

# **Attachment Booklet Part 2**

**Monday 18 September 2017**

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PE5, GO1, GO3, GO4, GO5 & EN1

# PE5 Attachments

1. Summary of Changes – Compliance Policy
2. Planning – Compliance Policy – PLA0032

**Monday 18 September 2017**

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PE5 – Adoption of Compliance Policy

## SUMMARY OF CHANGES – COMPLIANCE POLICY

Location	Previous Wording	New Wording	Reasoning
1 - Policy Objectives	<p>1.1 The objective of this policy is to establish clear guidelines for the management of Council's regulatory activities and implementation of enforcement action.</p> <p>1.2 This policy aims to ensure that regulatory matters are managed in a consistent and transparent manner and the principles of procedural fairness and natural justice are followed.</p> <p>1.3 This policy also provides guidelines on:</p> <p>1.3.1 The investigation of customer requests for action relating to regulatory matters.</p> <p>1.3.2 Options for dealing with unlawful activities and regulatory breaches.</p> <p>1.3.3 Matters for consideration and the exercise of discretion in dealing with regulatory action by Council.</p> <p>1.3.4 Determining whether or not enforcement action is warranted.</p>	<p>1.1 The intent of this policy is to establish clear guidelines and protocols for Council staff in the management of Council's regulatory activities.</p> <p>1.2 It provides workable guidelines on:</p> <ul style="list-style-type: none"> <li>• responding to reports alleging unlawful activity</li> <li>• assessing whether reports alleging unlawful activity require investigation</li> <li>• deciding on whether enforcement action is warranted</li> <li>• options for dealing with confirmed cases of unlawful activity</li> <li>• taking further action such as issuing an appropriate penalty or taking legal action.</li> <li>• implementing shared enforcement responsibilities.</li> </ul> <p>1.3 The policy also provides advice and guidance on:</p> <ul style="list-style-type: none"> <li>• the role of the Principal Certifying Authority and</li> <li>• the role of Councilors in enforcement.</li> </ul>	Included additional reasoning for the document and accurately reflect the objectives of the Policy.
2 - Background	<p>2.1 Enforcement and compliance issues have been guided in the past by staff based on the NSW Ombudsmen's "Local Government Enforcement Guidelines". Informally, these Guidelines have been used by Wollondilly Shire Council as Council has not had a specific Enforcement or Compliance Policy.</p> <p>2.2 Following the Department of Local Government "Promoting Better Practice Review of Wollondilly</p>	<p>2.1 Councils Regulatory responsibilities relate to actual unlawful activity as well as failure to take action (in order to be compliant with certain legal requirements). Council officers are often required to make decisions and use discretion about appropriate enforcement action when non-compliant issues are identified.</p> <p>2.2 Council also has a responsibility under Section 8 of the Local</p>	Reworded for ease of reading and provide a more informative introduction.

Location	Previous Wording	New Wording	Reasoning
	<p>Shire, Council is required to formally adopt a Policy that provides clear guidelines for the exercise of enforcement and compliance options in dealing with requests or complaints of alleged offences and breaches.</p>	<p>Government Act 1993 to ensure that its regulatory activities are carried out in a consistent manner and without bias.</p> <p>2.3 Council's regulatory and enforcement actions should be exercised to ensure the health, safety, welfare and environmental protection of all stakeholders including residents, visitors, workers and business operators. All stakeholders should have confidence in the decision making and internal review processes.</p> <p>2.4 In order to satisfy these needs this Policy has been developed and is broadly based on the "Model Policy" prepared for Local Councils by the NSW Ombudsman. Council supports and welcomes the positive assistance of the community in reporting issues of concern and undertakes to work collaboratively with the community to promote the benefits of compliance as a way of sustaining a safer quality of life for all.</p> <p>2.5 This policy distinguishes between a 'report alleging unlawful activity' and a 'complaint'.</p> <p>For the purposes of this policy, a report alleging unlawful activity is where an individual expresses concern in relation to alleged unlawful activity, or they request service from Council about such matters. Council considers that a response or resolution to a report alleging unlawful activity is explicitly or implicitly expected by the individual, or may be legally required.</p>	

Location	Previous Wording	New Wording	Reasoning
		<p>A complaint is where an individual expresses dissatisfaction about Council services, staff or the handling of a complaint. Therefore, a complaint may arise where an individual claims that Council staff have failed to take action in relation to a report alleging unlawful activity. A complaint will be recorded separately and responded to in accordance with Council's Complaints Management Policy and procedures.</p> <p>2.6 The spirit of this Policy is to use a graduated approach to enforcement action, for example the issue of a warning letter, which if not successful in resolving the issue may be followed by statutory Notices and Orders and finally some form of enforcement proceedings either via a penalty notice or Court action if compliance cannot be achieved by any other method.</p> <p>2.7 The Policy also recognises in some situations the gravity of the incident or other circumstances determines that an escalated approach is not appropriate and immediate regulatory action is required e.g. where an activity is or is likely to result in a significant public health or safety risk, or is or likely to cause environmental harm. Other offences such as parking matters and certain development consent breaches such as hours of operation may be dealt with using penalty notices due to the transient nature of the offence and the impracticality of using notices and orders to deal with the issue.</p> <p>2.8 Enforcement Guidelines and Procedures assist officers when</p>	

Location	Previous Wording	New Wording	Reasoning
		determining the most appropriate enforcement actions. This documentation facilitates a consistent approach for departments with regulatory responsibilities and will ensure the objectives of the Enforcement Policy are delivered.	
3. Applicability	<p><b>3. ELIGIBILITY</b></p> <p>3.1 The policy applies to all compliance and enforcement action where Council has regulatory responsibility under NSW legislation, including:</p> <p>3.1.1 Roads, footpaths and parking.</p> <p>3.1.2 Pollution control.</p> <p>3.1.3 Control of animals.</p> <p>3.1.4 Unauthorised development (including non-compliance with consent conditions).</p> <p>3.1.5 Public health and safety issues.</p> <p>3.1.6 Food safety.</p> <p>3.1.7 Fire safety.</p> <p>3.1.8 Tree preservation.</p>	<p><b>3. APPLICABILITY</b></p> <p><b>PURPOSE AND SCOPE</b></p> <p>3.1 This policy provides information for all internal and external stakeholders and interested parties about Council's position on compliance and enforcement matters in the local government area.</p> <p>3.2 The purpose of this policy is to provide structure for consistency and transparency in decision making and to facilitate a proportional approach to compliance and enforcement. It is also intended to assist Council staff to act promptly, effectively and consistently in response to allegations of unlawful activity.</p> <p>3.3 This policy outlines matters to be considered at the various stages of the enforcement process from the receipt and investigation of reports alleging unlawful activity, through to what enforcement option Council will choose and whether to commence criminal or civil proceedings.</p> <p>3.4 In certain circumstances Council will have shared enforcement responsibilities with other regulatory authorities. This policy sets out a collaborative and cooperative approach to such matters. Advice and guidance is also provided on the role of Council in building and construction compliance matters where there</p>	Generally adopted under the Model Compliance and Enforcement Policy- as prepared by Ombudsman's Office.

Location	Previous Wording	New Wording	Reasoning
		<p>is a private certifier and the role of Councillors in enforcement.</p> <p>3.5 Responsible Council staff are not limited by this policy in their use of discretion and exercise of official functions. The full circumstances and facts of each case need to be considered and a decision made on the merits.</p> <p>3.5.1 All employees who deal with alleged unlawful activities and the enforcement of relevant legislation are responsible for implementing this Policy.</p> <p>3.6 This Policy applies to all areas where Council has a compliance and enforcement role under the various Acts and Regulations, it includes but is not limited to:</p> <ul style="list-style-type: none"> <li>• abandoned vehicles</li> <li>• development and building control</li> <li>• pollution control</li> <li>• environmental health</li> <li>• public health and safety</li> <li>• sewage management</li> <li>• septic systems</li> <li>• control over animals</li> <li>• swimming pool audits</li> <li>• food safety</li> <li>• fire safety</li> <li>• tree preservation</li> <li>• parking control</li> <li>• any other functions which Council is the Appropriate Regulatory Authority (ARA).</li> </ul> <p>3.7 Any enforcement action will be in accordance with this Policy, relevant NSW legislation and the State Debt Recovery Office (SDRO) Guidelines.</p> <p>3.8 Whilst it is intended the principles in this Policy will have general application, there may be cases where the particular circumstances justify departure from these</p>	

Location	Previous Wording	New Wording	Reasoning
		<p>principles.</p> <p>3.9 In any situation where an officer considers taking action which varies from the Policy and associated guidelines/procedures, the officer will discuss the reasons for the variance with the Team Leader/Manager and will document and implement the agreed course of action.</p> <p>3.10 This Policy applies to Council's enforcement functions and supports the concept of an escalated and proportionate approach to most non-compliant issues except for examples such as parking and traffic matters.</p> <p>3.11 While this Policy covers all matters to be taken into account when exercising discretion about compliance and enforcement matters, it recognises that Rangers who work with traffic and parking matters are faced with different time frames and decisions which need to be made on the spot.</p> <p>3.12 It is Council's Policy that Rangers will enforce the Australian Road Rules and will carry out traffic and parking duties in a fair, equitable and consistent manner with a zero tolerance approach in school zones.</p> <p>3.13 Zero tolerance is the strict enforcement of the rules.</p> <p>3.14 Other offences such as certain development consent breaches e.g. hours of operation and some environmental offences (e.g. illegal burning of waste/plastics) may be dealt with using penalty notice due to the transient nature of the</p>	



Location	Previous Wording	New Wording	Reasoning				
		offence and the impracticality of using notices and orders to deal with the issue.					
4. Guidelines	<p>4. GUIDELINES</p> <p>The guidelines of this policy aim to clearly set out the methods of investigation of alleged offences and breaches.</p> <p>4.1 Regulatory matters are generally initially identified via proactive programs and inspections carried out by Council officers or via customer request management (CRMs) or complaints received from residents or other parties.</p> <p>4.2 All CRMs or complaints regarding regulatory matters are required to be investigated and acted upon promptly with the complainant kept regularly informed of progress in the matter in accordance with relevant legislative provisions and the standard procedures developed by the relevant Director or Manager. Details of CRMs or complaints received by Council are required to be documented in Council's Authority data base and except in the case of urgent matters, CRMs or complaints relating to privately owned premises are required to be provided in writing wherever possible.</p> <p>4.3 All complaints and alleged unlawful activities will be investigated by a relevant Council officer, except where:</p> <p>4.3.1 Advice has been provided to relevant parties and no further investigation is necessary.</p> <p>4.3.2 The matter has already been investigated and resolved to the satisfaction of the General Manager, Director Planning, Manager Compliance, Compliance Team Leader or investigating</p>	<p>4. GUIDELINES</p> <p><b>COMPLIANCE AND ENFORCEMENT PRINCIPLES</b></p> <p>4.1 The following are the principles that underpin Council actions relating to compliance and enforcement:</p> <table><tr><th>Principle</th><th>Action</th></tr><tr><td>Accountable and transparent</td><td><ul style="list-style-type: none"><li>• acting in the best interests of public health and safety and in the best interests of the environment</li><li>• ensuring accountability for decisions to take or not take action</li><li>• acting fairly and impartially and without bias or unlawful discrimination</li><li>• providing information about compliance and enforcement priorities and reasons for decisions to improve understanding and certainty and promote trust by the regulated community</li><li>• ensuring meaningful reasons for decisions are given to all relevant parties, particularly when there is a departure from this policy</li><li>• acting on any complaints or concerns about the conduct of compliance officers in accordance with Council's complaints management policy and procedures advising people and organisations subject to enforcement action</li></ul></td></tr></table>	Principle	Action	Accountable and transparent	<ul style="list-style-type: none"><li>• acting in the best interests of public health and safety and in the best interests of the environment</li><li>• ensuring accountability for decisions to take or not take action</li><li>• acting fairly and impartially and without bias or unlawful discrimination</li><li>• providing information about compliance and enforcement priorities and reasons for decisions to improve understanding and certainty and promote trust by the regulated community</li><li>• ensuring meaningful reasons for decisions are given to all relevant parties, particularly when there is a departure from this policy</li><li>• acting on any complaints or concerns about the conduct of compliance officers in accordance with Council's complaints management policy and procedures advising people and organisations subject to enforcement action</li></ul>	Rewritten to incorporate principles of the Model Compliance and Enforcement Policy- as prepared by Ombudsman's Office. It also incorporates a triage table for dealing with requests for action.
Principle	Action						
Accountable and transparent	<ul style="list-style-type: none"><li>• acting in the best interests of public health and safety and in the best interests of the environment</li><li>• ensuring accountability for decisions to take or not take action</li><li>• acting fairly and impartially and without bias or unlawful discrimination</li><li>• providing information about compliance and enforcement priorities and reasons for decisions to improve understanding and certainty and promote trust by the regulated community</li><li>• ensuring meaningful reasons for decisions are given to all relevant parties, particularly when there is a departure from this policy</li><li>• acting on any complaints or concerns about the conduct of compliance officers in accordance with Council's complaints management policy and procedures advising people and organisations subject to enforcement action</li></ul>						

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	<p>officer.</p> <p>4.3.3 Council is not the appropriate authority or has no jurisdiction to take regulatory action in relation to the particular matter (i.e. Matters under the jurisdiction of a State Authority such as Work Cover NSW or the NSW Department Environment &amp; Climate Change and Water, or internal matters in private Strata buildings and dividing fence disputes).</p> <p>4.3.4 The activity is considered to be lawful without further investigation.</p> <p>4.3.5 The complaint is considered to be trivial, frivolous or vexatious.</p> <p>4.3.6 The relevant General Manager, Director Planning, Manager Compliance, Compliance Team Leader or investigating officer has determined that investigation and/or regulatory action is not warranted (i.e. the extent of investigation requested would have an unreasonable impact upon the effective allocation of Council's resources or the investigation or taking of regulatory action would be unreasonable or not in the public interest).</p> <p>4.5 Council must consider a range of factors when determining whether a particular matter will warrant further investigation. Council's Customer Action Requests system is to be updated with the following details during the course of any investigation of a complaint:</p> <p>(i) Details of initial research or inspection, if any;</p> <p>(ii) Provide reasons to support initial action which may include, but not be limited to:</p> <ul style="list-style-type: none"> <li>▪ matter reported is part of an approved targeted program</li> <li>▪ relevant history of non-compliance</li> </ul>	<p>of any avenues available to seek an internal or external review of a decision.</p> <hr/> <p>Consistent</p> <ul style="list-style-type: none"> <li>• ensuring all compliance and enforcement action is implemented consistently</li> <li>• encouraging reports about possible unlawful activity by acting reasonably in response to the circumstances and facts of each matter.</li> </ul> <hr/> <p>Proportional</p> <ul style="list-style-type: none"> <li>• ensuring the level of enforcement action is proportionate to the level of risk and seriousness of the breach</li> <li>• making cost-effective decisions about enforcement action</li> <li>• taking action to address harm and deter future unlawful activity.</li> </ul> <hr/> <p>Timely</p> <ul style="list-style-type: none"> <li>• ensuring responses to reports alleging unlawful activity and decision making in relation to those is timely</li> </ul> <hr/> <p><b>PROCEDURAL FAIRNESS</b></p> <p>4.2 Council is committed to natural justice and acting fairly in all aspects of the implementation of this Policy. In order to achieve this outcome Council will:</p> <p>4.2.1 provide an opportunity for an alleged offender to provide an explanation. However there will be situations such as parking enforcement and other circumstances considered to represent a serious risk to public safety or the</p>	

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	<ul style="list-style-type: none"> <li>matter reported is the subject of an exemption</li> <li>matter reported poses an immediate risk to public health and or safety</li> <li>matter observed/reported has the potential for serious environmental impacts</li> <li>matter observed/reported contravenes a development consent or is contrary to the provisions of the Environmental Planning &amp; Assessment Act, Local Government Act, POEO Act, Companion's Animal Act or other relevant legislation.</li> </ul> <p>(iii) Subsequent follow-up actions are noted making reference to actions as outlined in Clauses 4.7.1 - 4.7.12.</p> <p>(iv) The complainant must be advised of the outcome or proposed action and this advice recorded in the CARS system outlining the manner in which this advice/information has been communicated to the complainant.</p> <p>(v) The CRM is to be clearly updated with the outcome of the investigation and if applicable the reasons for not taking further action as outlined under Clause 4.4 of the Compliance Policy.</p> <p>4.6 Following an investigation, there are a range of possible options available for Council to deal with a particular matter, depending on the nature of the matter or offence, relevant legislative provisions, circumstances of the case and the outcome desired.</p> <p>4.7 Enforcement options may include:</p> <p>4.7.1 Take no further action due to the lack of documentary evidence of the offence or breach.</p> <p>4.7.2 Take no further action having regard to the minor nature of the offence or breach and/or the circumstances of the case.</p>	<p>environment or the like which would preclude this opportunity;</p> <p>4.2.2 give due consideration to any written submission made by an alleged offender made either directly to Council in a representation period or via another agency e.g. State Debt Recovery Office if a penalty notice has been issued. Any requests or representations seeking reconsideration or waving of a penalty infringement notice are required to be made directly through The NSW Office of State Revenue. Requests to waive penalty infringement notices by individuals cannot be made directly to Council.</p> <p>4.2.3 make appropriate enquiries, investigations and searches prior to making an enforcement decision;</p> <p>4.2.4 establish appropriate procedures to avoid an enforcement decision being influenced by an actual, potential or perceived conflict of interest;</p> <p>4.2.5 implement procedures to ensure pertinent information is provided to a complainant and alleged offender, subject to maintaining appropriate confidentiality provisions;</p> <p>4.2.6 act without bias and within statutory time frames.</p> <p><b>CODE OF CONDUCT</b></p> <p>4.3 Council Officers carrying out their duties including the consideration of some form of enforcement action will have due regard to the contents of Council's Code of Conduct which is available on Council's</p>	

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	4.7.3 Counsel the person investigated to educate them on the relevant Council or regulatory requirements.	website;  <a href="http://www.wollondilly.nsw.gov.au/assets/Documents/Council/Meetings-and-Forums/Code-of-Conduct-Current.PDF">http://www.wollondilly.nsw.gov.au/assets/Documents/Council/Meetings-and-Forums/Code-of-Conduct-Current.PDF</a>	
	4.7.4 Refer parties to the Community Justice Centre (CJC) for mediation (i.e. in instances where it is considered that mediation would be more appropriate to resolve a particular matter rather than enforcement).	4.4 It is Council's expectation all inspections will be carried out in a respectful, helpful manner while being attuned to any language or cultural considerations. All Officers should:	
	4.7.5 Issue a warning and advise the person that any further breaches may result in possible regulatory action or penalties.	4.4.1 not permit personal views, or prejudices to influence their attitude towards any person or duty required to be undertaken;	
	4.7.6 Direct the person, or issue a letter requiring the person, to; cease specified activities; carry out specified works; provide specified information, documentation or certification; or obtain necessary approvals, within a specified timeframe.	4.4.2 respond to any reasonable request or lawful direction of any supervisor or manager of the Council;	
	4.7.7 Consult and negotiate with the parties and/or obtain undertakings, to achieve a reasonable outcome and resolution of a particular matter.	4.4.3 not commit any act which constitutes dereliction of duties;	
	4.7.8 Issue a formal Notice of Intention to serve an Order under relevant legislation, which allows the person to make representations to Council, prior to determining any appropriate action.	4.4.4 not commit any act that brings Council into disrepute;	
	4.7.9 Issue a formal Order or Notice under relevant legislation, requiring specified work to be undertaken or to provide specified documentation, certification or the like.	4.4.5 not publicly criticise Council in any way that is demeaning, defamatory or brings disrespect, or embarrassment to Council;	
	4.7.10 Issue a Penalty Infringement Notice (on-the-spot fine) for the offence or breach.	4.4.6 not publicly criticise any Council employee in any way, which is demeaning, defamatory or brings disrespect to Council;	
	4.7.11 Implement legal proceedings for the offence or breach (i.e. Local Court or Land & Environment	4.4.7 not obey any order or direction which is contrary to the law;	
		4.4.8 report any such unlawful order to the attention of an immediate supervisor, manager or, if required the General Manager;	
		4.4.9 not solicit or receive any gift that is contrary to Council's Code of Conduct.	

Location	Previous Wording	New Wording	Reasoning
	Court).		
	4.7.12 Implement proceedings for a Court Order or Injunction (i.e. to remedy or restrain a breach of relevant legislative provisions).	4.5 Council Officers who are accredited under the Building Professionals Board scheme must also satisfy the code of professional conduct requirements of such scheme.	
	4.7.13 Carry out the works specified in a Council Order under relevant legislation, at the expense of the person served with the Order.	4.6 Each officer should be mindful of any constraints that may have been placed on their "Delegations" by Council and be equipped with their specific authorisation (with photograph) under the particular Acts.	
	4.8 Council has discretion in determining whether or not enforcement action should be taken in relation to a particular matter having regard to evidence available; the nature, extent and impact of the offence or breach; the circumstances of the case and the public interest.	<b>CONFLICT OF INTEREST</b>	
	4.9 Further details on the use of discretion by regulatory authorities can be found in the Enforcement Guidelines for Councils published by the NSW Ombudsman and the NSW Department of Planning Practice Note – Exercising Discretion.	4.7 If a situation arises where an officer believes a perceived or actual conflict of interest exists, the matter will be referred to the supervisor.	
	4.10 A range of matters are required to be taken into consideration when determining the appropriate course of action on the enforcement of a regulatory matter, including:	<b>DISCLOSURE OF INTEREST</b>	
	4.10.1 The nature, extent and severity of the offence or breach.	4.8 Council Officers will respect the privacy and confidentiality of information received, however due to its statutory obligations and other requirements, confidentiality cannot always be guaranteed.	
	4.10.2 The impact or potential impact of the offence or breach upon the natural or built environment.	4.9 A person's identity who has made an allegation of illegal activity may be disclosed where:	
	4.10.3 The impact or potential impact of the offence or breach upon the health, safety and amenity of the locality and community.	4.9.1 access to the information is permitted under legislation including but limited to the Government Information (Public Access) Act 2009;	
	4.10.4 Whether or not the breach is of a technical, inconsequential or minor nature.	4.9.2 legal action is commenced and the information is disclosed in evidence	
		4.9.3 the person consents to the disclosure of the information;	
		4.9.4 the principles of natural justice dictate that information be disclosed to the person who is the subject of the request for action, which may enable the	

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	<p>4.10.5 Whether or not Council is legally stopped from taking action.</p> <p>4.10.6 The time period that has lapsed since the date of the offence or breach.</p> <p>4.10.7 Whether or not the breach has been remedied or rectified.</p> <p>4.10.8 Whether or not an informal warning or provision of education would be appropriate in the circumstances.</p> <p>4.10.9 Whether or not the particular matter satisfies relevant regulations, standards and requirements (i.e. Building Code of Australia).</p> <p>4.10.10 Whether or not the person has demonstrated contrition.</p> <p>4.10.11 Whether or not the person has been proactive in the resolution of the matter and assisted with any Council requirements and instructions.</p> <p>4.10.12 Whether or not a relevant development consent has been obtained or sought for the particular matter (i.e. variation to a consent).</p> <p>4.10.13 Whether or not any previous warnings, instructions or advice was provided which has not been followed.</p> <p>4.10.14 Whether or not it is likely that consent would have been issued for the particular matter if consent had been sought.</p> <p>4.10.15 Whether or not any relevant requirements of Council have been or will be satisfied to address or minimise any potential impacts of the particular matter.</p> <p>4.10.16 Whether or not it was likely that the person was aware</p>	<p>complainant to be identified;</p> <p>4.9.5 the Council is of the opinion that disclosure of information is necessary to effectively investigate the matter.</p> <p>4.10 Council Officers will also observe the information protection principles in the Privacy and Personal Information Protection Act 1998 which provides in certain circumstances for information to be shared with other public sector agencies for law enforcement purposes.</p> <p>4.11 Reasons for decisions regarding compliance and enforcement action will be made available, unless to do so would cause a breach of the law. Reasons may not be given in any case where the information may cause harm to an informant, witness, or the alleged offender, nor in circumstances which would significantly prejudice the administration of justice.</p> <p>4.12 Council's Rangers have access to external electronic databases including the NSW Companion Animals Register and the Roads and Maritime Services Vehicle Ownership Register. Neither of these are registers to which the general public or other Council Officers have access. The Information on both registers is protected under the relevant Acts. Rangers are subject to routine external auditing in regard to the use of databases.</p> <p>4.13 Some officers have access to the following information:</p> <ul style="list-style-type: none"> <li>• State wide Electronic Database of Residential Swimming Pools</li> <li>• Department of Fair Trading Boarding Houses Register</li> </ul>	

Location	Previous Wording	New Wording	Reasoning
	or should have been aware of the relevant regulatory provisions and requirements.	<b>INVESTIGATING ALLEGED UNLAWFUL ACTIVITY (RECEIVING AND RESPONDING TO CUSTOMER REQUESTS)</b>	
	4.10.17 Whether or not the person has demonstrated genuine mitigating circumstances or hardship.	4.14 Council's expectation is that all customer requests will be electronically recorded and dealt with within set customer service standards and having regard to the seriousness of the issue and other priorities.	
	4.10.18 Whether or not the action would be reasonable and proportionate in the particular case.	4.15 All reports alleging unlawful activity will be initially acknowledged through Council's Customer Requests system within 7 days and within 7-14 days appropriate action taken in accordance with this Policy and the person making the allegation also advised.	
	4.10.19 Whether or not the Council has sufficient admissible evidence to prove each element of the offence or breach.	14.16 All requests for action will be investigated unless:	
	4.10.20 The likely chances of success if the enforcement action was challenged in Court.	4.16.1 Council is not the Appropriate Regulatory Authority;	
	4.10.21 The costs and benefits of taking enforcement action or implementing proceedings (i.e. cost of proceedings, allocation of extensive resources compared to the likely outcome).	4.16.2 the matter has already been actioned and resolved;	
	4.10.22 The circumstances of the particular case.	4.16.3 insufficient information has been provided in order to adequately identify a property or issue;	
	4.10.23 The public interest.	4.16.4 the request for action is premature and relates to an unfinished aspect of work still in progress that has development approval;	
	4.11 Further details on the matters to be taken into consideration when deciding whether or not to take enforcement action are provided in <i>Annexure 1</i> .	4.16.5 a private Principal Certifying Authority is responsible for monitoring compliance with the conditions of development consent. Council will work cooperatively with relevant agencies and Private Certifiers to achieve compliant outcomes;	
	4.12 Examples of the key options available and possible courses of action for a number of regulatory scenarios are provided in <i>Annexure 2</i> .	4.16.6 the activity is determined to	
	4.13 Specific legislative provisions are contained within each piece of legislation relating to the appointment of Authorised Officers, Powers of Entry, Inspections & Investigations, Search Warrants, Issuing of		

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	<p>Notices &amp; Orders, Issuing Penalty Infringement Notices, Legal Proceedings, Appeals, Court Orders, Penalties, Compensation and other associated activities.</p> <p>4.14 Specific provisions are also contained in most legislation to restrict an Authorised Officers access to residential premises, unless permission has been obtained accordingly or the inspection relates to a current approval, or Council has obtained a Search Warrant from the Court Magistrate.</p> <p>4.15 Council officers are required to be duly authorised and carry out their regulatory functions fully in accordance with these provisions. Failure to do so may affect any potential proceedings or appeal and could result in a determination against Council or possible compensation.</p> <p>4.16 Specific provisions for offences are contained within relevant legislation. Offences include:</p> <p>4.16.1 Failure to comply with a particular legislative or regulatory provision (i.e. a provision of the Environmental Planning &amp; Assessment Act, Local Government Act, Roads Act, Companion Animals Act, Protection of the Environment Operations Act, Food Act etc).</p> <p>4.16.2 Failure to obtain the required development consent or a construction certificate for development and building works (where required).</p> <p>4.16.3 Carrying out development or other activity contrary to relevant legislative requirements, development consent or other approval (i.e. carrying out development contrary to a</p>	<p>be lawful and does not require an approval;</p> <p>4.16.7 a Development Approval, Complying Development Certificate or any other lawful authority has been granted for the work and the request for action does not relate to a non-compliance issue;</p> <p>41.6.8 the request for action is trivial, frivolous or vexatious in nature; the complainant is solely seeking a monetary refund from a third party;</p> <p>4.16.9 the request for action relates to a civil matter or dispute (private matter between neighbours).</p> <p>4.16.10 anonymous requests for action unless an imminent serious threat to the environment and public health and safety.</p> <p>4.17 In situations where Council is the Appropriate Regulatory Authority, the relative seriousness of each matter will determine the priority attached to a particular request for action.</p> <p>4.18 Council will try to use the quickest and most informal option to deal with unlawful activity wherever possible unless there is little likelihood of compliance with such options. Council staff will use discretion to determine the most appropriate response to confirmed cases of unlawful activity and may take more than one approach. Any enforcement action taken by Council will depend on the full circumstances and facts of each case, with any decision being made on the merits.</p>	



Location	Previous Wording	New Wording	Reasoning
	condition of consent).	4.19 At all times, Council's key concerns are:	
	4.16.4 Failure to comply with the terms of a Council Order or Notice.	<ul style="list-style-type: none"><li>to prevent or minimise harm to health, welfare, safety, property or the environment</li><li>to influence behaviour change for the common good and on behalf of the community.</li></ul>	
	4.16.5 Parking a vehicle or driving a vehicle contrary to the Road Transport Regulation -Roads Rules 2008.	4.20 As a guide the following categories can be applied:	
	4.16.6 Failure to provide specified documentation or certification to Council (i.e. annual fire safety statement).	Alleged non-compliant activities ranked by order of worst case consequence	
	4.17 Most of the legislation administered by Council, contains provisions requiring Council to issue a Notice of Intention prior to the service of a formal Order (except in the case of an emergency). The Notice of Intention must contain specific information and it, in effect, provides the person with the opportunity to make representations to Council, to demonstrate why Council should not issue a formal Order or commence proceedings or take other regulatory action.	<b>Alleged non-compliant activities ranked by order of worst case consequence</b>	
		<b>Legionella control – regulated systems</b>	
		<b>Fire Safety</b>	
		<b>Dangerous Structure</b>	
		<b>Dogs attacking\ Dangerous Dogs</b>	
		<b>Unsecured loads</b>	
		<b>Swimming pool – safety (fence\barrier)</b>	
		<b>Food Safety</b>	
		<b>Livestock Straying</b>	
		<b>Discharge waste to water body</b>	
		<b>Tree clearing</b>	
		<b>Demolition of heritage item</b>	
		<b>Asbestos removal</b>	
		<b>Major earthworks or landfill</b>	
		<b>As directed by Council Managers</b>	
	4.18 This process follows the principles of procedural fairness. However, at times, it may also have the effect of prolonging the effective resolution of a particular matter.	<b>Major non-compliance with approval including tattooing, botox and piercing injections</b>	
		<b>Skin penetration practice</b>	
		<b>Property squatter, abandoned unsecured property</b>	
		<b>Dogs Straying</b>	
		<b>Parking breach – safety issue</b>	
		<b>Public Place – Obstructions, Abandoned Articles or Building Materials</b>	
		<b>Public Swimming – water quality</b>	
		<b>Sewer discharges</b>	
	4.19 Representations may be made by the subject person or their solicitor and any representations are required to be made in writing, to ensure that any representations are appropriately recorded and considered. Any representations made within the specified timeframe are required to be considered by Council prior to determining the appropriate course of action.		
	4.20 Statistically, in the majority of cases, matters are often		

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	addressed or resolved to an acceptable level during the Notice of Intention and Representations stages and it may not be necessary to serve a formal Order (i.e. development consent has been obtained in relation to a previously unauthorised use of a premises or by the person carrying out certain works).	<b>Public Place – Litter</b> <b>Public Place – Rubbish Dumping</b> <b>Air Pollution</b> <b>Parking breach – general</b> <b>Unauthorised building works in progress</b> <b>On Site Sewage Management Systems</b> <b>Public Place – Advertising Signs Structures Oversized.</b> <b>Overgrown Land/Vegetation</b> <b>Unauthorised Land Use - General</b> <b>Rubbish accumulation</b> <b>Land Pollution</b> <b>Noise Pollution Commercial and Industrial</b> <b>Unauthorised Brothel</b> <b>Public Place – Abandoned Vehicles</b> <b>Vehicles in Parks/Reserves</b> <b>Land Use – Signs in commercial zones (no safety or heritage impacts) (** see below)</b> <b>Land Use – Living in Sheds/Garages/Caravans (**see below)</b> <b>Unauthorised building works completed (**see below)</b> <b>Land Use – Home Occupation/Business/Industry</b> <b>Animal &amp; Bird Control (Other than dogs and cats)</b> <b>Stormwater Nuisance</b> <b>Domestic noise pollution</b> <b>Domestic Odour nuisance</b> <b>Dogs Barking</b> <b>Dogs defecating in Public Places (ownership known)</b> <b>Land Use – Dividing Fences (possible referral to the Local Land Board)</b> <b>Hair/Skin/Beauty – no skin penetration</b> <b>Public Place – Buskers, Spruikers, Stalls</b>	
	4.21 Council may issue an Order (or Notice in some legislation) directing a person to carry out specified works or to provide specified information, documentation or the like, within a specified timeframe.		
	4.22 The legislation contains specific provisions relating to the service of Orders, which must be strictly followed. Council is also only able to issue an Order directing a person to do the matters specified in the legislation.		
	4.23 It is an offence to fail to comply with an Order and the relevant legislation generally contains provisions for the implementation of legal proceedings, penalties and in some cases, the issuing of penalty infringements for the offence.		
	4.24 The legislation also allows Council to enter upon the property and give effect to the terms of an order, including the carrying out of any work required by the order and to recover Council's costs.		
	4.25 The relevant legislation contains provisions for a person to lodge a formal Appeal against an Order in the Land & Environment Court within a specified timeframe.		
	4.26 Appeals are required to be considered on the merits of the case and the legality and scope	<p>*This is not an exhaustive list Compliance audits may affect order of priority.</p>	

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	<p>of the Order. Matters relating to any initial offence (i.e. the undertaking of unauthorised work) are not relevant matters for consideration by the Court, as separate provisions are available for criminal sanctions in relation to any initial offence.</p>	<p>** Matters raised by external complainants will be given priority unless it is deemed a serious public health or environmental risk.</p> <table><tr><td><b>Initial triaging response time</b></td></tr><tr><td>Extreme – within working day</td></tr><tr><td>High – Within 24 hours</td></tr><tr><td>Medium – within 7-14 days*</td></tr><tr><td>Minimal or no action</td></tr></table>	<b>Initial triaging response time</b>	Extreme – within working day	High – Within 24 hours	Medium – within 7-14 days*	Minimal or no action	
<b>Initial triaging response time</b>								
Extreme – within working day								
High – Within 24 hours								
Medium – within 7-14 days*								
Minimal or no action								
4.27	<p>Therefore, detailed consideration must be given to the possible service of any Orders and the likely outcome in the event of an Appeal.</p>	<p><b>ANONYMOUS REQUESTS FOR ACTION</b></p>						
4.28	<p>For example, a Notice of Intention and/or a Penalty Infringement Notice may be issued in relation to a particular breach (i.e. an unauthorised structure). However, following consideration of representations, provision of information and certain works being undertaken, it may not be appropriate to proceed to serve an Order, having considered the impacts upon the locality, compliance with relevant planning instruments and regulatory standards, etc, as the likelihood of success in Court may be minimal.</p>	<p>4.21 Anonymous requests for action may not be able to be investigated. The decision to investigate includes but is not limited to the subject and seriousness of the matter – i.e. whether the matter is a serious public health or environmental issue; the likely reliability of the request for action, ability to access further information, available staff resources and Work Health and Safety responsibilities.</p>						
4.29	<p>Many of the Acts of Parliament which Council administers provide the ability for Council officers to issue Penalty Notices for certain offences. The penalty notice system was introduced to provide an effective and efficient means to deal with those offences which are generally not serious enough to warrant instituting Court proceedings.</p>	<p>4.22 When an anonymous request for action is investigated, an appropriate record of the investigation will be made.</p>						
		<p><b>FRAUDULENT REQUESTS FOR ACTION</b></p>						
4.30	<p>A Penalty Notice is served because it is apparent that an offence has been committed, but payment of the fine does not result in the recording of a criminal conviction. Non-payment of the fine is not dealt with by way of criminal sanctions, but is recoverable as a civil debt.</p>	<p>4.23 Fraudulent request for action are where a person lodges a request with Council in someone else’s name without that persons knowledge or where the nature of the request is untrue. Such request will be treated as vexatious unless a valid basis for such a request can be established. The decision to investigate such a matter will be based on the same criteria as for anonymous request.</p>						

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	<p>4.31 However, a person may elect to have the matter heard in proceedings in the criminal jurisdiction of the Local Court.</p> <p>4.32 Penalty notices may be issued by designated authorised officers under the relevant legislation. In many instances, authorised officers are not only Council officers, but include officers from other agencies such as the Police and DECCW.</p> <p>4.33 Penalty notices are generally most appropriate where:</p> <p>4.33.1 the breach is minor,</p> <p>4.33.2 the facts are apparently incontrovertible,</p> <p>4.33.3 the breach is a one-off situation that can be remedied easily, and</p> <p>4.33.4 the issue of a penalty notice is likely to be a practical and viable deterrent.</p> <p>4.34 It may not be appropriate to issue penalty notices where:</p> <p>4.34.1 the breach is on-going.</p> <p>4.34.2 the penalty prescribed in the penalty notice would be clearly inadequate for the severity of the offence.</p> <p>4.34.3 the extent of impact or the harm to the environment or locality cannot be assessed immediately.</p> <p>4.34.4 the evidence available may be insufficient and the matter may be unlikely to succeed in the event of a Court hearing.</p> <p>4.34.5 a significant period of time has elapsed since the alleged breach.</p> <p>4.34.6 negotiations to find a resolution to the problem which is the subject</p>	<p><b>UNREASONABLE COMPLAINANT CONDUCT</b></p> <p>4.24 Council has an obligation to use resources efficiently and effectively. While Council acknowledges a customer's entitlement to make requests, it reserves the right to cease responding to customers that continually exhibit unreasonable customer behaviour including:</p> <p>4.24.1 requests that place unreasonable demands on Council's staff;</p> <p>4.24.2 requests that place unreasonable demands on Council's resources;</p> <p>4.24.3 unreasonable persistence;</p> <p>4.24.4 unreasonable lack of cooperation;</p> <p>4.24.5 requests for action based on unreasonable arguments;</p> <p>4.24.6 abusive and derogatory behaviour towards Council staff;</p> <p>4.24.7 requests for action which are proven to be vexatious or retaliatory.</p> <p>4.25 In the context of the above situations officers will follow Council's Policy on Dealing with Unreasonable Customer Conduct and its Customer Service Charter.</p> <p><b>CONSULTATION WITH OTHER AGENCIES</b></p> <p>4.26 There will be situations such as in the investigation of a request for action or the like where Council has no legal or geographical jurisdiction or</p>	

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	<p>of the breach are being conducted.</p> <p>4.34.7 a direction has been issued to perform specified work (i.e. via a Notice of Intention to serve an Order) within a timeframe and the time limit for such performance has not expired.</p> <p>4.34.8 Multiple breaches have occurred.</p> <p>4.35 Penalty Notices are generally most suitable for immediate and straightforward offences or breaches, to uphold the objectives of the relevant regulatory requirements and to act as a deterrent against further similar breaches, including:</p> <p>4.35.1 Parking offences.</p> <p>4.35.2 Roads and traffic offences.</p> <p>4.35.3 Waste and littering offences.</p> <p>4.35.4 Failure to comply with public notices.</p> <p>4.35.5 Companion animal offences.</p> <p>4.35.6 Public safety offences.</p> <p>4.35.7 Low impact pollution incidents.</p> <p>4.35.8 Minor fire safety offences.</p> <p>4.35.9 Low impact development control offences.</p> <p>4.35.10 Essential services certification offences.</p> <p>4.36 To ensure that Council manages the penalty infringement process and enforcement action in a consistent, transparent, accountable and unbiased manner, any requests or representations seeking reconsideration or waiving of a penalty infringement notice are required to be made directly</p>	<p>operational responsibility and consequently the matter should be referred to the relevant agency without delay.</p> <p>4.27 Agencies may include but not be limited to, the NSW Police Services, NSW Department of Planning and Infrastructure, Local Land Services, NSW Office of Fair Trading, NSW Department of Primary Industry, NSW WorkCover, NSW Environment Protection Authority, NSW Food Authority, NSW Health, the Building Professional Board, NSW Roads and Maritime Services, Fire and Rescue NSW.</p> <p>4.28 Council will consult with the responsible agencies to facilitate a coordinated and constructive compliance approach and keep the complainant informed.</p> <p><b>PRIVATE CERTIFIERS</b></p> <p>4.29 In terms of Council's Development Compliance role, requests for action are received from time to time in regard to various matters on building construction sites where Council is not the Principal Certifying Authority.</p> <p>4.30 In such situations in the first instance the complainant should be encouraged to contact the Principal Certifying Authority directly to ensure all relevant details are accurately communicated to the Principal Certifying Authority.</p> <p>4.31 Alternatively, should an external observation by a Council Officer of a building site which is under the jurisdiction of a Principal Certifying Authority (not being Council) disclose significant</p>	

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	through the NSW Office of State Revenue.	non-compliant issues, Council will initially draw the matter to the attention of the Principal Certifying Authority.	
	4.37 Requests to waive penalty infringement notices are not to be made directly to Council.	4.32 If a request or observation relates to an urgent matter involving a life threatening situation or significant environmental damage or an on-going matter where valuable evidence may not be available if an immediate response is not commenced, a Council Officer may undertake an immediate investigation to assess the seriousness of the situation.	
	4.38 To maintain the integrity of the Council's regulatory and enforcement functions, Council will not support the waiving of a penalty infringement notice unless:		
	4.38.1 It is evident that an error has been made in the issuing of the penalty notice, or		
	4.38.2 The extent of evidence or circumstances may affect the successful defence of the infringement in the event of a Court hearing or appeal, or	4.33 If the request is substantiated, Council will consider action in accordance with this Policy and the Principal Certifying Authority informed of any action taken by Council.	
	4.38.3 It is evident that Council has acted unreasonably in the issuing of the penalty notice, or	4.34 In any situation where it is considered a Principal Certifying Authority has acted incorrectly, improperly and/or unprofessionally a report may be forwarded to the Manager recommending referral of the matter to the Building Professionals Board.	
	4.38.4 Legal advice has been obtained and it is considered appropriate to do so.		
	4.38.5 Having regard to relevant legal advice.		
	4.39 Council's investigating officers will follow up enforcement matters to determine compliance with Council's directions, Notices and Orders, to an acceptable level. If Council's Notices and Orders are not reasonably complied with, consideration will be given to taking further regulatory action, legal proceedings or penalties.	4.35 Relevant factors for determining if a matter should be referred to the Building Professionals Board are:	
		a) the seriousness of the failure to act professionally;	
		b) any previous history of complaints;	
		c) the level of cooperation from the Principal Certifying Authority to rectify the problem/s;	
		d) the adequacy of changes made by the Principal Certifying Authority to procedures or practices to ensure that future problems will be minimized.	
	4.40 Council recognises that advice, negotiation and mediation may achieve compliance or a reasonable solution for the parties without the need to take enforcement action in certain circumstances.		

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	<p>4.41 This component of the policy relates specifically to situations where, through investigative work under taken by Council officers, work programs initiated by Council or specific complaints made to the Council it becomes evident that an unauthorised use has been noted.</p> <p>4.42 This could involve instances where additional dwellings (flats, units, etc) have been noted in an existing building or where a non-conforming use has been noted as operating without a relevant consent from the Council. In many instances these cases would relate to long terms situations where the non-conforming use or activity has been ongoing for some time.</p> <p>4.43 Where non-conforming uses are identified they will generally be investigated and reported to the Council for appropriate action. In situations where public safety is an immediate concern, particularly in relation to fire safety matters under the BCA, Council officers will serve the required Orders necessary to ensure that public safety is immediately addressed. In taking such action this does not imply that the Council is endorsing the unauthorised use or activity and such action will not prevent the Council from taking further action in relation to the matter.</p> <p>4.44 Matters for consideration include:-</p> <p>4.44.1 Safety – in the first instance the initial consideration needs to be whether or not the continuation of the use or activity constitutes a risk to public safety. If public safety is at serious risk then immediate action needs to be taken to address the risk above</p>	<p>4.36 Examples of matters that might be referred to the Building Professionals Board include but are not limited to:</p> <ul style="list-style-type: none"> <li>a) significant departure from the development consent and the PCA does not appear to be taking appropriate action to address the issue;</li> <li>b) the persistent failure to submit relevant certificates or other documentation to Council within the specified time period;</li> <li>c) Complying Development Certificates that do not meet the development standards for the relevant State Environmental Planning Policy.</li> </ul> <p><b>BUILDING CERTIFICATES</b></p> <p>4.37 Council recognises that persons who may have carried out unlawful building works may, as an option apply for approval of a development application. If this option is taken an owner will need to apply for a Building Certificate under section 149D of the Environmental Planning and Assessment Act to retain and regularise the structure. If a building certificate is issued, Council cannot ask for demolition or alterations unless after 7 years of fair wear and tear.</p> <p>4.38 It is Council's policy however that such applications should not be encouraged to justify unlawful works. Irrespective of whether or not a Building Certificate is applied for, Council may take action against a person who carried out unlawful works</p> <p>4.39 The action may include the issuing of a penalty notice or in conjunction with criminal proceedings, where it is</p>	

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	<p>all other considerations. This can be undertaken through the issuing of emergency orders and/ or injunctive relief depending on the matter and circumstances. Where orders are served in relation to fire safety and BCA compliance the property owner is to be advised that compliance with the order does not imply that the Council endorses the unauthorised use or activity nor will it prevent further action being taken by the Council in relation to the unauthorised use or activity.</p> <p>4.44.2 Onus of proof – property owners will be given a reasonable opportunity to establish the bona fides of the activity or use and provide evidence as to the history of the use of the property and their understanding of the circumstances arising in relation to the activity and use under question. Council staff and its solicitors will examine all information received in relation to such matters and undertake a thorough check of Council records to establish all relevant background information and history of use of the property. Where the examination of such information establishes reasonable doubt as to the bona fides of the activity or use the Council will generally err on the side of caution and not accept claims that are not supported by verifiable evidence.</p> <p>4.44.3 Personal circumstances – the personal circumstances of property owners will be taken into consideration in determining appropriate action, i.e. whether or not the property owner was directly responsible for the activity or use, how long the property has been owned by the current property owner, and any issues of personal hardship arising in relation to the matter.</p>	<p>considered appropriate and necessary for punitive action to also be taken, having regard to the restriction provisions provided under Section 127 (7) of the EP&amp;A Act.</p> <p>4.40 Building Certificate applications to support unlawful building works will be expected to provide the same level of details in plans, certificates, specifications etc. as would be required for assessing an Application for Development, a Construction Certificate, a Complying Development Certificate and/or an Occupation Certificate.</p> <p><b>ROLE OF COUNCILLORS IN ENFORCEMENT</b></p> <p>4.41 Decision making relating to the investigation of reports alleging unlawful activity and taking enforcement action is the responsibility of appropriately authorised Council staff or the Council itself.</p> <p>4.42 Individual Councillors do not have the right to direct Council staff in their day-to-day activities. Councillors can help individuals who raise concerns with them by satisfying themselves that their Council's policies are being carried out correctly, however they cannot ignore or alter a policy in order to satisfy the demands of special groups.</p> <p>4.43 The general manager may present certain decisions to be ratified by the elected Council if this is necessary or desirable, and the Councillors may also have the right to call for a report about particular issues to a Council meeting.</p>	



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	<p>4.45 As a general guide the Council will not tolerate property owners who are directly responsible for the unauthorised use or activity as opposed to those who may have unwittingly purchased a property unaware that the use or activity was unauthorised. In circumstances where the Council may have refused consent to a proposal to develop a property and the property owner subsequently proceeds to undertake the proposal without consent the Council will prosecute the property owner.</p> <p>4.46 In terms of personal hardship the Council will take into consideration individual circumstances which includes:</p> <p>4.46.1 the income(s) of the property owner(s).</p> <p>4.46.2 personal circumstances of the property owner(s).</p> <p>4.46.3 how much income is derived from the unauthorised use or activity.</p> <p>4.46.4 the willingness of a property owner(s) to enter into legally binding arrangements with the Council to consider limits or restrictions on the unauthorised use or activity continuing and its potential for further intensification.</p> <p>4.47 Length of time – after investigation of the matter and establishing the length of time an activity or use has been occurring consideration will be given as to whether or not there is a realistic prospect for a successful action to have the activity or use cease. Legal advice will be obtained before making a determination in such cases.</p> <p>4.48 Existing use rights –</p>	<p><b>PROACTIVE COMPLIANCE MONITORING</b></p> <p>4.44 In addition to responding to requests for action and enquiries about alleged unlawful activity Council also provides a number of proactive compliance programs around high risk regulatory areas. These areas include but are not limited to:</p> <ul style="list-style-type: none"> <li>• Food premises inspections</li> <li>• Swimming pool audit program</li> <li>• Public swimming pool water quality monitoring</li> <li>• Onsite sewage management systems (septic tanks)</li> <li>• Fire safety</li> <li>• Sedimentation and erosion control</li> </ul> <p>4.45 Compliance action may be initiated where non-compliance is identified in the course of a proactive compliance inspection, in which case the principles outlined in this policy will also be applied.</p> <p><b>THE DECISION PROCESS – TAKING ENFORCEMENT ACTION</b></p> <p>4.46 When deciding whether to take enforcement action in relation to a confirmed case of unlawful activity, Council will consider the full circumstances and facts of the matter and the public interest. The following common considerations will assist Council staff in determining the most appropriate response in the public interest:</p> <p><b>Considerations about the alleged offence and impact:</b></p> <ul style="list-style-type: none"> <li>• The nature, extent and severity of the unlawful activity, including whether the activity is continuing;</li> <li>• The harm or potential harm to the environment or public health, safety or amenity</li> </ul>	

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	<p>consideration will be given as to whether or not a decision to take or not take further action will have potential implications on the existing use rights of a property. This assessment will include an examination of future development potential, if any, of the property; the use of legal agreements or instruments to restrict and/or limit the future use of the property and its development potential or require its conversion to a conforming use at a later time. In resolving what form of action is appropriate Council staff will obtain appropriate legal advice.</p> <p>4.49 The General Manager, Director Planning, Manager Compliance, Compliance Team Leader or investigating Officer of the Council will recommend when specific matters should be referred for legal action.</p>	<p>caused by the unlawful activity;</p> <ul style="list-style-type: none"> <li>• The seriousness of the breach, including whether the breach is merely technical, inconsequential or minor in nature;</li> <li>• The time period that has lapsed since the date of the unlawful activity.</li> </ul> <p><b>Considerations about the alleged offender:</b></p> <ul style="list-style-type: none"> <li>• Any prior warnings, instruction, advice that was issued to the person or organization reported or previous enforcement action taken against them;</li> <li>• Whether the offence was committed with intent;</li> <li>• Whether the person or organization reported has been proactive in the resolution of the matter and assisted with any Council requirements and instructions;</li> <li>• Any mitigating or aggravating circumstances demonstrated by the alleged offender;</li> <li>• Any particular circumstances of hardship affecting the person or organization reported.</li> </ul> <p><b>Considerations about the impact of any enforcement action:</b></p> <ul style="list-style-type: none"> <li>• The need to deter any future unlawful activity;</li> <li>• Whether an educative approach would be more appropriate than a coercive approach in resolving the matter;</li> <li>• The prospect of success if the proposed enforcement action was challenged in court;</li> <li>• The costs and benefits of taking formal enforcement action as opposed to taking informal or no action;</li> <li>• What action would be proportionate and reasonable in response to the unlawful activity;</li> <li>• Whether Council is prevented from taking action based on</li> </ul>	

Location	Previous Wording	New Wording	Reasoning
		<p>earlier advice given, i.e. whether an estoppel situation has been created.</p> <p><b>Considerations about the potential for remedy:</b></p> <ul style="list-style-type: none"> <li>• Whether the breach can be easily remedied</li> <li>• Whether it is likely consent would have been given for the activity if it had been sought</li> <li>• Whether there is a draft planning instrument on exhibition that would make the unauthorized use legal.</li> </ul> <p><b>Legal or technical issues:</b></p> <ul style="list-style-type: none"> <li>• Where legal and/or technical issues are in question, Council staff will consider whether legal advice or professional advice from duly qualified staff or other experts should be obtained and considered. Council may also require a person subject to possible enforcement action to obtain professional advice in relation to issues of concern to Council for assessment as to whether further action is required.</li> </ul> <p><b>Requirements of Council staff considering enforcement action:</b></p> <ul style="list-style-type: none"> <li>• Prior to taking enforcement action, Council staff will take into account the above considerations as well as the evidence gathered during their investigation. Council staff must act impartially, be mindful of their obligations under Council's Code of Conduct and not act as a decision-maker in relation to any matter in which they have a personal interest. Enforcement action will not be taken purely as a response to the conduct of an individual such as persistent demands or threats.</li> <li>• Council staff are required to</li> </ul>	

Location	Previous Wording	New Wording	Reasoning
		<p>maintain records about critical thinking and decision making processes in relation to reports alleging unlawful activity and any enforcement action, as well as records of interactions with relevant parties. Council staff will at all times adhere to Council's internal approval processes prior to the commencement of any enforcement action.</p> <ul style="list-style-type: none"> <li>Council staff will take steps to ensure that any enforcement action is taken against the correct person or organization. Where there are multiple possible parties to an alleged unlawful activity, Council staff will be guided by legal advice in determining the appropriate persons to pursue.</li> </ul> <p><b>OPTIONS FOR DEALING WITH CONFIRMED CASES OF UNLAWFUL ACTIVITY</b></p> <p>4.47 Council will try to use the quickest and most informal option to deal with unlawful activity wherever possible unless there is little likelihood of compliance with such options. Council staff will use discretion to determine the most appropriate response to confirmed cases of unlawful activity and may take more than one approach. Any enforcement action taken by Council will depend on the full circumstances and facts of each case, with any decision being made on the merits.</p> <p>At all times, Council's key concerns are:</p> <ul style="list-style-type: none"> <li>To prevent or minimise harm to health, welfare, safety, property or the environment</li> <li>To influence behaviour change for the common good and on</li> </ul>	

Location	Previous Wording	New Wording	Reasoning
		<p>behalf of the community</p> <p>The following enforcement options to be considered by Council are ordered to reflect an escalation in response that is proportionate to the level of risk, the seriousness of the confirmed breach or the need for a deterrent:</p> <p>Level of risk    Enforcement options</p> <p>Minimal or No Action</p> <ul style="list-style-type: none"> <li>• Take no action on the basis of a lack of evidence or some other appropriate reason</li> <li>• Provision of information/advice on how to be compliant</li> </ul> <p>Medium</p> <ul style="list-style-type: none"> <li>• Negotiating with the person to obtain voluntary undertakings or an agreement to address the issues of concern</li> <li>• Issuing a warning or a formal caution</li> <li>• Issuing a letter requiring work to be done or activity to cease in lieu of more formal action</li> <li>• Issuing a notice of intention to serve an order or notice under relevant legislation, and then serving an order or notice if appropriate and may include the issuing of a penalty notice.</li> </ul> <p>High</p> <ul style="list-style-type: none"> <li>• Issuing a penalty notice</li> <li>• Carrying out the works specified in an order at the cost of the person served with the order</li> <li>• Commence legal proceedings for an offence against the relevant Act or Regulation</li> </ul> <p>Extreme</p> <ul style="list-style-type: none"> <li>• Seeking an injunction through the courts to prevent future or continuing unlawful activity</li> <li>• Commence legal proceedings for an offence against the relevant Act or Regulation</li> </ul> <p>(NB: this is a guide only and each issue is assessed on its merits and circumstances. Some</p>	

Location	Previous Wording	New Wording	Reasoning
		<p>offences such as parking may be dealt with using penalty notice due to the transient nature of the offence and the impracticality of using notices and orders to deal with the issue)</p> <p><b>Following up enforcement action:</b></p> <p>All enforcement action will be reviewed and monitored to ensure compliance with any undertakings given by the subject of enforcement action or advice, directions or orders issued by Council. Reports alleging continuing unlawful activity will be assessed and further action taken if necessary. If the unlawful activity has ceased or the work has been rectified, the matter will be resubmitted for follow up action to ensure ongoing compliance outcomes are met. Should initial enforcement action be found to have been ineffective, Council staff will consider other enforcement options.</p> <p><b>TAKING LEGAL ACTION</b></p> <p>4.48 The Council and its delegated staff will be guided by legal advice in deciding whether to commence criminal or civil proceedings and will consider the following;</p> <ul style="list-style-type: none"> <li>• Whether there is sufficient evidence to establish a case to the required standard of proof</li> <li>• Whether there is a reasonable prospect of success before a court</li> <li>• Whether the public interest warrants legal action being pursued</li> </ul> <p><b>Whether there is sufficient evidence to establish a case to the required standard of proof</b></p>	

Location	Previous Wording	New Wording	Reasoning
		<p>Council considers the decision to take legal action a serious matter, and as such will only initiate and continue proceedings once it has been established that there is admissible, substantial and reliable evidence to the required standard of proof.</p> <p>The basic requirement of any criminal prosecution is that the available evidence establishes a prima facie case. The prosecutor is required to prove the elements of the offence beyond reasonable doubt.</p> <p>In civil enforcement proceedings, Council will require sufficient evidence to satisfy the court that an actual or threatened breach has occurred on the balance of probabilities.</p> <p><b>Whether there is a reasonable prospect of success before a court</b></p> <p>Given the expense of legal action Council will not take legal action unless there is a reasonable prospect of success before a court. In making this assessment, Council staff will consider the availability, competence and credibility of witnesses, the admissibility of the evidence, all possible defences, and any other factors which could affect the likelihood of a successful outcome.</p> <p><b>Whether the public interest requires legal action to be pursued</b></p> <p>The principal consideration in deciding whether to commence legal proceedings is whether to do so is in the public interest. In making this determination, the same factors to be considered</p>	

Location	Previous Wording	New Wording	Reasoning
		<p>when taking enforcement action apply (see Section 20).</p> <p>The following considerations relate more specifically to the decision to commence legal proceedings and will assist Council and its delegated staff in making this determination:</p> <ul style="list-style-type: none"> <li>• The availability of any alternatives to legal action</li> <li>• Whether an urgent resolution is required (court proceedings may take some time)</li> <li>• The possible length and expense of court proceedings</li> <li>• Any possible counter-productive outcomes of prosecution</li> <li>• What the effective sentencing options are available to the court in the event of conviction</li> <li>• Whether the proceedings or the consequences of any resulting conviction would be unduly harsh or oppressive</li> </ul> <p>Time within which to commence proceedings:</p> <p>Council staff must be aware of legislative time limits in which enforcement proceedings must be commenced. Sometimes legal action will be statute barred despite good evidence that unlawful activity has occurred.</p> <p><b>RECOVERY OF FINES AND LEGAL COSTS:</b></p> <p>Council's policy for recovery of costs in Courts is:</p> <ol style="list-style-type: none"> <li>To seek to recover fair and reasonable costs in all matters where costs are recoverable, either by consent or by order of the court;</li> <li>To seek to recover the penalty imposed by the court where such penalty is imposed;</li> <li>Consider any recommendations of its legal representative/s to accept a lesser amount than the full legal cost if the acceptance</li> </ol>	



Location	Previous Wording	New Wording	Reasoning
		<p>will result in Council not incurring further and unnecessary legal costs.</p> <p><b>COMMUNITY AWARENESS</b></p> <p>4.49 Council will take every opportunity to promote ongoing community awareness in regard to compliance/enforcement. This may include but is not limited to, website references, the publication of press releases and the periodic inclusion in any community newsletters with a view to improving community confidence and awareness.</p> <p>4.50 Awareness initiatives that focus on residents, developers and business operators will adopt an educational approach designed to engage and promote:</p> <p>4.50.1 an awareness of the spirit and content of this Policy;</p> <p>4.50.2 the minimisation of non-compliance by improving the knowledge of legislation within the community;</p> <p>4.50.3 the benefits of complying with the legislation and the consequences of not complying.</p>	
5. Responsibility/Accountability	<p>5. RESPONSIBILITY/ACCOUNTABILITY</p> <p>5.1 This policy applies to the following Council officers:</p> <p>5.1.1 Team Leader – Compliance</p> <p>5.1.2 Senior Compliance Officers</p> <p>5.1.3 Senior Environmental Health Officers</p> <p>5.1.4 Rangers</p> <p>5.1.5 Animal Control Officers</p> <p>5.1.6 Parking Officers</p>	<p>5. RESPONSIBILITY/ACCOUNTABILITY</p> <p>5.1 This policy applies to the following Council officers:</p> <p>5.1.1 Manager – Compliance</p> <p>5.1.3 Compliance Officers</p> <p>5.1.4 Environmental Health Officers</p> <p>5.1.5 Rangers</p> <p>5.1.6 Animal Control Officers</p> <p>5.1.7 Parking Officers</p>	Minor changes to titles

Location	Previous Wording	New Wording	Reasoning
	<p>5.1.7 All of Council's staff undertaking compliance activities.</p> <p>5.2 The policy encompasses the entire Wollondilly Shire.</p>	<p>5.1.8 All of Council's staff undertaking compliance activities.</p> <p>5.2 The policy encompasses the entire Wollondilly Shire.</p>	
6. RELATED POLICIES	<p>6. RELATED POLICIES</p> <p>6.1 Complaint Handling Policy – GOV0054</p> <p>6.2 Code of Conduct</p> <p>6.5 Enforcement Guidelines for Council's - NSW Ombudsman</p> <p>6.6 NSW Department of Planning Practice Note – Exercising Discretion</p> <p>6.7 This Policy is principally based on the 'Enforcement Guidelines for Councils, published by the Office of the NSW Ombudsman, June 2002.</p>	<p>6. RELATED POLICIES/ PROTOCOLS/ CHARTERS</p> <p>Additional Policies/Protocols</p> <p>6.3 Dealing with Unreasonable Customer Contact</p> <p>6.4 Customer Services Charter</p>	Additional policies/protocols that relate to this Policy
7. Related Procedures	<p>7. RELATED PROCEDURES</p> <p>7.1 Nil</p>	<p>7. RELATED PROCEDURES</p> <p>7.1 Swimming Pool Audit Program</p>	New additional program
8. Related Legislation	<p>8. RELATED LEGISLATION</p> <p>8.1 This policy applies in relation to compliance and enforcement of all NSW Legislation administered by Council, including Council staff delegated to initiate various levels of enforcement action is set out in Council's Delegation Register. The legislation applicable to the delegations is as follows:</p> <p>8.1.1 Road Rules 2008</p> <p>8.1.4 Protection of the Environment Operations Act, 1998 (NSW)</p> <p>8.1.8 Public Health Act, 1991 (NSW)</p> <p>8.1.12 Food Act, 1989 (NSW)</p>	<p>8.1 This policy applies in relation to compliance and enforcement of all NSW Legislation administered by Council, including Council staff delegated to initiate various levels of enforcement action is set out in Council's Delegation Register. The legislation applicable to the delegations is as follows:</p> <p>8.1.1 Australian Road Rules 2014</p> <p>8.1.4 Protection of the Environment Operations Act, 1997(NSW)</p> <p>8.1.8 Public Health Act, 2010 (NSW) 2010</p> <p>8.1.11 Food Act, 2003 (NSW)</p> <p>8.1.13 Boarding Houses Act 2012</p> <p>8.1.14 Contaminated Land Management Act 1997</p>	Update of applicable legislation

Location	Previous Wording	New Wording	Reasoning
		<p>8.1.15 Crown lands Act 1989</p> <p>8.1.16 Fines Act 1996</p> <p>8.1.17 Motor Dealers &amp; Repairers Act 2013</p> <p>8.1.18 Roads Regulations 2008</p> <p>8.1.19 Building Professionals Act 2005</p> <p>8.1.20 The regulations relating to the above Acts</p>	
9. Definitions	New Addition Attachment 9.3	<p>9.1 The following are the definitions of key terms in this policy:</p> <p><b>ABN/ACN:</b> Australian Business/Company Number.</p> <p><b>Administration fee:</b> A prescribed fee imposed in some legislation to cover the cost of the service of a notice/order and re-inspection fee and adopted by Council in the annual Schedule of Fees and Charges.</p> <p><b>ARA:</b> Appropriate Regulatory Authority, a term under the Protection of the Environment Operations Act 1997.</p> <p><b>Authorised Officer:</b> A Council Officer with delegated authority to carry out specific duties and take any necessary enforcement action. Such officers carry specific Authorities under various Acts which include prescribed powers of entry to certain properties.</p> <p><b>BCA:</b> Building Code of Australia, part of the National Construction Code series.</p> <p><b>BPB:</b> Building Professionals Board.</p> <p><b>CAN:</b> Court Attendance Notice used to commence proceedings in the Local Court.</p> <p><b>CRM:</b> Customer Request</p>	Adopted under the Model Compliance and Enforcement Policy- as prepared by Ombudsman's Office

Location	Previous Wording	New Wording	Reasoning
		<p>Management, an electronic Council computer reporting system that registers and records requests for action, compliments and requests for service.</p> <p><b>Caution:</b> A formal warning given instead of a penalty advising enforcement action will follow if there is a recurrence, any consideration to issue a “Caution” should be in accordance with the Caution Guidelines issued by the NSW Attorney General under section 19 (1) (a) (1) of the Fines Act.</p> <p><b>Cautioning:</b> The verbal process an officer is required to issue to an alleged offender once the officer has considered an offence has occurred and the officer may use any subsequent statement/s made by the alleged offender as evidence.</p> <p><b>Civil Proceedings:</b> Include:</p> <ul style="list-style-type: none"> <li>• Notices, Orders and Directions issued pursuant to various legislation;</li> <li>• Class 4 proceedings in the Land and Environment Court seeking an order to remedy a breach of the Environmental Planning and Assessment Act, the Local Government Act, the Protection of the Environment Act or any other Act, if the breach is causing or is likely to cause harm to the environment;</li> <li>• Interlocutory relief for matters causing or with reasonable potential to cause serious environmental harm. In such proceedings it is likely the Council would be required to provide an undertaking as to damages.</li> </ul> <p><b>Complaint:</b> A complaint is an expression of dissatisfaction made about Council services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required. For the purposes of this policy, a</p>	

Location	Previous Wording	New Wording	Reasoning
		<p>complaint does not include:</p> <ul style="list-style-type: none"> <li>• a report alleging unlawful activity (see definition below)</li> <li>• a request for information about a Council policy or procedure</li> <li>• a request for an explanation of actions taken by Council</li> <li>• a request for internal review of a Council decision.</li> </ul> <p><b>Complainant:</b> A customer lodging a request for action to Council.</p> <p><b>Council:</b> Wollondilly Shire Council.</p> <p><b>Criminal Proceedings:</b> Includes:</p> <ul style="list-style-type: none"> <li>• the issuing of a penalty notice;</li> <li>• prosecuting an offence in the Local Court with the use of a Court Attendance Notice;</li> <li>• prosecuting for an offence in the summary jurisdiction of the Land and Environment Court (Class 5 proceedings).</li> </ul> <p><b>Defendant:</b> An alleged offender against whom action is being taken in Court.</p> <p><b>Enforcement:</b> Actions taken in response to serious or deliberate contraventions of laws.</p> <p><b>EP&amp;A Act:</b> The Environmental Planning and Assessment Act 1979.</p> <p><b>Estoppel:</b> Legal rule of evidence.</p> <p><b>Fines Act:</b> Fines Act 1996.</p> <p><b>GIPAA:</b> The Government Information (Public Access) Act 2009.</p> <p><b>ICAC:</b> Independent Commission Against Corruption.</p> <p><b>Informant:</b> the person who brings criminal proceedings.</p> <p><b>Issuing Agency:</b> Council.</p> <p><b>Issuing Officer:</b> the Council Officer authorised to issue a penalty notice</p>	

Location	Previous Wording	New Wording	Reasoning
		<p>for an offence.</p> <p><b>LGA:</b> Local Government Act 1993.</p> <p><b>Offence:</b> An offence under NSW legislation.</p> <p><b>PCA:</b> Principal Certifying Authority.</p> <p><b>PIN or Penalty Notice</b> - Penalty Infringement Notice (or Penalty Notice) occasionally referred to as an “on the spot fine”.</p> <p><b>Plaintiff:</b> The person commencing civil proceedings.</p> <p><b>Prima facie:</b> Presentation of sufficient evidence to support a legal claim.</p> <p><b>Procedural Fairness:</b> Procedural fairness relates to the use of fair and proper procedures as part of the decision making process.</p> <p><b>POEO:</b> The Protection of the Environment Operations Act 1997.</p> <p><b>Respondent:</b> The party against whom civil proceedings are brought.</p> <p><b>Regulation:</b> Using a variety of tools and strategies to influence and change behaviour to achieve the objectives of an Act, Regulation or other statutory instrument administered by Council.</p> <p><b>Report alleging unlawful activity:</b> An expression of concern or a request for service in relation to alleged unlawful activity, where a response or resolution is explicitly or implicitly expected or legally required.</p> <p><b>SDRO:</b> State Debt Recovery Office which produces the Fixed Penalty Handbook for the issue of penalty notices.</p> <p><b>Technical breach:</b> A breach to the provisions of an Act, Regulation, Notice, Order, Direction or Development Consent.</p>	

Location	Previous Wording	New Wording	Reasoning
		<b>Unauthorised/ unlawful activity:</b> Any activity that is: <ul style="list-style-type: none"> <li>• contrary to the terms or conditions of a development consent, approval or permission;</li> <li>• contrary to an environmental planning instrument that regulates the activities or work that can be carried out on particular land;</li> <li>• contrary to a legislative provision regulating particular activity of work;</li> <li>• without a required development consent, approval, permission or licence;</li> <li>• contrary to legislation for which the Council is the appropriate regulatory authority;</li> <li>• and includes any activity, place or structure which is a risk to public health and safety but excludes any parking or traffic offences which are dealt with in accordance with the Australian Road Rules</li> </ul>	
29. Implementation Statement	11.1 To ensure this policy is implemented effectively, Council will employ a variety of strategies involving awareness, education and training. These strategies will be aimed at Councillors, staff and Council representatives and will involve:  11.1.1 The draft policy will be placed on public exhibition.  11.1.2 The draft policy has been presented to a Councillor workshop.  11.1.3 Information sessions will be conducted with the staff on the implementation of the draft policy.	29.1 To ensure this policy is implemented effectively, Council will employ a variety of strategies involving awareness, education and training. These strategies will be aimed at Councillors, staff and Council representatives and will involve:  29.1.1 The draft policy will be placed on public exhibition.  29.1.2 Information sessions will be conducted with the staff on the implementation of the draft policy.	11.1.2 deleted
30. Annexure 2. List of Key Options	Development Control Plan – Tree Removal Major Tree covered by TPO removed without approval – significant impact on amenity of site/locality.	Development Control Plan – Tree Removal Major Tree covered by DCP removed without approval – significant impact on amenity of site/locality.	

## **1. POLICY OBJECTIVES**

- 1.1 The intent of this policy is to establish clear guidelines and protocols for Council staff in the management of Council's regulatory activities.
- 1.2 It provides workable guidelines on:
  - responding to reports alleging unlawful activity
  - assessing whether reports alleging unlawful activity require investigation
  - deciding on whether enforcement action is warranted
  - options for dealing with confirmed cases of unlawful activity
  - taking further action such as issuing an appropriate penalty or taking legal action.
  - implementing shared enforcement responsibilities.
- 1.3 The policy also provides advice and guidance on:
  - the role of the Principal Certifying Authority and
  - the role of Councilors in enforcement.

## **2. BACKGROUND**

- 2.1 Councils Regulatory responsibilities relate to actual unlawful activity as well as failure to take action (in order to be compliant with certain legal requirements). Council officers are often required to make decisions and use discretion about appropriate enforcement action when non-compliant issues are identified.
- 2.2 Council also has a responsibility under Section 8 of the Local Government Act 1993 to ensure that its regulatory activities are carried out in a consistent manner and without bias.
- 2.3 Council's regulatory and enforcement actions should be exercised to ensure the health, safety, welfare and environmental protection of all stakeholders including residents, visitors, workers and business operators. All stakeholders should have confidence in the decision making and internal review processes.
- 2.4 In order to satisfy these needs this Policy has been developed and is broadly based on the "Model Policy" prepared for Local Councils by the NSW Ombudsman. Council supports and welcomes the positive assistance of the community in reporting issues of concern and undertakes to work collaboratively with the community to promote the benefits of compliance as a way of sustaining a safer quality of life for all.
- 2.5 This policy distinguishes between a 'report alleging unlawful activity' and a 'complaint'.

For the purposes of this policy, a report alleging unlawful activity is where an individual expresses concern in relation to alleged unlawful activity, or they request service from Council about such matters. Council considers that a response or resolution to a report alleging unlawful activity is explicitly or implicitly expected by the individual, or may be legally required.

A complaint is where an individual expresses dissatisfaction about Council services, staff or the handling of a complaint. Therefore, a complaint may arise where an individual claims that Council staff have failed to take action in relation to a report alleging unlawful activity. A complaint will be recorded separately and responded to in accordance with Council's Complaints Management Policy and procedures.



- 2.6 The spirit of this Policy is to use a graduated approach to enforcement action, for example the issue of a warning letter, which if not successful in resolving the issue may be followed by statutory Notices and Orders and finally some form of enforcement proceedings either via a penalty notice or Court action if compliance cannot be achieved by any other method.
- 2.7 The Policy also recognises in some situations the gravity of the incident or other circumstances determines that an escalated approach is not appropriate and immediate regulatory action is required e.g. where an activity is or is likely to result in a significant public health or safety risk, or is or likely to cause environmental harm. Other offences such as parking matters and certain development consent breaches such as hours of operation may be dealt with using penalty notices due to the transient nature of the offence and the impracticality of using notices and orders to deal with the issue.
- 2.8 Enforcement Guidelines and Procedures assist officers when determining the most appropriate enforcement actions. This documentation facilitates a consistent approach for departments with regulatory responsibilities and will ensure the objectives of the Enforcement Policy are delivered.

### **3. APPLICABILITY**

#### **Purpose and Scope**

- 3.1 This policy provides information for all internal and external stakeholders and interested parties about Council's position on compliance and enforcement matters in the local government area.
- 3.2 The purpose of this policy is to provide structure for consistency and transparency in decision making and to facilitate a proportional approach to compliance and enforcement. It is also intended to assist Council staff to act promptly, effectively and consistently in response to allegations of unlawful activity.
- 3.3 This policy outlines matters to be considered at the various stages of the enforcement process from the receipt and investigation of reports alleging unlawful activity, through to what enforcement option Council will choose and whether to commence criminal or civil proceedings.
- 3.4 In certain circumstances Council will have shared enforcement responsibilities with other regulatory authorities. This policy sets out a collaborative and cooperative approach to such matters. Advice and guidance is also provided on the role of Council in building and construction compliance matters where there is a private certifier and the role of Councillors in enforcement.
- 3.5 Responsible Council staff are not limited by this policy in their use of discretion and exercise of official functions. The full circumstances and facts of each case need to be considered and a decision made on the merits.
- 3.5.1 All employees who deal with alleged unlawful activities and the enforcement of relevant legislation are responsible for implementing this Policy.

- 3.6 This Policy applies to all areas where Council has a compliance and enforcement role under the various Acts and Regulations, it includes but is not limited to:
- abandoned vehicles
  - development and building control
  - pollution control
  - environmental health
  - public health and safety
  - sewage management
  - septic systems
  - control over animals
  - swimming pool audits
  - food safety
  - fire safety
  - tree preservation
  - parking control
  - any other functions which Council is the Appropriate Regulatory Authority (ARA).
- 3.7 Any enforcement action will be in accordance with this Policy, relevant NSW legislation and the State Debt Recovery Office (SDRO) Guidelines.
- 3.8 Whilst it is intended the principles in this Policy will have general application, there may be cases where the particular circumstances justify departure from these principles.
- 3.9 In any situation where an officer considers taking action which varies from the Policy and associated guidelines/procedures, the officer will discuss the reasons for the variance with the Team Leader/Manager and will document and implement the agreed course of action.
- 3.10 This Policy applies to Council's enforcement functions and supports the concept of an escalated and proportionate approach to most non-compliant issues except for examples such as parking and traffic matters.
- 3.11 While this Policy covers all matters to be taken into account when exercising discretion about compliance and enforcement matters, it recognises that Rangers who work with traffic and parking matters are faced with different time frames and decisions which need to be made on the spot.
- 3.12 It is Council's Policy that Rangers will enforce the Australian Road Rules and will carry out traffic and parking duties in a fair, equitable and consistent manner with a zero tolerance approach in school zones.
- 3.13 Zero tolerance is the strict enforcement of the rules.
- 3.14 Other offences such as certain development consent breaches e.g. hours of operation and some environmental offences (e.g. illegal burning of waste/plastics) may be dealt with using penalty notice due to the transient nature of the offence and the impracticality of using notices and orders to deal with the issue.

### 4. GUIDELINES

#### Compliance and Enforcement Principles

4.1 The following are the principles that underpin Council actions relating to compliance and enforcement:

Principle	Action
Accountable and transparent	<ul style="list-style-type: none"> <li>• acting in the best interests of public health and safety and in the best interests of the environment</li> <li>• ensuring accountability for decisions to take or not take action</li> <li>• acting fairly and impartially and without bias or unlawful discrimination</li> <li>• providing information about compliance and enforcement priorities and reasons for decisions to improve understanding and certainty and promote trust by the regulated community</li> <li>• ensuring meaningful reasons for decisions are given to all relevant parties, particularly when there is a departure from this policy</li> <li>• acting on any complaints or concerns about the conduct of compliance officers in accordance with Council's complaints management policy and procedures advising people and organisations subject to enforcement action of any avenues available to seek an internal or external review of a decision.</li> </ul>
Consistent	<ul style="list-style-type: none"> <li>• ensuring all compliance and enforcement action is implemented consistently</li> <li>• encouraging reports about possible unlawful activity by acting reasonably in response to the circumstances and facts of each matter.</li> </ul>
Proportional	<ul style="list-style-type: none"> <li>• ensuring the level of enforcement action is proportionate to the level of risk and seriousness of the breach</li> <li>• making cost-effective decisions about enforcement action</li> <li>• taking action to address harm and deter future unlawful activity.</li> </ul>
Timely	<ul style="list-style-type: none"> <li>• ensuring responses to reports alleging unlawful activity and decision making in relation to those is timely</li> </ul>

#### Procedural Fairness

4.2 Council is committed to natural justice and acting fairly in all aspects of the implementation of this Policy. In order to achieve this outcome Council will:

- 4.2.1 provide an opportunity for an alleged offender to provide an explanation. However there will be situations such as parking enforcement and other circumstances considered to represent a serious risk to public safety or the environment or the like which would preclude this opportunity;

- 4.2.2 give due consideration to any written submission made by an alleged offender made either directly to Council in a representation period or via another agency e.g. State Debt Recovery Office if a penalty notice has been issued. Any requests or representations seeking reconsideration or waving of a penalty infringement notice are required to be made directly through The NSW Office of State Revenue. Requests to waive penalty infringement notices by individuals cannot be made directly to Council.
- 4.2.3 make appropriate enquiries, investigations and searches prior to making an enforcement decision;
- 4.2.4 establish appropriate procedures to avoid an enforcement decision being influenced by an actual, potential or perceived conflict of interest;
- 4.2.5 implement procedures to ensure pertinent information is provided to a complainant and alleged offender, subject to maintaining appropriate confidentiality provisions;
- 4.2.6 act without bias and within statutory time frames.

**Code of Conduct**

- 4.3 Council Officers carrying out their duties including the consideration of some form of enforcement action will have due regard to the contents of Council's Code of Conduct which is available on Council's website;  
  
<http://www.wollondilly.nsw.gov.au/assets/Documents/Council/Meetings-and-Forums/Code-of-Conduct-Current.PDF>
- 4.4 It is Council's expectation all inspections will be carried out in a respectful, helpful manner while being attuned to any language or cultural considerations. All Officers should:
  - 4.4.1 not permit personal views, or prejudices to influence their attitude towards any person or duty required to be undertaken;
  - 4.4.2 respond to any reasonable request or lawful direction of any supervisor or manager of the Council;
  - 4.4.3 not commit any act which constitutes dereliction of duties;
  - 4.4.4 not commit any act that brings Council into disrepute;
  - 4.4.5 not publicly criticise Council in any way that is demeaning, defamatory or brings disrespect, or embarrassment to Council;
  - 4.4.6 not publicly criticise any Council employee in any way, which is demeaning, defamatory or brings disrespect to Council;
  - 4.4.7 not obey any order or direction which is contrary to the law;
  - 4.4.8 report any such unlawful order to the attention of an immediate supervisor, manager or, if required the General Manager;
  - 4.4.9 not solicit or receive any gift that is contrary to Council's Code of Conduct.

- 4.5 Council Officers who are accredited under the Building Professionals Board scheme must also satisfy the code of professional conduct requirements of such scheme.
- 4.6 Each officer should be mindful of any constraints that may have been placed on their “Delegations” by Council and be equipped with their specific authorisation (with photograph) under the particular Acts.

**Conflict of Interest**

- 4.7 If a situation arises where an officer believes a perceived or actual conflict of interest exists, the matter will be referred to the supervisor.

**Disclosure of Interest**

- 4.8 Council Officers will respect the privacy and confidentiality of information received, however due to its statutory obligations and other requirements, confidentiality cannot always be guaranteed.
- 4.9 A person’s identity who has made an allegation of illegal activity may be disclosed where:
- 4.9.1 access to the information is permitted under legislation including but limited to the Government Information (Public Access) Act 2009;
  - 4.9.2 legal action is commenced and the information is disclosed in evidence;
  - 4.9.3 the person consents to the disclosure of the information;
  - 4.9.4 the principles of natural justice dictate that information be disclosed to the person who is the subject of the request for action, which may enable the complainant to be identified;
  - 4.9.5 the Council is of the opinion that disclosure of information is necessary to effectively investigate the matter.
- 4.10 Council Officers will also observe the information protection principles in the Privacy and Personal Information Protection Act 1998 which provides in certain circumstances for information to be shared with other public sector agencies for law enforcement purposes.
- 4.11 Reasons for decisions regarding compliance and enforcement action will be made available, unless to do so would cause a breach of the law. Reasons may not be given in any case where the information may cause harm to an informant, witness, or the alleged offender, nor in circumstances which would significantly prejudice the administration of justice.
- 4.12 Council’s Rangers have access to external electronic databases including the NSW Companion Animals Register and the Roads and Maritime Services Vehicle Ownership Register. Neither of these are registers to which the general public or other Council Officers have access. The Information on both registers is protected under the relevant Acts. Rangers are subject to routine external auditing in regard to the use of databases.
- 4.13 Some officers have access to the following information:
- State wide Electronic Database of Residential Swimming Pools
  - Department of Fair Trading Boarding Houses Register.

**Investigating Alleged Unlawful Activity (Receiving and Responding to Customer Request)**

- 4.14 Council's expectation is that all customer requests will be electronically recorded and dealt with within set customer service standards and having regard to the seriousness of the issue and other priorities.
- 4.15 All reports alleging unlawful activity will be initially acknowledged through Council's Customer Requests system within 7 days and within 7-14 days appropriate action taken in accordance with this Policy and the person making the allegation also advised.
- 4.16 All requests for action will be investigated unless:
- 4.16.1 Council is not the Appropriate Regulatory Authority;
  - 4.16.2 the matter has already been actioned and resolved;
  - 4.16.3 insufficient information has been provided in order to adequately identify a property or issue;
  - 4.16.4 the request for action is premature and relates to an unfinished aspect of work still in progress that has development approval;
  - 4.16.5 a private Principal Certifying Authority is responsible for monitoring compliance with the conditions of development consent. Council will work cooperatively with relevant agencies and Private Certifiers to achieve compliant outcomes;
  - 4.16.6 the activity is determined to be lawful and does not require an approval;
  - 4.16.7 a Development Approval, Complying Development Certificate or any other lawful authority has been granted for the work and the request for action does not relate to a non-compliance issue;
  - 4.16.8 the request for action is trivial, frivolous or vexatious in nature; the complainant is solely seeking a monetary refund from a third party;
  - 4.16.9 the request for action relates to a civil matter or dispute (private matter between neighbours).
  - 4.16.10 anonymous requests for action unless an imminent serious threat to the environment and public health and safety.
- 4.17 In situations where Council is the Appropriate Regulatory Authority, the relative seriousness of each matter will determine the priority attached to a particular request for action.
- 4.18 Council will try to use the quickest and most informal option to deal with unlawful activity wherever possible unless there is little likelihood of compliance with such options. Council staff will use discretion to determine the most appropriate response to confirmed cases of unlawful activity and may take more than one approach. Any enforcement action taken by Council will depend on the full circumstances and facts of each case, with any decision being made on the merits.
- 4.19 At all times, Council's key concerns are:

- to prevent or minimise harm to health, welfare, safety, property or the environment
- to influence behaviour change for the common good and on behalf of the community.

4.20 As a guide the following categories can be applied:

**Alleged non-compliant activities ranked by order of worst case consequence**

<b>Legionella control – regulated systems</b>
<b>Fire Safety</b>
<b>Dangerous Structure</b>
<b>Dogs attacking\ Dangerous Dogs</b>
<b>Unsecured loads</b>
<b>Swimming pool – safety (fence\barrier)</b>
<b>Food Safety</b>
<b>Livestock Straying</b>
<b>Discharge waste to water body</b>
<b>Tree clearing</b>
<b>Demolition of heritage item</b>
<b>Asbestos removal</b>
<b>Major earthworks or landfill</b>
<b>As directed by Council Managers</b>



Major non-compliance with approval including tattooing, botox and piercing injections
Skin penetration practice
Property squatter, abandoned unsecured property
Dogs Straying
Parking breach – safety issue
Public Place – Obstructions, Abandoned Articles or Building Materials
Public Swimming – water quality
Sewer discharges
Public Place – Litter
Public Place – Rubbish Dumping
Air Pollution
Parking breach – general
Unauthorised building works in progress
On Site Sewage Management Systems
Public Place – Advertising Signs Structures Oversized.
Overgrown Land/Vegetation
Unauthorised Land Use - General
Rubbish accumulation
Land Pollution
Noise Pollution Commercial and Industrial
Unauthorised Brothel
Public Place – Abandoned Vehicles
Vehicles in Parks/Reserves
Land Use – Signs in commercial zones (no safety or heritage impacts) (** see below)
Land Use – Living in Sheds/Garages/Caravans (**see below)
Unauthorised building works completed (**see below)
Land Use – Home Occupation/Business/Industry
Animal & Bird Control (Other than dogs and cats)
Stormwater Nuisance
Domestic noise pollution
Domestic Odour nuisance
Dogs Barking
Dogs defecating in Public Places (ownership known)
Land Use – Dividing Fences (possible referral to the Local Land Board)
Hair/Skin/Beauty – no skin penetration
Public Place – Buskers, Spruikers, Stalls

- \* This is not an exhaustive list Compliance audits may affect order of priority.
- \*\* Matters raised by external complainants will be given priority unless it is deemed a serious public health or environmental risk.

Initial triaging response time
Extreme – within working day
High – Within 24 hours
Medium – within 7-14 days*
Minimal or no action



**Anonymous Requests for Action**

- 4.21 Anonymous requests for action may not be able to be investigated. The decision to investigate includes but is not limited to the subject and seriousness of the matter – i.e. whether the matter is a serious public health or environmental issue; the likely reliability of the request for action, ability to access further information, available staff resources and Work Health and Safety responsibilities.
- 4.22 When an anonymous request for action is investigated, an appropriate record of the investigation will be made.

**Fraudulent Requests for Action**

- 4.23 Fraudulent request for action are where a person lodges a request with Council in someone else's name without that person's knowledge or where the nature of the request is untrue. Such request will be treated as vexatious unless a valid basis for such a request can be established. The decision to investigate such a matter will be based on the same criteria as for anonymous request.

**Unreasonable Complaint Conduct**

- 4.24 Council has an obligation to use resources efficiently and effectively. While Council acknowledges a customer's entitlement to make requests, it reserves the right to cease responding to customers that continually exhibit unreasonable customer behaviour including:
- 4.24.1 requests that place unreasonable demands on Council's staff;
  - 4.24.2 requests that place unreasonable demands on Council's resources;
  - 4.24.3 unreasonable persistence;
  - 4.24.4 unreasonable lack of cooperation;
  - 4.24.5 requests for action based on unreasonable arguments;
  - 4.24.6 abusive and derogatory behaviour towards Council staff;
  - 4.24.7 requests for action which are proven to be vexatious or retaliatory.
- 4.25 In the context of the above situations officers will follow Council's Policy on Dealing with Unreasonable Customer Conduct and its Customer Service Charter.

**Consultation with other Agencies**

- 4.26 There will be situations such as in the investigation of a request for action or the like where Council has no legal or geographical jurisdiction or operational responsibility and consequently the matter should be referred to the relevant agency without delay.
- 4.27 Agencies may include but not be limited to, the NSW Police Services, NSW Department of Planning and Infrastructure, Local Land Services, NSW Office of Fair Trading, NSW Department of Primary Industry, NSW WorkCover, NSW Environment Protection Authority, NSW Food Authority, NSW Health, the Building Professional Board, NSW Roads and Maritime Services, Fire and Rescue NSW.
- 4.28 Council will consult with the responsible agencies to facilitate a coordinated and constructive compliance approach and keep the complainant informed.

**Private Certifiers**

- 4.29 In terms of Council's Development Compliance role, requests for action are received from time to time in regard to various matters on building construction sites where Council is not the Principal Certifying Authority.
- 4.30 In such situations in the first instance the complainant should be encouraged to contact the Principal Certifying Authority directly to ensure all relevant details are accurately communicated to the Principal Certifying Authority.
- 4.31 Alternatively, should an external observation by a Council Officer of a building site which is under the jurisdiction of a Principal Certifying Authority (not being Council) disclose significant non-compliant issues, Council will initially draw the matter to the attention of the Principal Certifying Authority.
- 4.32 If a request or observation relates to an urgent matter involving a life threatening situation or significant environmental damage or an on-going matter where valuable evidence may not be available if an immediate response is not commenced, a Council Officer may undertake an immediate investigation to assess the seriousness of the situation.
- 4.33 If the request is substantiated, Council will consider action in accordance with this Policy and the Principal Certifying Authority informed of any action taken by Council.
- 4.34 In any situation where it is considered a Principal Certifying Authority has acted incorrectly, improperly and/or unprofessionally a report may be forwarded to the Manager recommending referral of the matter to the Building Professionals Board.
- 4.35 Relevant factors for determining if a matter should be referred to the Building Professionals Board are:
- a) the seriousness of the failure to act professionally;
  - b) any previous history of complaints;
  - c) the level of cooperation from the Principal Certifying Authority to rectify the problem/s;
  - d) the adequacy of changes made by the Principal Certifying Authority to procedures or practices to ensure that future problems will be minimized.
- 4.36 Examples of matters that might be referred to the Building Professionals Board include but are not limited to:
- a) significant departure from the development consent and the PCA does not appear to be taking appropriate action to address the issue;
  - b) the persistent failure to submit relevant certificates or other documentation to Council within the specified time period;
  - c) Complying Development Certificates that do not meet the development standards for the relevant State Environmental Planning Policy.

**Building Certificates**

- 4.37 Council recognises that persons who may have carried out unlawful building works may, as an option apply for approval of a development application. If this option is taken an owner will need to apply for a Building Certificate under section 149D of the Environmental Planning and Assessment Act to retain and regularise the structure. If a building certificate is issued, Council cannot ask for demolition or alterations unless after 7 years of fair wear and tear.
- 4.38 It is Council's policy however that such applications should not be encouraged to justify unlawful works. Irrespective of whether or not a Building Certificate is applied for, Council may take action against a person who carried out unlawful works
- 4.39 The action may include the issuing of a penalty notice or in conjunction with criminal proceedings, where it is considered appropriate and necessary for punitive action to also be taken, having regard to the restriction provisions provided under Section 127 (7) of the EP&A Act.
- 4.40 Building Certificate applications to support unlawful building works will be expected to provide the same level of details in plans, certificates, specifications etc. as would be required for assessing an Application for Development, a Construction Certificate, a Complying Development Certificate and/or an Occupation Certificate.

**Role of Councillors in Enforcement**

- 4.41 Decision making relating to the investigation of reports alleging unlawful activity and taking enforcement action is the responsibility of appropriately authorised Council staff or the Council itself.
- 4.42 Individual Councillors do not have the right to direct Council staff in their day-to-day activities. Councillors can help individuals who raise concerns with them by satisfying themselves that their Council's policies are being carried out correctly, however they cannot ignore or alter a policy in order to satisfy the demands of special groups.
- 4.43 The General Manager may present certain decisions to be ratified by the elected Council if this is necessary or desirable, and the Councillors may also have the right to call for a report about particular issues to a Council meeting.

**Proactive Compliance Monitoring**

- 4.44 In addition to responding to requests for action and enquiries about alleged unlawful activity Council also provides a number of proactive compliance programs around high risk regulatory areas. These areas include but are not limited to:
- Food premises inspections
  - Swimming pool audit program
  - Public swimming pool water quality monitoring
  - Onsite sewage management systems (septic tanks)
  - Fire safety
  - Sedimentation and erosion control
- 4.45 Compliance action may be initiated where non-compliance is identified in the course of a proactive compliance inspection, in which case the principles outlined in this policy will also be applied.

**The Decision Process – Taking Enforcement Action**

4.46 When deciding whether to take enforcement action in relation to a confirmed case of unlawful activity, Council will consider the full circumstances and facts of the matter and the public interest. The following common considerations will assist Council staff in determining the most appropriate response in the public interest:

**Considerations about the alleged offence and impact:**

- The nature, extent and severity of the unlawful activity, including whether the activity is continuing;
- The harm or potential harm to the environment or public health, safety or amenity caused by the unlawful activity;
- The seriousness of the breach, including whether the breach is merely technical, inconsequential or minor in nature;
- The time period that has lapsed since the date of the unlawful activity.

**Considerations about the alleged offender:**

- Any prior warnings, instruction, advice that was issued to the person or organization reported or previous enforcement action taken against them;
- Whether the offence was committed with intent;
- Whether the person or organization reported has been proactive in the resolution of the matter and assisted with any Council requirements and instructions;
- Any mitigating or aggravating circumstances demonstrated by the alleged offender;
- Any particular circumstances of hardship affecting the person or organization reported.

**Considerations about the impact of any enforcement action:**

- The need to deter any future unlawful activity;
- Whether an educative approach would be more appropriate than a coercive approach in resolving the matter;
- The prospect of success if the proposed enforcement action was challenged in court;
- The costs and benefits of taking formal enforcement action as opposed to taking informal or no action;
- What action would be proportionate and reasonable in response to the unlawful activity;
- Whether Council is prevented from taking action based on earlier advice given, i.e. whether an estoppel situation has been created.

**Considerations about the potential for remedy:**

- Whether the breach can be easily remedied
- Whether it is likely consent would have been given for the activity if it had been sought
- Whether there is a draft planning instrument on exhibition that would make the unauthorized use legal.

**Legal or technical issues:**

- Where legal and/or technical issues are in question, Council staff will consider whether legal advice or professional advice from duly qualified staff or other experts should be obtained and considered. Council may also require a person subject to possible enforcement action to obtain professional advice in relation to issues of concern to Council for assessment as to whether further action is required.

#### **Requirements of Council staff considering enforcement action**

- Prior to taking enforcement action, Council staff will take into account the above considerations as well as the evidence gathered during their investigation. Council staff must act impartially, be mindful of their obligations under Council's Code of Conduct and not act as a decision-maker in relation to any matter in which they have a personal interest. Enforcement action will not be taken purely as a response to the conduct of an individual such as persistent demands or threats.
- Council staff are required to maintain records about critical thinking and decision making processes in relation to reports alleging unlawful activity and any enforcement action, as well as records of interactions with relevant parties. Council staff will at all times adhere to Council's internal approval processes prior to the commencement of any enforcement action.
- Council staff will take steps to ensure that any enforcement action is taken against the correct person or organization. Where there are multiple possible parties to an alleged unlawful activity, Council staff will be guided by legal advice in determining the appropriate persons to pursue.

#### **Options for Dealing with Confirmed Cases of Unlawful Activity**

4.47 Council will try to use the quickest and most informal option to deal with unlawful activity wherever possible unless there is little likelihood of compliance with such options. Council staff will use discretion to determine the most appropriate response to confirmed cases of unlawful activity and may take more than one approach. Any enforcement action taken by Council will depend on the full circumstances and facts of each case, with any decision being made on the merits.

At all times, Council's key concerns are:

- To prevent or minimise harm to health, welfare, safety, property or the environment
- To influence behaviour change for the common good and on behalf of the community

The following enforcement options to be considered by Council are ordered to reflect an escalation in response that is proportionate to the level of risk, the seriousness of the confirmed breach or the need for a deterrent:

<b>Level of risk</b>	<b>Enforcement options</b>
Minimal or No Action	<ul style="list-style-type: none"> <li>▪ Take no action on the basis of a lack of evidence or some other appropriate reason</li> <li>▪ Provision of information/advice on how to be compliant</li> </ul>
Medium	<ul style="list-style-type: none"> <li>▪ Negotiating with the person to obtain voluntary undertakings or an agreement to address the issues of concern</li> <li>▪ Issuing a warning or a formal caution</li> <li>▪ Issuing a letter requiring work to be done or activity to cease in lieu of more formal action</li> <li>▪ Issuing a notice of intention to serve an order or notice under relevant legislation, and then serving an order or notice if appropriate and may include the issuing of a penalty notice.</li> </ul>
High	<ul style="list-style-type: none"> <li>▪ Issuing a penalty notice</li> <li>▪ Carrying out the works specified in an order at the cost of the person served with the order</li> </ul>

Level of risk	Enforcement options
Extreme	<ul style="list-style-type: none"> <li>Commence legal proceedings for an offence against the relevant Act or Regulation</li> </ul>
	<ul style="list-style-type: none"> <li>Seeking an injunction through the courts to prevent future or continuing unlawful activity</li> </ul>
	<ul style="list-style-type: none"> <li>Commence legal proceedings for an offence against the relevant Act or Regulation</li> </ul>

(NB: this is a guide only and each issue is assessed on its merits and circumstances. Some offences such as parking may be dealt with using penalty notice due to the transient nature of the offence and the impracticality of using notices and orders to deal with the issue)

#### **Following up enforcement action:**

All enforcement action will be reviewed and monitored to ensure compliance with any undertakings given by the subject of enforcement action or advice, directions or orders issued by Council. Reports alleging continuing unlawful activity will be assessed and further action taken if necessary. If the unlawful activity has ceased or the work has been rectified, the matter will be resubmitted for follow up action to ensure ongoing compliance outcomes are met. Should initial enforcement action be found to have been ineffective, Council staff will consider other enforcement options.

#### **Taking Legal Action**

- 4.48 The Council and its delegated staff will be guided by legal advice in deciding whether to commence criminal or civil proceedings and will consider the following;
- Whether there is sufficient evidence to establish a case to the required standard of proof
  - Whether there is a reasonable prospect of success before a court
  - Whether the public interest warrants legal action being pursued

#### **Whether there is sufficient evidence to establish a case to the required standard of proof**

Council considers the decision to take legal action a serious matter, and as such will only initiate and continue proceedings once it has been established that there is admissible, substantial and reliable evidence to the required standard of proof.

The basic requirement of any criminal prosecution is that the available evidence establishes a prima facie case. The prosecutor is required to prove the elements of the offence beyond reasonable doubt.

In civil enforcement proceedings, Council will require sufficient evidence to satisfy the court that an actual or threatened breach has occurred on the balance of probabilities.

#### **Whether there is a reasonable prospect of success before a court**

Given the expense of legal action Council will not take legal action unless there is a reasonable prospect of success before a court. In making this assessment, Council staff will consider the availability, competence and credibility of witnesses, the admissibility of the evidence, all possible defenses, and any other factors which could affect the likelihood of a successful outcome.



**Whether the public interest requires legal action to be pursued**

The principal consideration in deciding whether to commence legal proceedings is whether to do so is in the public interest. In making this determination, the same factors to be considered when taking enforcement action apply (see Section 20).

The following considerations relate more specifically to the decision to commence legal proceedings and will assist Council and its delegated staff in making this determination:

- The availability of any alternatives to legal action
- Whether an urgent resolution is required (court proceedings may take some time)
- The possible length and expense of court proceedings
- Any possible counter-productive outcomes of prosecution
- What the effective sentencing options are available to the court in the event of conviction
- Whether the proceedings or the consequences of any resulting conviction would be unduly harsh or oppressive

**Time within which to commence proceedings**

Council staff must be aware of legislative time limits in which enforcement proceedings must be commenced. Sometimes legal action will be statute barred despite good evidence that unlawful activity has occurred.

**Recovery of Fines and Legal Costs**

Council's policy for recovery of costs in Courts is:

- a) To seek to recover fair and reasonable costs in all matters where costs are recoverable, either by consent or by order of the court;
- b) To seek to recover the penalty imposed by the court where such penalty is imposed;
- c) Consider any recommendations of its legal representative/s to accept a lesser amount than the full legal cost if the acceptance will result in Council not incurring further and unnecessary legal costs.

**Community Awareness**

- 4.49 Council will take every opportunity to promote ongoing community awareness in regard to compliance/enforcement. This may include but is not limited to, website references, the publication of press releases and the periodic inclusion in any community newsletters with a view to improving community confidence and awareness.
- 4.50 Awareness initiatives that focus on residents, developers and business operators will adopt an educational approach designed to engage and promote:
  - 4.50.1 an awareness of the spirit and content of this Policy;
  - 4.50.2 the minimisation of non-compliance by improving the knowledge of legislation within the community;
  - 4.50.3 the benefits of complying with the legislation and the consequences of not complying.

## **5. RESPONSIBILITY/ACCOUNTABILITY**

- 5.1 This policy applies to the following Council officers:
  - 5.1.1 Manager – Compliance
  - 5.1.2 Team Leader – Compliance
  - 5.1.3 Compliance Officers
  - 5.1.4 Environmental Health Officers
  - 5.1.5 Rangers
  - 5.1.6 Animal Control Officers
  - 5.1.7 Parking Officers
  - 5.1.8 All of Council's staff undertaking compliance activities.
- 5.2 The policy encompasses the entire Wollondilly Shire.

## **6. RELATED POLICIES/PROTOCOLS/CHARTERS**

- 6.1 Complaint Handling Policy – GOV0054
- 6.2 Code of Conduct
- 6.3 Dealing with Unreasonable Customer Contact
- 6.4 Customer Services Charter
- 6.5 Enforcement Guidelines for Council's - NSW Ombudsman
- 6.6 NSW Department of Planning Practice Note – Exercising Discretion
- 6.7 This Policy is principally based on the 'Enforcement Guidelines for Councils, published by the Office of the NSW Ombudsman, June 2002.

## **7. RELATED PROCEDURES**

- 7.1 Swimming Pool Audit Program

## **8. RELATED LEGISLATION**

- 8.1 This policy applies in relation to compliance and enforcement of all NSW Legislation administered by Council, including Council staff delegated to initiate various levels of enforcement action is set out in Council's Delegation Register. The legislation applicable to the delegations is as follows:



- 8.1.1 Australian Road Rules 2014
- 8.1.2 Local Government Act, 1993 (NSW)
- 8.1.3 Environmental Planning and Assessment Act, 1979 (NSW)
- 8.1.4 Protection of the Environment Operations Act, 1997(NSW)
- 8.1.5 Roads Act, 1993 (NSW)
- 8.1.6 Companion Animals Act, 1998 (NSW)
- 8.1.7 Noxious Weeds Act, 1993 (NSW)
- 8.1.8 Public Health Act, 2010 (NSW) 2010
- 8.1.9 Swimming Pools Act, 1992 (NSW)
- 8.1.10 Rural Fires Act, 1997
- 8.1.11 Food Act, 2003 (NSW)
- 8.1.12 Impounding Act 1993 (NSW)
- 8.1.13 Boarding Houses Act 2012
- 8.1.14 Contaminated Land Management Act 1997
- 8.1.15 Crown lands Act 1989
- 8.1.16 Fines Act 1996
- 8.1.17 Motor Dealers & Repairers Act 2013
- 8.1.18 Roads Regulations 2008
- 8.1.19 Building Professionals Act 2005
- 8.1.20 The regulations relating to the above Acts

## **9. ATTACHMENTS**

- 9.1 Annexure 1
- 9.2 Annexure 2
- 9.3 Definitions

## 10. RESOURCES

- 10.1 Model Compliance and Enforcement Policy 2015 - NSW Ombudsman
- 10.2 NSW Department of Planning Practice Note – Exercising Discretion
- 10.3 The assistance of other NSW Councils with compliance and enforcement policies.

## 11. IMPLEMENTATION STATEMENT

- 11.1 To ensure this policy is implemented effectively, Council will employ a variety of strategies involving awareness, education and training. These strategies will be aimed at Councillors, staff and Council representatives and will involve:
  - 11.1.1 The draft policy will be placed on public exhibition.
  - 11.1.2 Information sessions will be conducted with the staff on the implementation of the draft policy.

## 12. POLICY HISTORY

- |                           |                    |
|---------------------------|--------------------|
| 12.1 Date First Adopted   | 16 August 2010     |
| 12.2 Most Recent Adoption | 16 March 2015      |
| 12.3 Next Review Date     | March 2016         |
| 12.4 Responsible Officer  | Manager Compliance |

**Attachment 9.1**

ANNEXURE 1

EXAMPLES OF MATTERS TAKEN INTO CONSIDERATION WHEN DETERMINING  
APPROPRIATE REGULATORY ACTION AND ENFORCEMENT

Considerations	Comments/Examples
1. Does Council have sufficient evidence to prove the alleged offence?	To be able to implement any enforcement action, Council is required to possess sufficient evidence of the alleged offence (which can be substantiated in Court if required), including evidence of the person responsible for the offence to be successful in the event of a hearing or appeal.
2. Is the offence or breach of a technical or inconsequential nature?	<p>Consideration is to be given to the nature, extent and severity of the offence or breach and any material impacts upon the health, safety and amenity of the environment and community.</p> <p>Consideration should be given to the likely costs and benefits of any enforcement action where breaches are solely of a minor technical nature or resulting in no material impacts upon any other party or the environment.</p>
3. How long has the unlawful activity or breach been occurring and is enforcement action statute barred?	<p>The legislation may provide time limits in which to commence proceedings or take enforcement action.</p> <p>In addition, consideration should be given to the time which the offence or breach occurred and the 'reasonableness' of taking enforcement action if a significant time has lapsed since the time of the offence or breach.</p>
4. Is the matter subject to estoppel?	Estoppel is a legal rule which prevents a person from later denying something which may have previously been relied upon by another person. For example Council may not be able to take action if Council has contributed in some way to the person acting upon a reasonable expectation that no action would be taken or if a matter had previously been brought to Council's attention and no action was taken at the time.
5. Has the offence or breach affected the natural or built environment and/or amenity of the area?	Consideration should be given to the nature and extent of any actual or potential impact that the breach has or may have upon the natural or built environment, or upon the amenity of the locality and community.
6. Has the offence or breach affected or potentially affected the health, safety and well-being of the residents or community?	Offences or breaches which affect, or potentially affect, the health, safety and well-being of the residents or community would generally warrant affirmative and effective enforcement and remedial action.

<p>7. Can the matter be resolved by seeking and obtaining the relevant approval from Council (i.e. development consent or a Section 96 amendment to an existing consent)?</p>	<p>If the legislation enables the particular matter to be resolved by obtaining the relevant approval (i.e. a development consent or a Section 96 amendment to an existing development consent), it may be appropriate to allow a reasonable period for the person to seek the necessary consent/s from Council, prior to taking any enforcement action, such as the service of possible orders to demolish unauthorised works or commencement of legal proceedings.</p> <p>Consideration should also be given to all other relevant factors, in particular, any current impacts upon the community and environment, which require the matter to be remedied expeditiously.</p> <p>If appropriate, having regard to the circumstances of the case, Council may still be able to issue a penalty infringement notice or commence legal proceedings for the initial offence or breach.</p>
<p>8. Has the relevant approval (i.e. development consent or section 96 amendment to the existing consent) already been obtained from Council in relation to the particular breach or offence?</p>	<p>If development consent (or Section 96 amendment to an existing consent) has been obtained from Council in relation to the particular matter, Council would not be able to issue further Notices or Orders in relation to the subject matter.</p> <p>Council may (if it has not already done so), issue a penalty infringement notice/s or implement legal proceedings for the initial offence or breach, following consideration of the circumstances of the case and the nature and severity of the offence.</p> <p>However, if consent has been obtained from Council in relation to a previous breach (i.e. a section 96 application) and the matter was of a minor nature, with minimal impact, consideration would need to be given to the likelihood of success and the likely outcome of any possible enforcement action or legal proceedings for the initial offence.</p>
<p>9. Could the non-compliance or breach be easily remedied by the person responsible?</p>	<p>Generally, where appropriate, Council will attempt to ensure compliance by informal means, however, there is a need to consider and balance the public interest in enforcing the law. Consideration is also to be given to whether or not it is possible to remedy a breach and at what cost.</p> <p>In some cases, upon being advised of the regulatory requirements or breach, the responsible person may be pro-active and remedy the matter, rather than being subject to possible enforcement action.</p>
<p>10. Has the breach or unauthorised activity detrimentally affected a heritage item or the heritage.</p>	<p>Where applicable, relevant Council officers will be consulted in assessing the detriment to the natural or built environment and possible remedies.</p>

11. Does the unauthorised work or activity comply with relevant criteria and Standards?	<p>Consideration should be given to compliance with relevant criteria and Standards (i.e. Building Code of Australia and fire safety requirements) and the extent and suitability of evidence provided to confirm compliance.</p> <p>If relevant criteria and Standards are not satisfied, appropriate and affirmative enforcement action may be warranted.</p>
12. What is the intent and importance of the regulatory requirements?	Regulatory requirements which aim to ensure the health, safety and well-being of the community are considered to be of paramount importance and any offences or breaches of this nature would generally warrant affirmative and effective enforcement action.
13. Would the enforcement action be in the public interest?	<p>Public interest considerations include:</p> <ul style="list-style-type: none"> <li>• Does the breach or unlawful activity affect the public interest (i.e. affect a number of people or the community generally), or does the breach primarily affect a private interest?</li> <li>• Would enforcement action be in the public interest or would it primarily benefit only a private interest?</li> <li>• Are there any circumstances of hardship applicable?</li> <li>• Would enforcement action by Council impact unreasonably on certain parties or population groups (i.e. disadvantaged or elderly residents)?</li> <li>• What other remedies are available to address the matter? For example, if a breach primarily affects a private interest, the affected party should seek alternative remedies, such as civil action or mediation (i.e. disputes regarding trespass, alleged damage to premises or encroachments).</li> </ul>
14. Does the person or corporation exhibit contrition for the breach or offence?	In some cases, it will be appropriate to have regard to the behaviour of the offender and their willingness to remedy the breach or prevent a recurrence of the problem.
15. Have any previous warnings, instructions or advice been provided to the person, which have not been followed?	If the investigation reveals that previous instructions, advice or a warning has been provided in relation to the particular matter, which has not been followed or complied with, a more formal enforcement approach is generally appropriate for any offences which have occurred.

16.	Is it likely that the person would generally have been aware, or should have been aware, of the relevant regulatory provisions, requirements or offence?	<p>When deciding whether to take an educative approach or enforcement approach, consideration should be given to the following matters:</p> <ul style="list-style-type: none"> <li>• the reasonable likelihood that the person may have known or should have known the relevant requirements or rules,</li> <li>• level of contrition shown by the responsible person,</li> <li>• whether the parties have previously been advised of the regulatory requirements or provisions,</li> <li>• whether or not any previous warnings or instructions have been provided,</li> <li>• the apparent level of intent shown by the responsible person.</li> </ul>
17.	Is the cost of enforcing likely to be excessive having regard to the nature and impact of the offence?	Consideration should be given to the relative costs and benefits of taking formal enforcement action as opposed to taking informal action or an educative approach. Council's action should be commensurate with the seriousness of the breach and any impacts or potential impacts on other parties and the environment.
18.	Is the particular requirement (i.e. condition of development consent) which has not been complied with unreasonable, ambiguous or ultra vires?	A condition that is unreasonable, ambiguous or ultra vires may be unenforceable and may preclude Council from taking enforcement action or issuing Orders or the like.
19.	Does the legislation provide for representations or submissions to be made in the matter?	<p>Certain legislation contains provisions for the person responsible to make representations to prior to Council taking certain enforcement action (i.e. service of an Order to do certain things), which must be considered on their merits.</p> <p>However, in most cases, the provisions do not provide for representations to be sought or made prior to taking enforcement action for the initial offence or breach of the legislation or regulations (i.e. failure to obtain an approval or comply with a particular requirement).</p>
20.	What are the chances of success if challenged?	<p>Council should take into consideration what the likelihood is of a successful appeal or court challenge against the proposed enforcement action.</p> <p>It may not be appropriate to take enforcement action (i.e. service of an Order or commencement of legal proceedings) if the chances of success, in the event of any appeal or hearing, are unlikely.</p>

<p>21. Is the proposed course of action reasonable and proportionate?</p>	<p>The proposed course of action for a particular breach or Offence should be reasonable and proportional to the nature and extent of the breach or offence and the circumstances of the case.</p> <p>The costs and benefits of particular enforcement action must also be considered and compared against other possible solutions or action.</p>
<p>22. Has consideration been given to other relevant factors and the circumstances of the case?</p>	<p>To ensure that Council's enforcement action is appropriate, effective, reasonable and successful, particularly in the event of an appeal or Court hearing, consideration should be given to any other relevant factors and the circumstances of the particular case.</p>

**Attachment 9.2**

## ANNEXURE 2

## EXAMPLES OF KEY OPTIONS AND POSSIBLE COURSES OF ACTION\*

Offence Scenario	Act/Reg.	Details of the case	Warning/ Education	Penalty Infringement Notice	Notice &/or Order	Legal Action	LEC Class 4
Nuisance Dog Order	Companion Animals Act	Failure to comply with a Nuisance Dog Order (i.e. Possible danger to other people, unrestrained or barking dog)	X	X	X		
Traffic/ Parking	Aust. Road Rules or LGA	Parking of vehicle in No Stopping signposted area		X			
Traffic/ Parking	Aust. Road Rules	Parking of vehicle on footpath or nature strip	X	X			
Traffic/Parking	Aust. Road Rules	Parking of vehicles on road reserves	X	X			
Pollution of stormwater drain	POEO Act	Soil, sand and other building waste entered stormwater system	X	X	X	X	
Potential for pollution	POEO Act	Location of stockpile of sand may cause pollution incident (i.e. in rain)	X	X	X		
Minor building works - Owner	EP&A Act	Construction of pergola awning by owner –Where there is no material impact on other parties and locality – No BCA issues	X	X	X		
Site management	Local Govt. Act or EP&A Act	Articles located on footpath without approval – Possible safety hazard	X	X	X		



Offence Scenario	Act/Reg.	Details of the case	Warning/ Education	Penalty Infringement Notice	Notice &/or Order	Legal Action	LEC Class 4
Building work outside of hours	EP&A Act	Carrying out building works outside of hours permitted in DA – Licensed. Builder	X	X	X		
Minor building works – Licensed Builder	EP&A Act	Construction of alterations or additions to rear of existing dwelling – BCA issues to be resolved	X	X	X		
Major building works	EP&A Act	Substantial alterations and additions to the existing building – Planning & BCA compliance issues		X	X	X	
Variation to DA - Major	EP&A Act	Major variation to DA (i.e. substantial changes to approved development or use)		X	X	X	X
Variation to DA - Minor	EP&A Act	Minor variation to DA (i.e. relocation of door/window) – Section 96 obtained	X				
Unauthorised Use - Major	EP& A Act	Unauthorised use of premises as backpacker accommodation, additional dwelling(s) or brothel			X	X	X
Fire safety Minor	EP&A Act	Failure to submit an annual fire safety statement after due date		X	X		
Fire safety	EP&A Act	Fire safety upgrading			X		

Offence Scenario	Act/Reg.	Details of the case	Warning/ Education	Penalty Infringement Notice	Notice &/or Order	Legal Action	LEC Class 4
Development Control Plan – Tree Removal Minor	EP&A Act	Tree covered by DCP lopped without approval – minor impact on tree / amenity of locality	X	X			
Development Control Plan - Tree Removal Major	EP&A Act	Tree covered by TPO removed without approval – significant impact on amenity of site/locality	X	X		X	
Food Premises	NSW Food Act & Regulation	Unclean food premises.	X	X	X	X	
Vegetative Overgrowth and/or Noxious Weeds.	Local Gvt Act or Noxious Weeds Act	Vegetation causes, or is likely to cause, unsafe or unhealthy conditions.	X	X	X	X	
Accumulation of Rubbish	Local Gvt Act	Accumulation results in, or is likely to result in, unsafe or unhealthy conditions.	X	X	X	X	

\* Notes:

- In some cases, the particular breach may be remedied or resolved prior to proceeding to the service of Notices, Orders or legal proceedings i.e. via negotiation or by promptly obtaining relevant approvals.
- Prior to determining an appropriate course of action, consideration is required to be given to the circumstances of the case and the courses of action contained in the above table may not be suitable or sufficient in all cases.

**Attachment 9.3****DEFINITIONS**

4.1 The following are the definitions of key terms in this policy:

**ABN/ACN:** Australian Business/Company Number.

**Administration fee:** A prescribed fee imposed in some legislation to cover the cost of the service of a notice/order and re-inspection fee and adopted by Council in the annual Schedule of Fees and Charges.

**ARA:** Appropriate Regulatory Authority, a term under the Protection of the Environment Operations Act 1997.

**Authorised Officer:** A Council Officer with delegated authority to carry out specific duties and take any necessary enforcement action. Such officers carry specific Authorities under various Acts which include prescribed powers of entry to certain properties.

**BCA:** Building Code of Australia, part of the National Construction Code series.

**BPB:** Building Professionals Board.

**CAN:** Court Attendance Notice used to commence proceedings in the Local Court.

**CRM:** Customer Request Management, an electronic Council computer reporting system that registers and records requests for action, compliments and requests for service.

**Caution:** A formal warning given instead of a penalty advising enforcement action will follow if there is a recurrence, any consideration to issue a “Caution” should be in accordance with the Caution Guidelines issued by the NSW Attorney General under section 19 (1) (a) (1) of the Fines Act.

**Cautioning:** The verbal process an officer is required to issue to an alleged offender once the officer has considered an offence has occurred and the officer may use any subsequent statement/s made by the alleged offender as evidence.

**Civil Proceedings:** Include:

- Notices, Orders and Directions issued pursuant to various legislation;
- Class 4 proceedings in the Land and Environment Court seeking an order to remedy a breach of the Environmental Planning and Assessment Act, the Local Government Act, the Protection of the Environment Act or any other Act, if the breach is causing or is likely to cause harm to the environment;
- Interlocutory relief for matters causing or with reasonable potential to cause serious environmental harm. In such proceedings it is likely the Council would be required to provide an undertaking as to damages.

**Complaint:** A complaint is an expression of dissatisfaction made about Council services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.

For the purposes of this policy, a complaint does not include:

- a report alleging unlawful activity (see definition below)
- a request for information about a Council policy or procedure
- a request for an explanation of actions taken by Council
- a request for internal review of a Council decision.

**Complainant:** A customer lodging a request for action to Council.

**Council:** Wollondilly Shire Council.

**Criminal Proceedings:** Includes:

- the issuing of a penalty notice;
- prosecuting an offence in the Local Court with the use of a Court Attendance Notice;
- prosecuting for an offence in the summary jurisdiction of the Land and Environment Court (Class 5 proceedings).

**Defendant:** An alleged offender against whom action is being taken in Court.

**Enforcement:** Actions taken in response to serious or deliberate contraventions of laws.

**EP&A Act:** The Environmental Planning and Assessment Act 1979.

**Estoppel:** Legal rule of evidence.

**Fines Act:** Fines Act 1996.

**GIPAA:** The Government Information (Public Access) Act 2009.

**ICAC:** Independent Commission Against Corruption.

**Informant:** the person who brings criminal proceedings.

**Issuing Agency:** Council.

**Issuing Officer:** the Council Officer authorised to issue a penalty notice for an offence.

**LGA:** Local Government Act 1993.

**Offence:** An offence under NSW legislation.

**PCA:** Principal Certifying Authority.

**PIN or Penalty Notice** - Penalty Infringement Notice (or Penalty Notice) occasionally referred to as an “on the spot fine”.

**Plaintiff:** The person commencing civil proceedings.

**Prima facie:** Presentation of sufficient evidence to support a legal claim.

**Procedural Fairness:** Procedural fairness relates to the use of fair and proper procedures as part of the decision making process.

**POEO:** The Protection of the Environment Operations Act 1997.

**Respondent:** The party against whom civil proceedings are brought.

**Regulation:** Using a variety of tools and strategies to influence and change behaviour to achieve the objectives of an Act, Regulation or other statutory instrument administered by Council.

**Report alleging unlawful activity:** An expression of concern or a request for service in relation to alleged unlawful activity, where a response or resolution is explicitly or implicitly expected or legally required.

**SDRO:** State Debt Recovery Office which produces the Fixed Penalty Handbook for the issue of penalty notices.

**Technical breach:** A breach to the provisions of an Act, Regulation, Notice, Order, Direction or Development Consent.

**Unauthorised/ unlawful activity:** Any activity that is:

- contrary to the terms or conditions of a development consent, approval or permission;
- contrary to an environmental planning instrument that regulates the activities or work that can be carried out on particular land;
- contrary to a legislative provision regulating particular activity of work;
- without a required development consent, approval, permission or licence;
- contrary to legislation for which the Council is the appropriate regulatory authority;
- and includes any activity, place or structure which is a risk to public health and safety but excludes any parking or traffic offences which are dealt with in accordance with the Australian Road Rules

# GO1 Attachment

1. Investment Summary Report as at 31 July 2017

**Monday 18 September 2017**

GO1 – Investment of Funds as at 31 July 2017



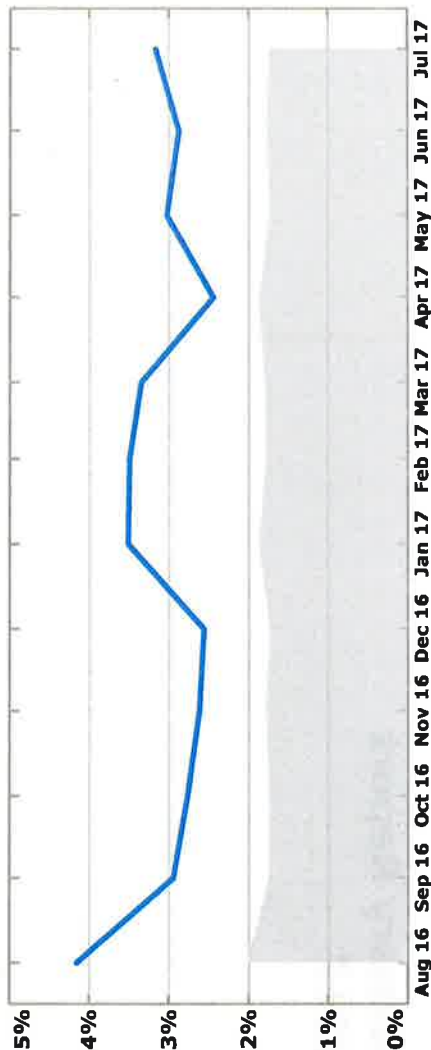
**Wollondilly**  
Shire Council

**Investment Summary Report  
July 2017**

**Investment Holdings**

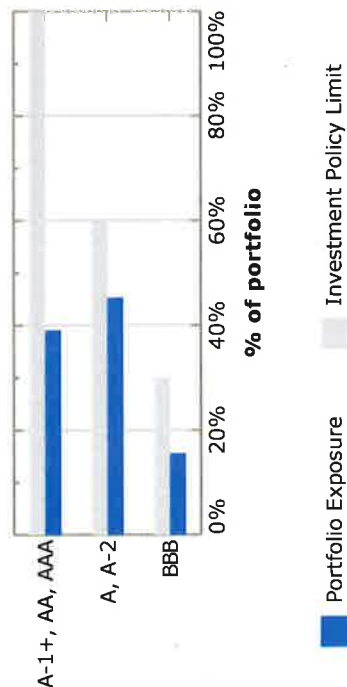
By Product	Face Value (\$)	Current Value (\$)	Current Yield (%)
Bonds	2,000,000.00	1,977,040.00	7.1692
Cash	3,321,000.00	3,321,000.00	1.5500
Floating Rate Note	14,500,000.00	14,655,562.25	2.8464
Mortgage Backed Security	1,653,644.03	1,119,833.53	2.2213
Term Deposit	34,750,000.00	35,239,140.68	2.8124
	<b>56,224,644.03</b>	<b>56,312,576.46</b>	<b>2.8842</b>

**Investment Performance**

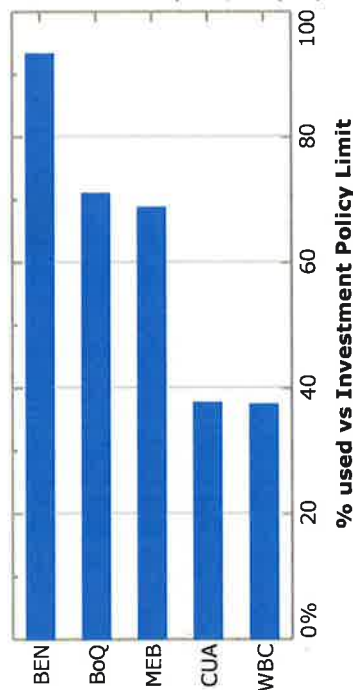


**Investment Policy Compliance**

**Total Credit Exposure**



**Highest Individual Exposures**



**Term to Maturities**

Maturity Profile	Face Value (\$)	Policy Max
Less than 1yr	34,071,000	61% 100% ✓
Greater than 1yr	22,153,644	39% 60% ✓
a. Between 3 and 5yrs	4,500,000	8% 30% ✓
b. Greater than 5yrs	1,653,644	3% 0% X
	<b>56,224,644</b>	



**Cash Accounts**

	Face Value (\$)	Current Yield	Institution	Credit Rating	Current Value (\$)	Deal No.	Reference
	3,321,000.00	1.5500%	National Australia Bank	A-1+	3,321,000.00	211819	
	<b>3,321,000.00</b>	<b>1.5500%</b>			<b>3,321,000.00</b>		

**Term Deposits**

Maturity Date	Face Value (\$)	Rate	Institution	Credit Rating	Purchase Price (\$)	Purchase Date	Current Value (\$)	Deal No.	Accrued Interest (\$)	Coupon Frequency	Reference
2-Aug-17	1,000,000.00	2.8000%	National Australia Bank	A-1+	1,000,000.00	3-Aug-16	1,027,846.58	534097	27,846.58	AtMaturity	
29-Aug-17	1,000,000.00	2.9500%	Bendigo and Adelaide Bank	A-2	1,000,000.00	1-Sep-15	1,026,994.52	509014	26,994.52	Annually	
5-Sep-17	1,000,000.00	2.6500%	Bank of Queensland	A-2	1,000,000.00	1-Mar-17	1,011,108.22	534926	11,108.22	AtMaturity	
13-Sep-17	1,000,000.00	3.0000%	Westpac Group	A-1+	1,000,000.00	1-Sep-16	1,027,452.05	534200	27,452.05	Annually	
27-Sep-17	500,000.00	3.0000%	Westpac Group	A-1+	500,000.00	25-Aug-16	514,013.70	534178	14,013.70	Annually	
27-Sep-17	1,000,000.00	3.0000%	Westpac Group	A-1+	1,000,000.00	2-Sep-16	1,027,369.86	534223	27,369.86	Annually	
4-Oct-17	1,000,000.00	3.0000%	Westpac Group	A-1+	1,000,000.00	14-Sep-16	1,026,383.56	534334	26,383.56	Annually	
11-Oct-17	1,000,000.00	2.6000%	ME Bank	A-2	1,000,000.00	14-Jun-17	1,003,419.18	535360	3,419.18	AtMaturity	
18-Oct-17	750,000.00	2.6500%	ME Bank	A-2	750,000.00	19-Apr-17	755,663.01	535187	5,663.01	AtMaturity	
1-Nov-17	2,000,000.00	2.8800%	Credit Union Australia	A-2	2,000,000.00	1-Feb-17	2,028,563.29	534818	28,563.29	AtMaturity	
8-Nov-17	500,000.00	2.7500%	Bendigo and Adelaide Bank	A-2	500,000.00	9-Nov-16	509,982.88	534517	9,982.88	AtMaturity	
15-Nov-17	1,000,000.00	2.7000%	Bank of Queensland	A-2	1,000,000.00	16-Feb-17	1,012,279.45	534882	12,279.45	AtMaturity	
6-Dec-17	1,000,000.00	2.6500%	ME Bank	A-2	1,000,000.00	1-Mar-17	1,011,108.22	534927	11,108.22	AtMaturity	
6-Dec-17	1,000,000.00	2.7000%	ME Bank	A-2	1,000,000.00	5-Jun-17	1,004,216.44	535292	4,216.44	AtMaturity	
13-Dec-17	1,000,000.00	2.8000%	Bank of Queensland	A-2	1,000,000.00	14-Dec-16	1,017,643.84	534665	17,643.84	AtMaturity	
13-Dec-17	1,000,000.00	2.7000%	ME Bank	A-2	1,000,000.00	14-Jun-17	1,003,550.68	535361	3,550.68	AtMaturity	
20-Dec-17	1,000,000.00	2.8000%	Bank of Queensland	A-2	1,000,000.00	20-Dec-16	1,017,183.56	534671	17,183.56	AtMaturity	
2-Jan-18	1,000,000.00	2.7000%	ME Bank	A-2	1,000,000.00	4-Apr-17	1,008,802.74	535131	8,802.74	AtMaturity	
10-Jan-18	1,000,000.00	2.7200%	Commonwealth Bank of Australia	A-1+	1,000,000.00	9-Mar-17	1,010,805.48	534987	10,805.48	AtMaturity	
14-Feb-18	1,000,000.00	2.7000%	Bank of Queensland	A-2	1,000,000.00	15-Feb-17	1,012,353.42	534879	12,353.42	AtMaturity	

### Term Deposits

Maturity Date	Face Value (\$)	Rate	Institution	Credit Rating	Purchase Price (\$)	Purchase Date	Current Value (\$)	Deal No.	Accrued Interest (\$)	Coupon Frequency	Coupon Reference
5-Mar-18	1,000,000.00	2.7000%	Rural Bank	A-2	1,000,000.00	2-Mar-17	1,011,243.84	534933	11,243.84	Annually	
7-Mar-18	1,000,000.00	2.7400%	Commonwealth Bank of Australia	A-1+	1,000,000.00	9-Mar-17	1,010,884.93	534986	10,884.93	AtMaturity	
7-Mar-18	1,000,000.00	2.6500%	Bank of Queensland	A-2	1,000,000.00	5-Jun-17	1,004,138.36	535293	4,138.36	AtMaturity	
14-Mar-18	1,000,000.00	2.6500%	Bank of Queensland	A-2	1,000,000.00	14-Jun-17	1,003,484.93	535362	3,484.93	AtMaturity	
24-Apr-18	1,000,000.00	2.7000%	ME Bank	A-2	1,000,000.00	26-Apr-17	1,007,175.34	535196	7,175.34	AtMaturity	
23-May-18	1,000,000.00	2.8500%	Credit Union Australia	A-2	1,000,000.00	24-May-17	1,005,387.67	535264	5,387.67	AtMaturity	
30-May-18	1,000,000.00	2.7000%	Bendigo and Adelaide Bank	A-2	1,000,000.00	31-May-17	1,004,586.30	535276	4,586.30	AtMaturity	
6-Jun-18	1,000,000.00	2.7000%	Bendigo and Adelaide Bank	A-2	1,000,000.00	5-Jun-17	1,004,216.44	535294	4,216.44	AtMaturity	
4-Jul-18	1,000,000.00	2.7000%	Bank of Queensland	A-2	1,000,000.00	5-Jul-17	1,001,997.26	535439	1,997.26	AtMaturity	
23-Aug-18	1,000,000.00	3.1000%	Westpac Group	AA-	1,000,000.00	23-Aug-16	1,029,131.51	534157	29,131.51	Annually	
27-Aug-18	1,000,000.00	3.0500%	Bendigo and Adelaide Bank	BBB+	1,000,000.00	26-Aug-15	1,028,410.96	508262	28,410.96	Annually	
12-Sep-18	1,000,000.00	3.1000%	Westpac Group	AA-	1,000,000.00	1-Sep-16	1,028,367.12	534201	28,367.12	Annually	
15-May-19	2,000,000.00	2.9000%	Bendigo and Adelaide Bank	BBB+	2,000,000.00	17-May-17	2,012,076.71	535244	12,076.71	Annually	
9-Aug-19	1,000,000.00	3.2000%	Westpac Group	AA-	1,000,000.00	9-Aug-16	1,031,298.63	534113	31,298.63	Annually	
	<b>34,750,000.00</b>	<b>2.8124%</b>			<b>34,750,000.00</b>		<b>35,239,140.68</b>		<b>489,140.68</b>		

### Floating Rate Notes

Maturity Date	Face Value (\$)	Current Coupon	Security Name	Credit Rating	Purchase Price (\$)	Purchase Date	Current Value (\$)	Deal No.	Accrued Interest (\$)	Next Coupon Reference Date
1-Apr-19	500,000.00	3.3100%	CUA Snr FRN (Apr19) BBSW+1.60%	BBB	500,000.00	1-Apr-16	504,544.93	533363	1,314.93	3-Oct-17
10-May-19	1,000,000.00	2.7350%	WBC Snr FRN (May19) BBSW+1.00%	AA-	1,000,000.00	11-Mar-16	1,016,979.32	533330	6,219.32	10-Aug-17
11-Jun-19	750,000.00	2.8200%	AMP Snr FRN (Jun19) BBSW+1.10%	A	750,000.00	11-Dec-15	757,444.32	512050	2,839.32	11-Sep-17
18-Jul-19	1,000,000.00	3.1450%	ME Bank Snr FRN (Jul19) BBSW+1.45%	BBB	1,000,000.00	18-Jul-16	1,005,386.30	534040	1,206.30	18-Oct-17
17-Sep-19	1,000,000.00	2.6500%	BEN Snr FRN (Sep19) BBSW+0.93%	BBB+	1,000,000.00	17-Sep-14	1,003,981.92	491128	3,121.92	18-Sep-17
11-Nov-19	1,000,000.00	2.5850%	ANZ Snr FRN (Nov19) BBSW+0.85%	AA-	1,000,000.00	11-Nov-14	1,014,237.40	497055	5,807.40	11-Aug-17
29-Nov-19	500,000.00	3.2400%	GBS Snr FRN (Nov19) BBSW+1.50%	BBB	500,000.00	29-Nov-16	500,284.61	534565	2,840.55	28-Aug-17

### Floating Rate Notes

Maturity Date	Face Value (\$)	Current Coupon	Security Name	Credit Rating	Purchase Price (\$)	Purchase Date	Current Value (\$)	Deal No.	Accrued Interest (\$)	Next Coupon Reference Date
22-Jan-20	1,000,000.00	2.5900%	WBC Snr FRN (Jan20) BBSW+0.90%	AA-	1,000,000.00	22-Jan-15	1,010,167.67	501146	567.67	23-Oct-17
21-Feb-20	500,000.00	2.8350%	BEN Snr FRN (Feb20) BBSW+1.10%	BBB+	500,000.00	21-Nov-16	504,122.33	534537	2,757.33	21-Aug-17
3-Mar-20	1,000,000.00	2.8300%	MAC Snr FRN (Feb20) BBSW+1.10%	A	1,000,000.00	3-Mar-15	1,012,689.45	502273	4,419.45	4-Sep-17
20-Mar-20	750,000.00	3.0200%	CUA Snr FRN (Mar20) BBSW+1.30%	BBB	750,000.00	20-Mar-17	752,028.80	534994	2,606.30	20-Sep-17
17-Jul-20	1,000,000.00	2.6000%	CBA Snr FRN (Jul20) BBSW+0.90%	AA-	1,000,000.00	17-Jul-15	1,010,218.49	507122	1,068.49	17-Oct-17
18-Aug-20	1,000,000.00	2.8350%	BEN Snr FRN (Aug20) BBSW+1.10%	BBB+	1,000,000.00	18-Aug-15	1,008,465.34	505173	5,825.34	18-Aug-17
20-Oct-20	1,000,000.00	2.9500%	SUN Snr FRN (Oct20) BBSW+1.25%	A+	1,000,000.00	20-Oct-15	1,014,929.86	510106	969.86	20-Oct-17
18-Jan-21	500,000.00	2.8450%	CBA Snr FRN (Jan21) BBSW+1.15%	AA-	500,350.00	25-Jan-16	508,345.62	533092	545.62	18-Oct-17
20-Apr-21	500,000.00	3.1600%	BEN Snr FRN (Apr21) BBSW+1.46%	BBB+	500,000.00	20-Apr-16	507,394.45	533420	519.45	20-Oct-17
3-Jun-21	1,000,000.00	2.9000%	WBC Snr FRN (Jun21) BBSW+1.17%	AA-	1,000,000.00	3-Jun-16	1,021,378.77	533707	4,528.77	4-Sep-17
30-Mar-22	500,000.00	2.7550%	AMP Snr FRN (Mar22) BBSW+1.05%	A	500,000.00	30-Mar-17	502,962.67	535097	1,207.67	29-Sep-17
	<b>14,500,000.00</b>	<b>2.8464%</b>			<b>14,500,350.00</b>		<b>14,655,562.25</b>		<b>48,365.69</b>	

### Zero Coupon Bonds

Maturity Date	Face Value (\$)	Security Name	Credit Rating	Purchase Price (\$)	Purchase Date	Current Value (\$)	Deal No.	Purchase Yield Reference
22-Jan-18	2,000,000.00	CBA Snr Bond (Feb18) ZC	A-1+	1,000,000.00	21-Jan-08	1,977,040.00	220294	7.1692%
	<b>2,000,000.00</b>			<b>1,000,000.00</b>		<b>1,977,040.00</b>		<b>7.1692%</b>

### Mortgage Backed Securities

Weighted Avg Life	Face Value (\$)	Current Coupon	Security Name	Rating	Purchase Price (\$)	Purchase Date	Current Value (\$)	Deal No.	Accrued Interest (\$)	Reference
22-Aug-22	653,644.03	2.1850%	Emerald Reverse Mortgage (A Tranche)	AAA	1,000,000.00	17-Jul-06	519,156.95	310323	2,778.17	
21-Jul-27	1,000,000.00	2.2450%	Emerald Reverse Mortgage (B Tranche)	AA	1,000,000.00	6-Jul-07	600,676.58	310288	676.58	
	<b>1,653,644.03</b>	<b>2.2213%</b>			<b>2,000,000.00</b>		<b>1,119,833.52</b>		<b>3,454.74</b>	



# Wollondilly Shire Council Accrued Interest Report



## Accrued Interest Report

Asset Type	Deal Number	Face Value (\$)	Settlement Date	Maturity Date	Interest Received (\$)	Days Accrued	Interest Accrued (\$)	Percentage Return
<b>Bonds</b>								
CBA Snr Bond (Feb18) ZC	220294	2,000,000.00	21-Jan-08	22-Jan-18	0.00	31	8,483.85	7.17%
					<b>0.00</b>		<b>8,483.85</b>	<b>7.17%</b>
<b>Cash</b>								
National Australia Bank	211819	3,321,000.00			4,937.04	31	4,937.04	1.55%
					<b>4,937.04</b>		<b>4,937.04</b>	<b>1.55%</b>
<b>Floating Rate Note</b>								
CUA Snr FRN (Apr19) BBSW+1.60%	533363	500,000.00	1-Apr-16	1-Apr-19	4,232.12	31	1,407.95	3.32%
WBC Snr FRN (May19) BBSW+1.00%	533330	1,000,000.00	11-Mar-16	10-May-19	0.00	31	2,322.88	2.74%
AMP Snr FRN (Jun19) BBSW+1.10%	512050	750,000.00	11-Dec-15	11-Jun-19	0.00	31	1,796.30	2.82%
ME Bank Snr FRN (Jul19) BBSW+1.45%	534040	1,000,000.00	18-Jul-16	18-Jul-19	8,015.48	31	2,703.70	3.18%
BEN Snr FRN (Sep19) BBSW+0.93%	491128	1,000,000.00	17-Sep-14	17-Sep-19	0.00	31	2,250.68	2.65%
ANZ Snr FRN (Nov19) BBSW+0.85%	497055	1,000,000.00	11-Nov-14	11-Nov-19	0.00	31	2,195.48	2.59%
GBS Snr FRN (Nov19) BBSW+1.50%	534565	500,000.00	29-Nov-16	29-Nov-19	0.00	31	1,375.89	3.24%
WBC Snr FRN (Jan20) BBSW+0.90%	501146	1,000,000.00	22-Jan-15	22-Jan-20	6,594.38	31	2,234.38	2.63%
BEN Snr FRN (Feb20) BBSW+1.10%	534537	500,000.00	21-Nov-16	21-Feb-20	0.00	31	1,203.90	2.83%
MAC Snr FRN (Feb20) BBSW+1.10%	502273	1,000,000.00	3-Mar-15	3-Mar-20	0.00	31	2,403.56	2.83%
CUA Snr FRN (Mar20) BBSW+1.30%	534994	750,000.00	20-Mar-17	20-Mar-20	0.00	31	1,923.70	3.02%
CBA Snr FRN (Jul20) BBSW+0.90%	507122	1,000,000.00	17-Jul-15	17-Jul-20	6,571.00	31	2,236.67	2.63%
BEN Snr FRN (Aug20) BBSW+1.10%	505173	1,000,000.00	18-Aug-15	18-Aug-20	0.00	31	2,407.81	2.83%
SUN Snr FRN (Oct20) BBSW+1.25%	510106	1,000,000.00	20-Oct-15	20-Oct-20	7,479.45	31	2,531.51	2.98%
CBA Snr FRN (Jan21) BBSW+1.15%	533092	500,000.00	25-Jan-16	18-Jan-21	3,634.00	31	1,224.50	2.88%
BEN Snr FRN (Apr21) BBSW+1.46%	533420	500,000.00	20-Apr-16	20-Apr-21	4,001.51	31	1,354.93	3.19%
WBC Snr FRN (Jun21) BBSW+1.17%	533707	1,000,000.00	3-Jun-16	3-Jun-21	0.00	31	2,463.01	2.90%

# Wollondilly Shire Council Accrued Interest Report



## Accrued Interest Report

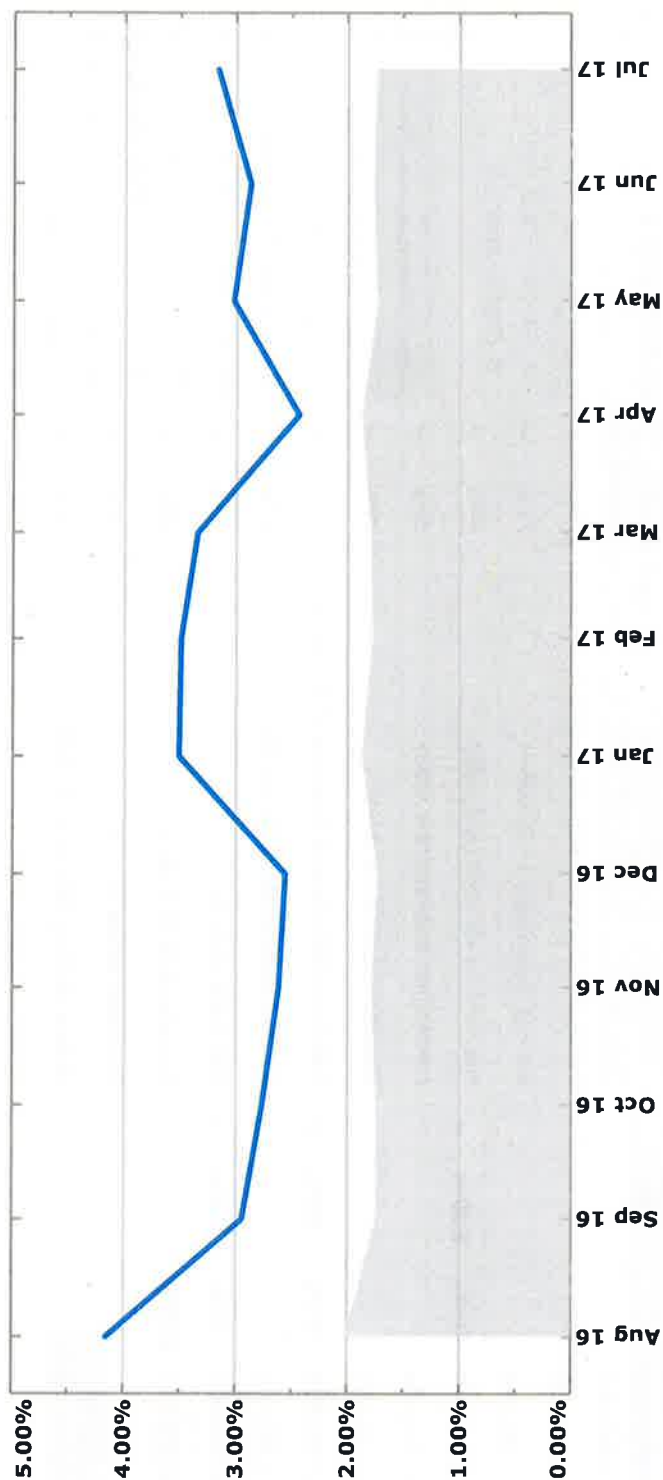
Asset Type	Deal Number	Face Value (\$)	Settlement Date	Maturity Date	Interest Received (\$)	Days Accrued	Interest Accrued (\$)	Percentage Return
AMP Snr FRN (Mar22) BBSW+1.05%	535097	500,000.00	30-Mar-17	30-Mar-22	0.00	31	1,169.93	2.76%
					<b>40,527.95</b>		<b>35,206.79</b>	<b>2.86%</b>
<b>Mortgage Backed Securities</b>								
Emerald Reverse Mortgage (A Tranche)	310323	653,644.03	17-Jul-06	22-Aug-22	0.00	31	1,213.00	2.19%
Emerald Reverse Mortgage (B Tranche)	310288	1,000,000.00	6-Jul-07	21-Jul-27	5,734.25	31	1,936.85	2.28%
					<b>5,734.25</b>		<b>3,149.85</b>	<b>2.24%</b>
<b>Term Deposit</b>								
National Australia Bank	534009	1,000,000.00	6-Jul-16	5-Jul-17	28,421.92	4	312.33	2.85%
Suncorp Bank	534652	1,000,000.00	7-Dec-16	12-Jul-17	16,646.58	11	843.84	2.80%
ME Bank	534890	500,000.00	20-Feb-17	19-Jul-17	5,510.96	18	665.75	2.70%
National Australia Bank	534097	1,000,000.00	3-Aug-16	2-Aug-17	0.00	31	2,378.08	2.80%
Bendigo and Adelaide Bank	509014	1,000,000.00	1-Sep-15	29-Aug-17	0.00	31	2,505.48	2.95%
Bank of Queensland	534926	1,000,000.00	1-Mar-17	5-Sep-17	0.00	31	2,250.68	2.65%
Westpac Group	534200	1,000,000.00	1-Sep-16	13-Sep-17	0.00	31	2,547.95	3.00%
Westpac Group	534178	500,000.00	25-Aug-16	27-Sep-17	0.00	31	1,273.97	3.00%
Westpac Group	534223	1,000,000.00	2-Sep-16	27-Sep-17	0.00	31	2,547.95	3.00%
Westpac Group	534334	1,000,000.00	14-Sep-16	4-Oct-17	0.00	31	2,547.95	3.00%
ME Bank	535360	1,000,000.00	14-Jun-17	11-Oct-17	0.00	31	2,208.22	2.60%
ME Bank	535187	750,000.00	19-Apr-17	18-Oct-17	0.00	31	1,688.01	2.65%
Credit Union Australia	534818	2,000,000.00	1-Feb-17	1-Nov-17	0.00	31	4,892.05	2.88%
Bendigo and Adelaide Bank	534517	500,000.00	9-Nov-16	8-Nov-17	0.00	31	1,167.81	2.75%
Bank of Queensland	534882	1,000,000.00	16-Feb-17	15-Nov-17	0.00	31	2,293.15	2.70%
ME Bank	534927	1,000,000.00	1-Mar-17	6-Dec-17	0.00	31	2,250.68	2.65%
ME Bank	535292	1,000,000.00	5-Jun-17	6-Dec-17	0.00	31	2,293.15	2.70%

# Wollondilly Shire Council Accrued Interest Report



Accrued Interest Report									
Asset Type	Deal Number	Face Value (\$)	Settlement Date	Maturity Date	Interest Received (\$)	Days Accrued	Interest Accrued (\$)	Percentage Return	
Bank of Queensland	534665	1,000,000.00	14-Dec-16	13-Dec-17	0.00	31	2,378.08	2.80%	
ME Bank	535361	1,000,000.00	14-Jun-17	13-Dec-17	0.00	31	2,293.15	2.70%	
Bank of Queensland	534671	1,000,000.00	20-Dec-16	20-Dec-17	0.00	31	2,378.08	2.80%	
ME Bank	535131	1,000,000.00	4-Apr-17	2-Jan-18	0.00	31	2,293.15	2.70%	
Commonwealth Bank of Australia	534987	1,000,000.00	9-Mar-17	10-Jan-18	0.00	31	2,310.14	2.72%	
Bank of Queensland	534879	1,000,000.00	15-Feb-17	14-Feb-18	0.00	31	2,293.15	2.70%	
Rural Bank	534933	1,000,000.00	2-Mar-17	5-Mar-18	0.00	31	2,293.15	2.70%	
Commonwealth Bank of Australia	534986	1,000,000.00	9-Mar-17	7-Mar-18	0.00	31	2,327.12	2.74%	
Bank of Queensland	535293	1,000,000.00	5-Jun-17	7-Mar-18	0.00	31	2,250.68	2.65%	
Bank of Queensland	535362	1,000,000.00	14-Jun-17	14-Mar-18	0.00	31	2,250.68	2.65%	
ME Bank	535196	1,000,000.00	26-Apr-17	24-Apr-18	0.00	31	2,293.15	2.70%	
Credit Union Australia	535264	1,000,000.00	24-May-17	23-May-18	0.00	31	2,420.55	2.85%	
Bendigo and Adelaide Bank	535276	1,000,000.00	31-May-17	30-May-18	0.00	31	2,293.15	2.70%	
Bendigo and Adelaide Bank	535294	1,000,000.00	5-Jun-17	6-Jun-18	0.00	31	2,293.15	2.70%	
Bank of Queensland	535439	1,000,000.00	5-Jul-17	4-Jul-18	0.00	27	1,997.26	2.70%	
Westpac Group	534157	1,000,000.00	23-Aug-16	23-Aug-18	0.00	31	2,632.88	3.10%	
Bendigo and Adelaide Bank	508262	1,000,000.00	26-Aug-15	27-Aug-18	0.00	31	2,590.41	3.05%	
Westpac Group	534201	1,000,000.00	1-Sep-16	12-Sep-18	0.00	31	2,632.88	3.10%	
Bendigo and Adelaide Bank	535244	2,000,000.00	17-May-17	15-May-19	0.00	31	4,926.03	2.90%	
Westpac Group	534113	1,000,000.00	9-Aug-16	9-Aug-19	0.00	31	2,717.81	3.20%	
					<b>50,579.45</b>		<b>84,531.71</b>	<b>2.81%</b>	
<b>Grand Totals</b>					<b>101,778.68</b>		<b>136,309.24</b>	<b>2.83%</b>	

**Annualised Monthly Return (Marked to Market)**



■ Portfolio Annualised Return ■ AusBond BB Index Annualised Return

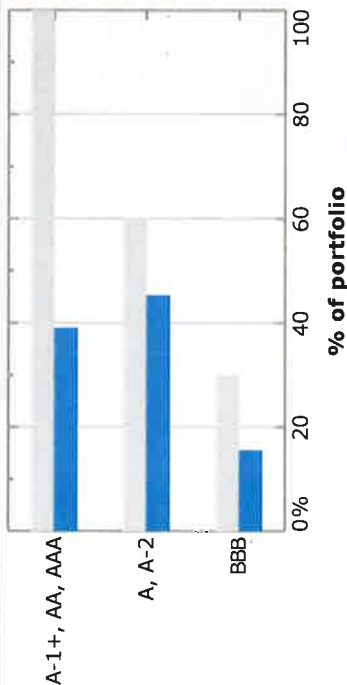
**Historical Performance Summary**

	Portfolio	AusBond BB Index	Outperformance
Jul 2017	3.16%	1.73%	1.43%
Last 3 Months	3.02%	1.74%	1.28%
Last 6 Months	3.05%	1.77%	1.28%
Financial Year to Date	3.16%	1.73%	1.43%
Last 12 months	3.07%	1.79%	1.28%

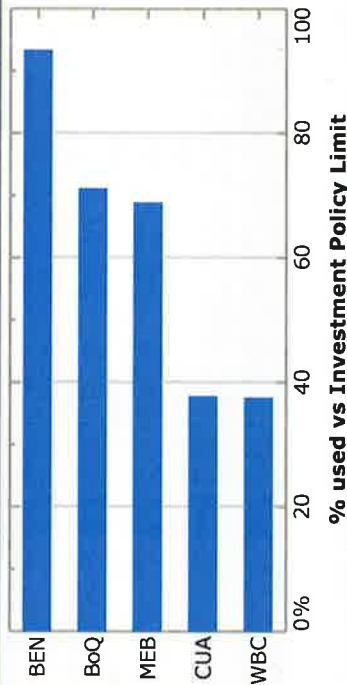
# Wollondilly Shire Council Investment Policy Compliance Report



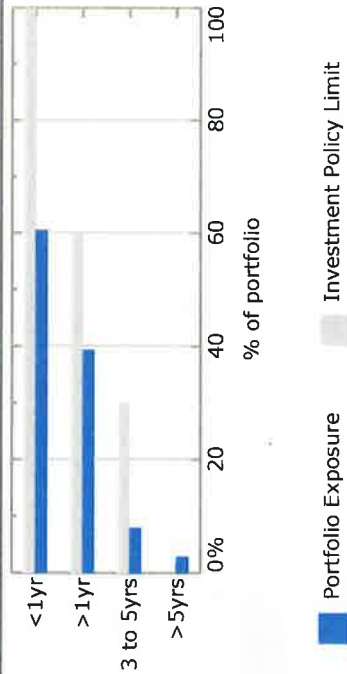
Total Credit Exposure



Individual Institutional Exposures



Term to Maturities



Credit Rating	Face Value (\$)	Policy Max
Short Term	11,821,000	
Long Term	9,500,000	
Long Term	653,644	
	<b>21,974,644</b>	<b>39%</b>
Short Term	22,250,000	
Long Term	3,250,000	
	<b>25,500,000</b>	<b>45%</b>
Long Term	8,750,000	
	<b>8,750,000</b>	<b>16%</b>
	<b>56,224,644</b>	<b>100%</b>

✓ = compliant  
X = non-compliant

Institution	Credit Rating	Face Value (\$)	Policy Limit	% used vs Investment Policy Limit
Bendigo and Adelaide Bank (A-2, BBB+)	A-2	34,071,000	61%	93%
Bank of Queensland (A-2, BBB+)	A-2	22,153,644	39%	71%
Members Equity Bank (A-2, BBB)	A-2	4,500,000	8%	69%
Credit Union Australia (A-2, BBB)	A-2	1,653,644	3%	38%
Westpac Group (A-1+, AA-)	A-1+	56,224,644	100%	38%
Commonwealth Bank of Australia (A-1+, AA-)	A-1+	22,250,000	45%	22%
National Australia Bank (A-1+, AA-)	A-1+	8,750,000	16%	17%
AMP Bank (A-1, A)	A-1	8,750,000	30%	11%
Suncorp Bank (A-1, A+)	A-1	8,750,000	30%	9%
Macquarie Group (A-1, A)	A-1	8,750,000	30%	9%
Greater Building Society (A-2, BBB)	A-2	653,644		9%
Emerald Reverse Mortgage (B Tranche) (AA)	AA	1,653,644	3%	5%
ANZ Group (A-1+, AA-)	A-1+	1,653,644	3%	5%
Emerald Reverse Mortgage (A Tranche) (AAA)	AAA	1,653,644	3%	3%

Maturity Profile	Face Value (\$)	Policy Max
Less than 1yr	34,071,000	61%
Greater than 1yr	22,153,644	39%
a. Between 3 and 5yrs	4,500,000	8%
b. Greater than 5yrs	1,653,644	3%
	<b>56,224,644</b>	<b>0%</b>

Detailed Maturity Profile	Face Value (\$)
00. Cash + Managed Funds	3,321,000
01. Less Than 30 Days	2,000,000
02. Between 30 Days and 60 Days	3,500,000
03. Between 60 Days and 90 Days	2,750,000
04. Between 90 Days and 180 Days	12,500,000
05. Between 180 Days and 365 Days	10,000,000
06. Between 365 Days and 3 Years	16,000,000
07. Between 3 Years and 5 Years	4,500,000
08. Between 5 Years and 10 Years	1,653,644
	<b>56,224,644</b>

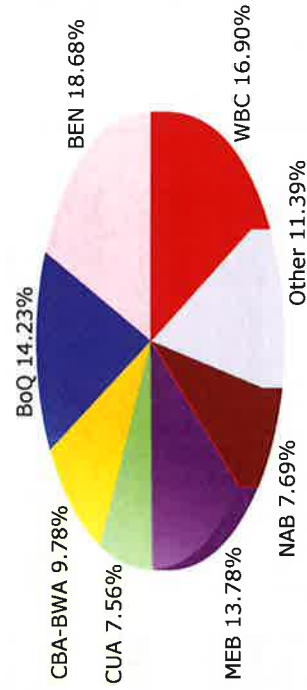
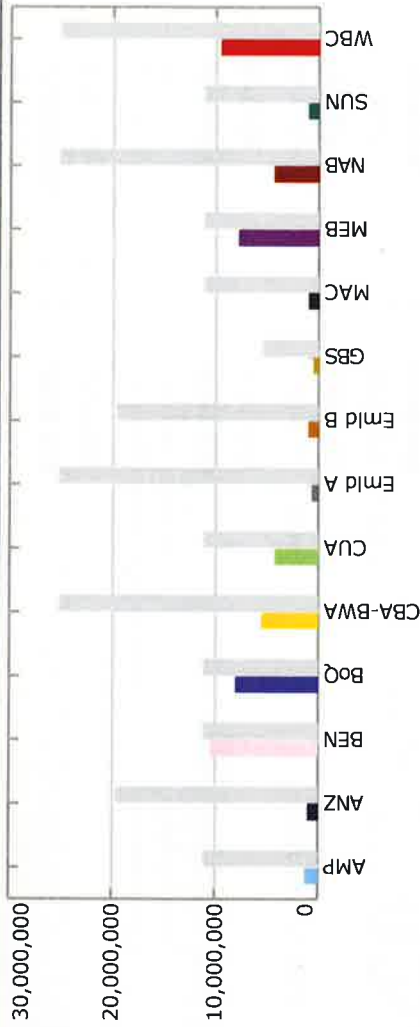




Individual Institutional Exposures

Parent Group	Credit Rating	Portfolio Exposure (\$)	Investment Policy Limit (\$)
AMP Bank	A, A-1	1,250,000	11,244,929
ANZ Group	A-1+, AA-	1,000,000	19,678,625
Bank of Queensland	A-2, BBB+	8,000,000	11,244,929
Bendigo and Adelaide Bank	A-2, BBB+	10,500,000	11,244,929
Commonwealth Bank of Australia	A-1+, AA-	5,500,000	25,301,090
Credit Union Australia	A-2, BBB	4,250,000	11,244,929
Emerald Reverse Mortgage (A Tranche)	AAA	653,644	25,301,090
Emerald Reverse Mortgage (B Tranche)	AA	1,000,000	19,678,625
Greater Building Society	A-2, BBB	500,000	5,622,464
Macquarie Group	A-1, A	1,000,000	11,244,929
Members Equity Bank	A-2, BBB	7,750,000	11,244,929
National Australia Bank	A-1+, AA-	4,321,000	25,301,090
Suncorp Bank	A-1, A+	1,000,000	11,244,929
Westpac Group	A-1+, AA-	9,500,000	25,301,090
		<b>56,224,644</b>	

Individual Institutional Exposure Charts



**Current Month Cashflows**

<u>Transaction Date</u>	<u>Deal No.</u>	<u>Cashflow Counterparty</u>	<u>Asset Type</u>	<u>Cashflow Description</u>	<u>Cashflow Received</u>
<b>3-Jul-17</b>	533363	Credit Union Australia	Floating Rate Note	Coupon - Received	4,232.12
				<u>Deal Total</u>	<u>4,232.12</u>
<b>5-Jul-17</b>	534009	National Australia Bank	Term Deposits	<b>Day Total</b>	<b>4,232.12</b>
		National Australia Bank	Term Deposits	Interest - Received	28,421.92
				Maturity Face Value - Received	1,000,000.00
				<u>Deal Total</u>	<u>1,028,421.92</u>
	535439	Bank of Queensland	Term Deposits	Settlement Face Value - Paid	-1,000,000.00
				<u>Deal Total</u>	<u>-1,000,000.00</u>
<b>12-Jul-17</b>	534652	Suncorp Bank	Term Deposits	<b>Day Total</b>	<b>28,421.92</b>
		Suncorp Bank	Term Deposits	Interest - Received	16,646.58
				Maturity Face Value - Received	1,000,000.00
				<u>Deal Total</u>	<u>1,016,646.58</u>
<b>17-Jul-17</b>	507122	Commonwealth Bank of Australia	Floating Rate Note	<b>Day Total</b>	<b>1,016,646.58</b>
				Coupon - Received	6,571.00
				<u>Deal Total</u>	<u>6,571.00</u>
<b>18-Jul-17</b>	533092	Commonwealth Bank of Australia	Floating Rate Note	<b>Day Total</b>	<b>6,571.00</b>
				Coupon - Received	3,634.00
				<u>Deal Total</u>	<u>3,634.00</u>
	534040	ME Bank	Floating Rate Note	Coupon - Received	8,015.48
				<u>Deal Total</u>	<u>8,015.48</u>
<b>19-Jul-17</b>	534890	ME Bank	Term Deposits	<b>Day Total</b>	<b>11,649.48</b>
		ME Bank	Term Deposits	Interest - Received	5,510.96
				Maturity Face Value - Received	500,000.00
				<u>Deal Total</u>	<u>505,510.96</u>
<b>20-Jul-17</b>	510106	Suncorp Bank	Floating Rate Note	<b>Day Total</b>	<b>505,510.96</b>
				Coupon - Received	7,479.45
				<u>Deal Total</u>	<u>7,479.45</u>
	533420	Bendigo and Adelaide Bank	Floating Rate Note	Coupon - Received	4,001.51



### Current Month Cashflows

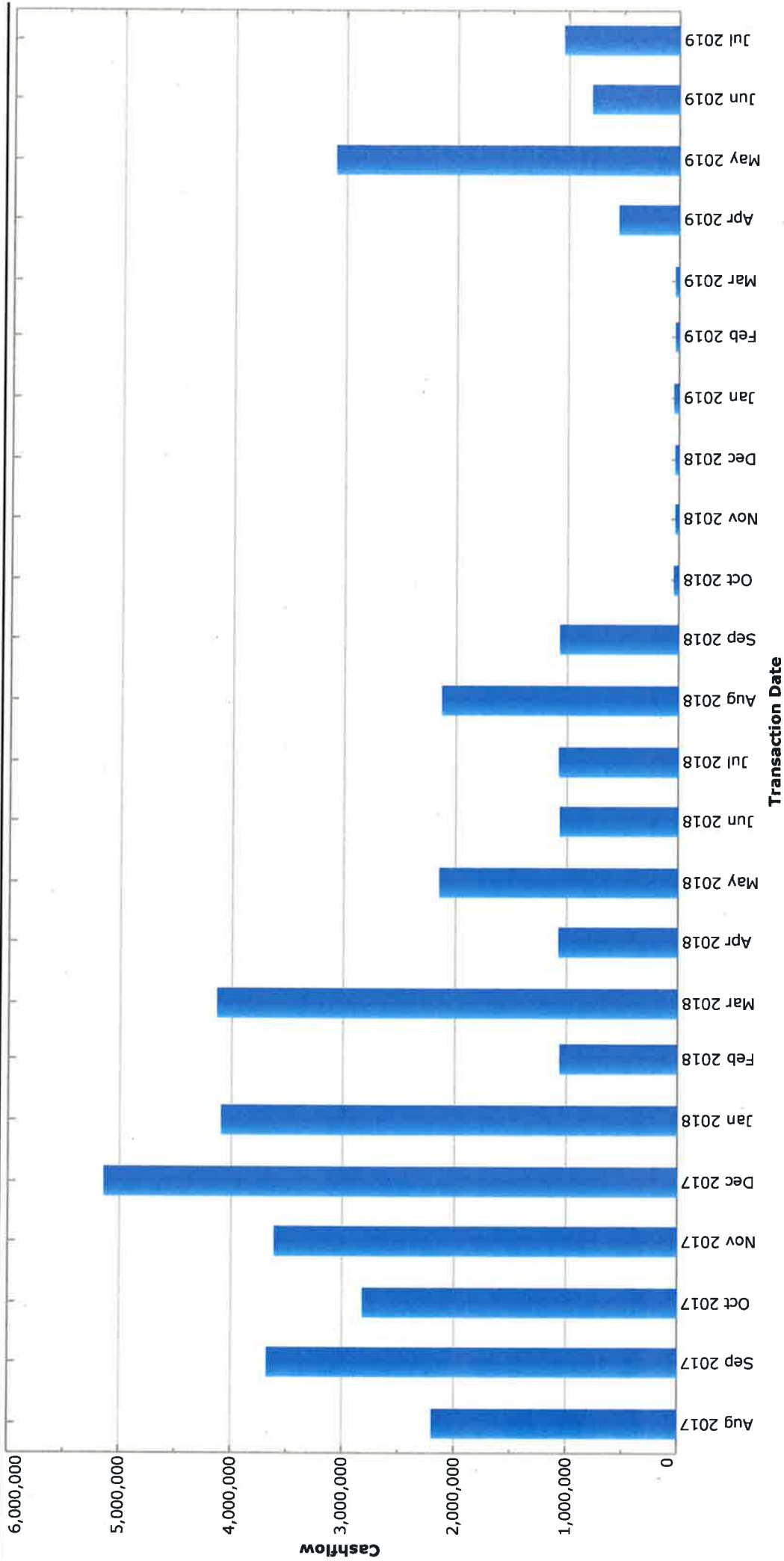
<u>Transaction Date</u>	<u>Deal No.</u>	<u>Cashflow Counterparty</u>	<u>Asset Type</u>	<u>Cashflow Description</u>	<u>Cashflow Received</u>
				<u>Deal Total</u>	<u>4,001.51</u>
<b>21-Jul-17</b>	<b>310288</b>	<b>Emerald Reverse Mortgage (B Tranche)</b>	<b>Mortgage Backed Securities</b>	<b>Day Total</b>	<b>11,480.96</b>
				Coupon - Received	5,734.25
				<u>Deal Total</u>	<u>5,734.25</u>
<b>24-Jul-17</b>	<b>501146</b>	<b>Westpac Group</b>	<b>Floating Rate Note</b>	<b>Day Total</b>	<b>5,734.25</b>
				Coupon - Received	6,594.38
				<u>Deal Total</u>	<u>6,594.38</u>
				<b>Day Total</b>	<b>6,594.38</b>
				<b>Net Cash Movement for Period</b>	<b>1,596,841.64</b>

### Next Month Cashflows

<u>Transaction Date</u>	<u>Deal No.</u>	<u>Cashflow Counterparty</u>	<u>Asset Type</u>	<u>Cashflow Description</u>	<u>Cashflow Due</u>
<b>2-Aug-17</b>	<b>534097</b>	<b>National Australia Bank</b>	<b>Term Deposit</b>	<b>Interest - Received</b>	<b>27,923.29</b>
		<b>National Australia Bank</b>	<b>Term Deposit</b>	<b>Maturity Face Value - Received</b>	<b>1,000,000.00</b>
				<u>Deal Total</u>	<u>1,027,923.29</u>
<b>9-Aug-17</b>	<b>534113</b>	<b>Westpac Group</b>	<b>Term Deposit</b>	<b>Day Total</b>	<b>1,027,923.29</b>
				Interest - Received	32,000.00
				<u>Deal Total</u>	<u>32,000.00</u>
<b>10-Aug-17</b>	<b>533330</b>	<b>Westpac Group</b>	<b>Floating Rate Note</b>	<b>Day Total</b>	<b>32,000.00</b>
				Coupon - Received	6,893.70
				<u>Deal Total</u>	<u>6,893.70</u>
<b>11-Aug-17</b>	<b>497055</b>	<b>ANZ Banking Group</b>	<b>Floating Rate Note</b>	<b>Day Total</b>	<b>6,893.70</b>
				Coupon - Received	6,515.62
				<u>Deal Total</u>	<u>6,515.62</u>
<b>18-Aug-17</b>	<b>505173</b>	<b>Bendigo and Adelaide Bank</b>	<b>Floating Rate Note</b>	<b>Day Total</b>	<b>6,515.62</b>
				Coupon - Received	7,145.75
				<u>Deal Total</u>	<u>7,145.75</u>
<b>21-Aug-17</b>	<b>310323</b>	<b>Emerald Reverse Mortgage (A Tranche)</b>	<b>Mortgage Backed Securities</b>	<b>Day Total</b>	<b>7,145.75</b>
				Coupon - Received	3,560.75

**Next Month Cashflows**

<u>Transaction Date</u>	<u>Deal No.</u>	<u>Cashflow Counterparty</u>	<u>Asset Type</u>	<u>Cashflow Description</u>	<u>Cashflow Due</u>
	534537	Bendigo and Adelaide Bank	Floating Rate Note	<u>Deal Total</u>	3,560.75
				Coupon - Received	3,534.04
				<u>Deal Total</u>	3,534.04
<b>23-Aug-17</b>	534157	Westpac Group	Term Deposit	<b>Day Total</b>	<b>7,094.79</b>
				Interest - Received	31,000.00
				<u>Deal Total</u>	31,000.00
<b>25-Aug-17</b>	534178	Westpac Group	Term Deposit	<b>Day Total</b>	<b>31,000.00</b>
				Interest - Received	15,000.00
				<u>Deal Total</u>	15,000.00
<b>28-Aug-17</b>	508262	Bendigo and Adelaide Bank	Term Deposit	<b>Day Total</b>	<b>15,000.00</b>
				Interest - Received	30,667.12
				<u>Deal Total</u>	30,667.12
	534565	Greater Building Society	Floating Rate Note	Coupon - Received	4,038.90
				<u>Deal Total</u>	4,038.90
<b>29-Aug-17</b>	509014	Bendigo and Adelaide Bank	Term Deposit	<b>Day Total</b>	<b>34,706.03</b>
				Interest - Received	29,257.53
		Bendigo and Adelaide Bank	Term Deposit	Maturity Face Value - Received	1,000,000.00
				<u>Deal Total</u>	1,029,257.53
				<b>Day Total</b>	<b>1,029,257.53</b>
				<b>Net Cash Movement for Period</b>	<b>2,197,536.71</b>



# GO3 Attachments

1. Summary of Changes Table
2. Draft Code of Meeting Practice

**Monday 18 September 2017**

GO3 – Adoption of the Draft Code of Meeting Practice



## SUMMARY OF CHANGES – CODE OF MEETING PRACTICE

Location	Previous Wording	New Wording	Reasoning
Page 4 – Commencement	...Sixth code...	... <b>Seventh</b> Code...	New version
Page 14 – Order of Business	<ol style="list-style-type: none"> <li>1. Opening</li> <li>2. National Anthem</li> <li>3. Welcome/ Acknowledgement of Country</li> <li>4. Webcast Notice</li> <li>5. Apologies and Leave of Absence Request</li> <li>6. Declaration of Pecuniary or Conflict of Interest</li> <li>7. Confirmation of Previous Minutes</li> <li>8. Items to be Tabled</li> <li>9. Mayoral Minute</li> <li>10. Reports: <ul style="list-style-type: none"> <li>- Planning and</li> <li>- Economy</li> <li>- Governance</li> <li>- Environment</li> <li>- Community</li> <li>- Infrastructure</li> </ul> </li> <li>9. Notices of Motion/Rescissions</li> <li>10. "Closed Meeting" Items</li> <li>11. Questions for Next Meeting</li> </ol>	<ol style="list-style-type: none"> <li>1. Opening</li> <li><b>2.</b> Webcast Notice</li> <li><b>3.</b> National Anthem</li> <li><b>4.</b> Welcome/ Acknowledgement of Country</li> <li>5. Apologies and Leave of Absence Request</li> <li>6. Declaration of Pecuniary or Conflict of Interest</li> <li>7. Confirmation of Previous Minutes</li> <li>8. Items to be Tabled</li> <li>9. Mayoral Minute</li> <li>10. <b>Agenda</b> Reports</li> <li><b>11.</b> Notices of Motion/Rescissions</li> <li><b>12.</b> "Closed Meeting" Items</li> <li><b>13.</b> Questions for Next Meeting</li> </ol>	<p>Moved Webcast Notice up in the order of proceedings to reflect current practice</p> <p>Removed itemised listing of report categories</p> <p>Fixed numbering error</p>
Page 16 – Notice of Motion	<p>29.(1)</p> <p>Any Councillor may give notice of any motion for consideration by the Council or a Committee of Council by providing the proposed motion in writing to the General Manager by noon on the Friday or the third (3rd) calendar day prior to the Council Meeting.</p>	<p>29.(1)</p> <p>Any Councillor may give notice of any motion for consideration by the Council or a Committee of Council by providing the proposed motion in writing to the General Manager by noon on the <b>Wednesday</b> or the <b>fifth (5th)</b> calendar day prior to the Council Meeting.</p>	Deadline brought forward

# CODE OF MEETING PRACTICE

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# CODE OF MEETING PRACTICE

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# PART 1 – PRELIMINARY

## CITATION

1. This code has been developed in accordance with The Local Government Act 1993 (as amended from time to time) and Local Government (General) Regulation 2005 and may be cited as the “Code of Meeting Practice” and applies to all meetings of Council and any Committees of Council.

## COMMENCEMENT

2. This code will come into force after its formal adoption by Wollondilly Shire Council. It is the **seventh** code and supersedes the version previously adopted.

## DEFINITIONS

3. In this code:-

### **Amendment**

An amendment is a change to the motion before the Council, and takes place while that motion is being debated. An amendment to a motion must be put forward in a motion itself.

The amendment may propose that some words be omitted from the original motion or that some words be added but it must not contradict the original motion. It would be unacceptable that the word “not” be inserted or omitted.

### **Chairperson**

- (a) In relation to a meeting of the Council – means the person presiding at the meeting as provided by s. 369 of the Act, and
- (b) In relation to a meeting of a Committee of the Council – means the person presiding at the meeting as provided by clause 54 of this code.

### **Committee**

In relation to the Council, means a Committee appointed or elected by the Council as set out in Clause 50 of this code.

### **Councillor**

Is an elected member of the Council.

### **Foreshadowed Amendments**

A Councillor may foreshadow an amendment to be moved when anticipating that the current amendment is not successfully carried.

### **Foreshadowed Motion:**

A Councillor may foreshadow a motion when it is desired to have a motion opposite to that proposed in the motion currently before the meeting, or when it is desired to alter a motion more drastically than is possible by amendment.

**Laid on the Table**

Means a matter is held in abeyance; and can be resumed at any time. This is done by resolution and is less concluding than a resolution that “no action be taken”.

This motion is for disposing of the matter before the chair in such a way that the debate can be resumed if and when the body desires. It is in effect an adjournment.

There can be no discussion, amendments, or right of reply. The motion to take the original motion off the table is similarly not open to discussion or amendment.

**Motion**

A motion is a proposal to be considered by Council at a meeting. It is a request to do something or to express an opinion about something. A motion formally puts the subject of the motion as an item of business for the Council.

**Resolution**

A resolution is a motion that has been passed by a majority of Councillors at the meeting.

**Record**

Means a document (including any written or printed material) or object (including a sound recording, coded storage device, magnetic tape or disk, microfilm, photograph, film, map, plan or model or a painting or other pictorial or graphic work) that is or has been made or received in the course of official duties by a Councillor or an employee of the Council and, in particular, includes the minutes of meetings of the Council or of a Committee of the Council.

**Tabled (Tabling of Documents)**

Means to introduce a document or material to a meeting for it to be added to the records of the Council and for it to be accessible to the Councillors, press and public.

This is usually done when the document is unusually long or if it is relatively unimportant, or if its nature prevents it from being read – for example, graphs, tables of statistics, photographs. No motion is necessary, persons tendering documents merely saying as they do so that they are tabling such and such document. The tabling should, however, be recorded in the minutes, with appropriate details sufficient to identify the documents concerned.

**The Act**

This means the Local Government Act 1993 (as amended from time to time).

This “Code of Meeting Practice” is made pursuant to Section 360(2) of the Local Government Act 1993. It incorporates relevant provisions of the Regulations and Act. In the event of any inconsistency between the Code and the Act or Regulations, the Act or Regulations (as the case may be) prevails to the extent of the inconsistency.

Where a clause or subclause contains a reference such as (s.365) at the end of the clause or subclause, this is a reference to the relevant section of the Local Government Act, 1993.

Where a clause or subclause contains a reference such as (cl.233) at the end of the clause or subclause, this is a reference to the relevant clause in the Local Government (General) Regulation 2005.

## PART 2 – CONVENING OF, AND ATTENDANCE AT COUNCIL AND COMMITTEE MEETINGS

### COUNCIL MEETINGS

4. Council shall meet in accordance with Section 365 of the Local Government Act, 1993 (as amended from time to time) and the adopted Meeting Calendar and as resolved by Council and must be at least 10 times each year, each time in a different month.

(s.365)

### MINUTES OF MEETINGS

5. (1) The Council must ensure that full and accurate minutes are kept of the proceedings of a meeting of the Council. The following matters must be included in the minutes of Council meetings:
- (a) Details of each motion moved at a Council meeting and of any amendments.
  - (b) The names of the mover and seconder of each motion and amendment and that voting be recorded for every motion of Council.
  - (c) Whether each motion and amendment is carried or lost.
  - (d) The circumstances and reasons relating to the absence of a quorum together with the names of the Councillors present.
  - (e) The dissenting vote of a Councillor, if requested
  - (f) The names of the councillors who voted for a motion in a division and those who voted against it. A division is always required when a motion for a planning decision is put at a meeting of the Council.
  - (g) A report of the proceedings of the Committee of the whole, including any recommendations of the Committee.
  - (h) The grounds for closing part of a meeting to the public.
  - (i) The report of a Council Committee leading to a rescission or alteration motion.
  - (j) The disclosure to a meeting by a Councillor of a pecuniary interest.
  - (k) Closed Minutes must include the details of all motions and amendments; the names of their movers and seconders; and whether the motions and amendments are passed or lost at a closed part of a Council meeting.
- (2) To ensure the integrity of the minutes the minute taker/s, at their discretion, may call a halt to proceedings and request the Chair clarify the contents of resolutions.
- (3) The Minutes must, when they have been confirmed at a subsequent meeting of the Council, be signed by the person presiding at the subsequent meeting.

(s.375)

- (4) Every entry in the minutes of the business transacted at a meeting of the Council and purporting to be signed by the person presiding at a subsequent meeting of the Council is, until the contrary is proved, evidence:
- (a) That the business as recorded in the minutes was transacted at the meeting, and
  - (b) That the meeting was duly convened and held.

(s.703)

- (5) If a Councillor has a concern regarding the wording of the minutes of any meeting the Councillor should contact the Mayor or Chairperson, General Manager or relevant Senior Officer prior to the meeting at which the minutes are to be adopted.

#### **WHO IS ENTITLED TO ATTEND**

6. (1) Except as provided by the Act
- (a) Everyone is entitled to attend a meeting of Council and those of its Committees of which all the members are Councillors.
  - (b) A Council must ensure that all meetings of the Council and of such committees are open to the public.
  - (c) Councillors must sign the attendance/declaration of interest register documentation/when attending a meeting of Council.
  - (d) Council staff must sign the meeting attendance register when attending meetings in Councils Administration Building.
- (2) A person (whether a Councillor or another person) is not entitled to be present at a meeting of the Council or such a Committee if expelled from the meeting.
- (a) By a resolution of the meeting; or
  - (b) By the person presiding at the meeting, if the Council has, by resolution, authorised the person presiding to exercise the power of expulsion.
- (3) A person may be expelled from a meeting only on the grounds specified in, or in the circumstances prescribed by, the regulations.

(s.10)

#### **PUBLIC ACCESS TO AGENDAS AND ASSOCIATED AGENDA**

7. (1) Copies of the agenda, not being a confidential agenda prepared for business of a type determined in accordance with clause 62, which has been prepared to a meeting of the Council or a Committee of the Council will be available to the press and the public at or before the opening of the meeting. Copies of the agenda will also be available at Council libraries, on Council's website and at the customer service centre by 3.00pm on the Monday two weeks prior to the meeting. Hard copies will be made available free of charge from Councils Administration Building in reasonable numbers.
- (2) Subject to subclause (3), the press and the public will, during or at the close of a meeting of the Council or a Committee of the Council be allowed reasonable access to the correspondence and reports tabled at or submitted to the meeting.
- (3) The Council or a Committee of the Council may withhold access to the correspondence and reports referred to in subclause (2):
- (a) Where the correspondence and the reports relate to any matter dealt with at a time when the press and the public were excluded from the meeting of the Committee, or
  - (b) In any case where the Committee so decides on the ground that publicity may prejudice the Council's interests in threatened or pending litigation.
- (4) Annual subscription to the Council and Committee agenda and minutes is available at a charge determined each year in the Council's Business Plan.

- (5) Councils Business Papers are available from Councils Administration Building; Library; Website and upon request in electronic or hardcopy format. Nothing in this code shall be construed as limiting the means of distributing information to any one medium.

#### **EXTRAORDINARY MEETINGS**

8. (1) If the Mayor receives a request in writing signed by at least two Councillors, the Mayor must call an extraordinary meeting of the Council to be held as soon as practicable but in any event within 14 days after receipt of the request. (s.366)
- (2) Notice of less than 3 days may be given of an extraordinary meeting called in an emergency by the Mayor.

#### **NOTICE OF MEETING**

9. (1) The General Manager must send to each Councillor, at least 3 days before each meeting of the Council, a notice specifying the time and place at which and the date on which the meeting is to be held and the business proposed to be transacted at the meeting.
- (2) Notice of less than 3 days may be given of an extraordinary meeting called in an emergency and the reasons for the emergency shall be defined. Emergency meeting advice shall stipulate the venue, date and time.
- (3) Notice of and the Agenda for and the business papers relating to, the meeting may be given to a Councillor in electronic form but only if all Councillors have facilities to access the notice, agenda and business papers in that form. (s.367)
- (4) Proceedings at a meeting of a Council or a Council Committee are not invalidated because of a failure to give notice of the meeting to any Councillor or Committee member. (s.374 Pt b)
- (5) Council must give public notice of the times and places of its meetings and those of its Standing Committee meetings of which all the members are Councillors. (s.9)

#### **QUORUM**

10. The quorum for a meeting of the Council is a majority of the Councillors of the Council who hold office for the time being and are not suspended from office. (s.368)

#### **QUORUM IS NOT PRESENT**

11. (1) A meeting of the Council must be adjourned if a quorum is not present:
- (a) Within half an hour after the time designated for the holding of the meeting.
- (b) At any time during the meeting.

- (2) In either case, the meeting must be adjourned to a time, date and place fixed:
- (a) By the Chairperson.
  - (b) In his or her absence – by the majority of the Councillors present.
  - (c) Failing that, by the General Manager.
- (3) The General Manager must record in the Council's minutes or records the circumstances relating to the absence of a quorum (including the reasons for the absence of a quorum) at or arising during a meeting of the Council, together with the names of the Councillors present.
- (cl.233)

#### **PRESENCE AT COUNCIL**

12. (1) A Councillor cannot participate in a meeting of the Council unless personally present at the meeting and within the physical confines of the room, in which the meeting is being held.
- (cl.235)

#### **DECLARATIONS OF INTEREST**

13. (1) A Councillor or a member of a council committee who declares a pecuniary conflict of interest in any matter before the council and who is present at a meeting where the matter is being considered, must:
- (a) Submit to the General Manager a written declaration of Interest prior to the meeting
  - (b) Disclose and identify the nature of the interest to the meeting as soon as practicable
  - (c) Vacate the Council meeting room and not be within visual or hearing range of the debate on the item, for which the interest has been declared, both as a Councillor and a member of the public.
- (2) There are three types of non-pecuniary conflicts of interests. They are 'significant', 'less than significant' and 'political donations'. Council's code of conduct describes the procedures that need to be followed in respect of each type (Clauses 7.13 – 7.26).

A Councillor or a member of a council committee who declares a non-pecuniary conflict of interest in any matter before the council and who is present at a meeting where the matter is being considered, must:

- (a) Submit to the General Manager a written Declaration of Interest prior to the meeting
- (b) Disclose and identify the nature of the interest to the meeting as soon as practicable
- (c) Take part in debate and vote on the item

However, if the Councillor chooses to not take part in the item of conflict, then the Councillor must leave the meeting room.

(s.442)



## **ABSENCE FROM COUNCIL MEETING**

14. (1) A civic office becomes vacant if the holder is absent without prior leave of the Council from 3 consecutive meetings of the Council.  
(s.234 (d))
- (2) Leave of absence may only be granted by a Council resolution. A Councillor may attend a Council meeting during the period of which the leave has been granted, however, the leave is taken to be rescinded as regards any future Council meeting. The Act requires a Councillor who wishes to attend a Council meeting while on leave to provide the General Manager a minimum of two days notice of the intention to attend and participate in a meeting of Council, however, failure to give such a notice does not prevent a Councillor from attending the meeting or voting at it and any business conducted at the meeting would not be invalidated because of that failure to give notice.
- (3) There is nothing to prevent a Councillor from seeking the leave of the Council for a further period of absence however any further leave of absence will require Council to make another resolution.
- (4) A Councillor, whenever possible, should provide to the Council a proposed date of return when seeking leave for an extended period of time.  
(s.234)
- (5) The tendering of an apology is a form of courtesy to those attending the meeting from the person tendering the apology that they will not be attending. It aids the efficient conduct of meetings by informing the chairperson as to who will not be attending and avoids delaying the opening of a meeting.

The acceptance of an apology is a positive acknowledgement of the courtesy of the person who tendered it.

It does not amount to a grant of a leave of absence and although recognised as a component of good meeting practice has no recognition in either the Act or the Regulations.

## **ATTENDANCE OF STAFF AT COUNCIL AND COUNCIL COMMITTEE MEETINGS**

15. (1) The General Manager is entitled to attend, but not vote at, a meeting of the Council or a meeting of a Committee of the Council of which all the members are Councillors.
- (2) The General Manager is entitled to attend a meeting of any other Committee of the Council and may, if a member of the Committee, exercise a vote.
- (3) However, the General Manager may be excluded from a meeting of the Council or a Committee while the Council or Committee deals with a matter relating to the standard of performance of the General Manager or the terms of the employment of the General Manager.  
(s.376)
- (4) Other Council officers may attend Council and Committee meetings as Council and the respective Committees and/or the General Manager shall determine as appropriate from time to time.

- (5) The role of those Council officers attending will be to offer advice and to answer questions within their individual fields of expertise and experience. With the exception of special standing Committees outlined elsewhere, Council staff are not permitted to vote, nor take part in debate (unless specifically invited by the Chairperson of the Committee). It is not appropriate for Council officers to offer opinions not related to their areas of expertise.
  - (6) A member of the staff of a Council is not subject to direction by the Council as to the content of any advice or recommendation made by the member.
  - (7) Subclause (6) above does not prevent a Council from directing a member of the staff to provide advice or a recommendation.
- (s.352)

#### **ABSENCE OF THE MAYOR**

16. (1) The Mayor or, at the request of or in the absence of the Mayor, the Deputy Mayor presides at meetings of the Council.
- (2) If the Mayor and the Deputy Mayor are absent, a Councillor elected to chair the meeting by the Councillors present presides at a meeting of the Council
- (s.369)
- (3) The election, referred to in subclause (2) must be conducted:
- (a) By the General Manager or, in his absence, an employee of the Council designated by the General Manager to conduct the election, or
  - (b) If neither of them is present at the meeting or there is no General Manager or designated employee – by the person who called the meeting or a person acting on his or her behalf.
- (4) If, at an election of a Chairperson, 2 or more candidates receive the same number of votes and no other candidate receives a greater number of votes, the Chairperson is to be the candidate whose name is chosen by lot.
- (5) For the purpose of subclause (3), the person conducting the election must:
- (a) Arrange for the names of the candidates who have equal numbers of votes to be written on similar slips, and
  - (b) Then fold the slips so as to prevent the names from being seen, mix the slips and draw one of the slips at random.
- (6) The candidate whose name is on the drawn slip is the candidate who is to be the Chairperson.
- (cl.236)

## **PART 3 – CONDUCT OF COUNCIL MEETINGS**

### **VOTING ENTITLEMENTS**

17. (1) Each Councillor is entitled to one vote.
- (2) A person presiding at a meeting of the Council or any Committee of Council has, in the event of equality of votes, a second or casting vote.
- (s.370)

### **DECISION OF THE COUNCIL**

18. A decision supported by a majority of the votes at a meeting of the Council at which a quorum is present is a decision of the Council.
- (s.371)

### **CERTAIN CIRCUMSTANCES DO NOT INVALIDATE DECISIONS**

19. Proceedings at a meeting of a Council or a Council Committee are not invalidated because of:
- (1) A vacancy in a civic office.
- (2) A failure to give notice of the meeting to any Councillor or Committee member.
- (3) Any defect in the election or appointment of a Councillor or Committee member.
- (4) A failure of a Councillor or a Committee member to disclose a pecuniary or conflict of interest at a Council or Committee meeting in accordance with s. 451 of the Act.
- (5) A failure to comply with the code of meeting practice.
- (s.374)

### **CHAIRPERSON TO HAVE PRECEDENCE**

20. When the Chairperson rises during a meeting of the Council:
- (1) Any Councillor then speaking or seeking to speak, must, if standing, immediately resume his or her seat, and
- (2) Every Councillor present must be silent to enable the Chairperson to be heard without interruption
- (cl.237)

### **CHAIRPERSON'S DUTY WITH RESPECT TO MOTIONS**

21. (1) It is the duty of the Chairperson at a meeting of the Council, to receive and put to the meeting any lawful motion that is brought before the meeting.
- (2) The Chairperson must rule out of order any motion that is unlawful or the implementation of which would be unlawful.

- (3) Any motion, amendment or other matter that the Chairperson has ruled out of order is taken to have been rejected.

(cl.238)

#### **LENGTH OF MEETINGS**

22. (1) The length of the Council, or a Committee of Council, shall not exceed 4 hours unless Council resolves to extend the time for the meeting by a decision of Council, that the items considered are deemed urgent and warrant consideration at the current meeting.
- (2) In the case of a Council or Committee of Council being particularly lengthy, the Chairperson shall call an adjournment for a rest period of Ten (10) Minutes for the benefit of Councillors and Council staff at approximately 2 hourly increments.

#### **AGENDA FOR COUNCIL**

23. (1) The General Manager must ensure that the agenda prepared for a meeting of the Council states:
- (a) All matters to be dealt with arising out of the proceedings of former meetings of the Council.
  - (b) If the Mayor is the Chairperson - any matter or topic that the Chairperson proposes, at the time when the agenda is prepared, to put to the meeting.
  - (c) Any business of which due notice has been given.
- (2) The General Manager must not include in the agenda for a meeting of the Council any business of which due notice has been given if, in the opinion of the General Manager, the business is (or the implementation of the business would be) unlawful. The General Manager must report (without giving details of the item of business) any such exclusion to the next meeting of the Council.
- (3) The General Manager must cause an agenda to be delivered to Councillors not later than three days prior to the meeting.
- (s.367)
- (4) If, in the opinion of the General Manager, business to be transacted at a meeting of the Council or a Committee of the Council is a kind of business referred to in s. 10A(2) of the Act, the business may be included in a confidential agenda. All other business to be transacted at the meeting must be included in an open agenda.
- (5) If a confidential agenda is prepared for a kind of business referred to in section 10A(2) of the Act, the business must be referred to in the open agenda prepared for the same meeting.
- (6) Nothing in this clause limits the powers of the Chairperson under Clause 28 of this code.

- (7) A Council and each Committee of which all the members are Councillors must have available for the public at its offices at each meeting copies (for inspection or taking away by any person) of the agenda for the meeting. This requirement does not apply to an agenda for the matter that, in the opinion of the General Manager, is likely to be considered when the meeting is closed to the public, or to any correspondence or reports in an agenda that, in the opinion of the General Manager, are likely to be the subject of a resolution that they be treated as confidential.
- (8) Once the agenda for a meeting has been sent to Councillors an item of business on the agenda should not be removed from the agenda prior to the meeting. If it is proposed that an item of business which is on the agenda not be dealt with at the meeting, Council should resolve to defer that business to another meeting or resolve not to consider the matter, as the case may be.

## ORDER OF BUSINESS

24. (1) The order of business for meetings of the Council shall be:

1. Opening
2. Webcast Notice
3. National Anthem
4. Welcome/Acknowledgement of Country
5. Apologies and Leave of Absence Request
6. Declaration of Pecuniary or Conflict of Interest
7. Confirmation of Previous Minutes
8. Items to be Tabled
9. Mayoral Minute
10. Agenda Reports:
  - Planning and Economy
  - Governance
  - Environment
  - Community
  - Infrastructure
11. Notices of Motion/Rescissions
12. "Closed Meeting" Items
13. Questions for Next Meeting

- (2) The order of business fixed under subclause (1) may be altered or suspended if a motion to that effect is carried. Such a motion can be moved without notice.
- (3) Notwithstanding clause 43 of this code only the mover of a motion to alter the order of business referred to in subclause (2) may speak on the motion before it is put.  
(cl.239)

## GIVING NOTICE OF BUSINESS – ORDINARY MEETINGS

25. (1) Council must not transact business at a meeting of the Council:

- (a) Unless a Councillor has given notice of the business in writing within such time before the meeting in accordance with this code.
- (b) Unless notice of the business has been sent to the Councillors in accordance with Section 367 of the Act.

- (2) Subclause (1) does not apply to the consideration of business at a meeting if the business:
- (a) Is already before, or directly relates to a matter that is already before, the Council.
  - (b) Is the election of a Chairperson to preside at the meeting as provided by clause 16 of this code.
  - (c) Is a matter or topic put to the meeting by the Chairperson in accordance with clause 30 of this code.
  - (d) Is a motion for the adoption of recommendations of a Committee of the Council.
- (3) Despite clause 43, only the mover of a motion referred to in subclause (2) can speak to the motion before it is put.
- (cl.241)

### QUESTIONS FOR NEXT MEETING

26. (1) Council must not transact business at a meeting of the Council:
- (a) unless a Councillor has given notice of the business in writing within such time before the meeting in accordance with this code, and
  - (b) unless notice of the business has been sent to the Councillors in accordance with section 367 of the Act.
- (2) A Councillor wishing to raise 'Questions for Next Meeting' at a Council meeting must supply to the General Manager a written copy of the Business to be discussed at least three (3) days prior to the meeting.
- (3) The General Manager must send to each Councillor, at least three (3) days before each meeting of Council a notice specifying any 'Questions for Next Meeting' to be raised at each meeting of Council.
- (Reg. Clause 241)
- (4) The questions will be placed on the next meeting agenda unless:
- (a) an answer is given straight away, if it makes sense to do so
  - (b) they do not require research or further investigation.
- (5) 'Questions for Next Meeting' are not open for debate until they are placed on the following Council meeting agenda.

### EXTRAORDINARY MEETINGS – AGENDA

27. (1) The General Manager must ensure that the agenda for an extraordinary meeting of the Council deals only with the matters stated in the notice of the meeting.
- (cl.242)

### MAYORAL MINUTES

28. (1) If the Mayor is the Chairperson at a meeting of the Council, the Chairperson is, by minute signed by the Chairperson, entitled to put to the meeting, without notice, any matter or topic that is within the jurisdiction of the Council or of which the Council has official knowledge.

- (2) Such a minute, when put to the meeting, takes precedence over all business on the Council's agenda for the meeting. The Chairperson (but only if the Chairperson is the Mayor) may move the adoption of the minute without the motion being seconded.
- (3) A recommendation made in a minute of the Chairperson (being the Mayor) or in a report made by a Council employee, so far as adopted by the Council, is a resolution of Council.  
(cl.243)
- (4) The Mayoral minute will not introduce, without notice, matters that are routine, not urgent, or need research or consideration by Councillors before coming to a decision.

#### **NOTICE OF MOTION**

- 29. (1) Any Councillor may give notice of any motion for consideration by the Council or a Committee of Council by providing the proposed motion in writing to the General Manager by noon on the **Wednesday** or the **fifth (5th)** calendar day prior to the Council Meeting.
- (2) Any changes to a Notice of Motion submitted in accordance with this code must be submitted by 12 noon on the day of the Meeting to the General Manager by the Councillor who submitted the original Notice of Motion to Council.
- (3) Any changes to a Notice of Motion by a Councillor other than the submitting Councillor must be raised during the discussion of the Notice of Motion at the Council Meeting.
- (4) The provision of confidential issues as defined in Section 10A (2) of the Act applies to Notices of Motion.
- (5) The General Manager will (where considered necessary) provide factual information on the motion to assist in the discussion of the motion.
- (6) A Notice of Motion must be submitted by the Councillor to [noticeofmotion@wollondilly.nsw.gov.au](mailto:noticeofmotion@wollondilly.nsw.gov.au) in accordance with part (1) of this clause.
- (7) A councillor may speak to a Notice of Motion for not longer than five (5) minutes at any one time.

#### **NOTICE OF MOTION – UNOPPOSED**

- 30. The Chairperson may call over the Notices of Motion on the agenda, in the order in which they appear thereon, and if objection is not taken to a motion being taken as a formal motion may, without discussion, put the motion to the vote.

#### **NOTICE OF MOTION – ABSENCE OF MOVER**

31. In the absence of a Councillor who has placed a notice of motion on the agenda for a meeting of the Council:
- (1) Any other Councillor may move the motion at the meeting.
  - (2) The Chairperson may defer the motion until the next meeting of the Council at which the motion can be considered.
- (cl.245)

#### **RECOGNISING A MOVER OF A MOTION**

32. A mover, by rising or by raising a hand, or by speaking, must attempt to get the attention of the chairperson. The Chairperson then must recognise the mover who first caught their attention.

#### **MOTIONS TO BE SECONDED**

33. A motion or an amendment cannot be debated unless or until it has been seconded. This clause is subject to clauses 25(2) and 42(5).
- (cl.246)

#### **AMENDMENTS AND SUBSEQUENT AMENDMENTS**

34. (1) An amendment may be moved after a motion has been seconded but must be prior to the main motion being put to a vote.
- (2) If an amendment has been rejected, a further amendment can be moved to the motion to which the rejected amendment was moved, and so on, but no more than once motion and one proposed amendment can be before the Council at any one time.
- (cl.246) and (cl.247)
- (3) If during discussions one motion and one amendment are already before the Council, any further amendments can only be “foreshadowed” and cannot be considered by the Council until the amendment before the Council has been determined.
- (4) It is permissible to debate a motion and an amendment concurrently.
- (5) The right of reply to any amendment is the mover of the original motion. The right of reply must be related to the current amendment before the Council.

#### **MOTIONS PUT WITHOUT DEBATE**

35. Provided there is no objection from any Councillor present, any motion may be put to the vote without discussion or debate.



## **MOTIONS OF DISSENT**

36. (1) A Councillor can, without notice, move to dissent from the ruling of the Chairperson on a point of order. If that happens, the Chairperson must suspend the business before the meeting until a decision is made on the motion of dissent.
- (2) If a motion of dissent is carried, the Chairperson must proceed with the suspended business as though the ruling dissented from had not been given. If, as a result of the ruling, any motion or business has been discharged as out of order, the Chairperson must restore the motion or business to the agenda and proceed with it in due course.
- (3) Despite clause 42, only the mover of a motion of dissent and the Chairperson can speak on the motion before it is put. The mover of the motion does not have a right of reply.
- (cl.248)

## **MOTIONS OF ADJOURNMENT OF A MEETING**

37. (1) Debate shall not be permitted on any motion of adjournment of a meeting of the Council.
- (2) If a motion of adjournment is lost, the business of the meeting shall proceed, and it shall not be in order for any Councillor to again move a motion of adjournment within half an hour of the previous motion of adjournment being lost.
- (3) A motion of adjournment may specify the time, date and place of the adjourned meeting; however, if a motion of adjournment is carried but does not specify the time, date and place of the adjourned meeting, the Chairperson shall make a determination with respect to whichever of these has not been specified.
- (4) The chairperson may adjourn a meeting at any time, based on issues at hand and operation of meeting at the time.
- (5) An adjourned meeting is a continuation of the earlier part of the same meeting, not a new meeting and the Agenda and Business Papers already issued would be the proper documents from which to work.

## **RESCINDING OR ALTERING**

38. (1) A resolution passed by a Council may not be altered or rescinded except by a motion to that effect of which notice has been duly given in accordance with the Council's code of meeting practice.
- (2) If notice of motion to rescind a resolution is given at the meeting at which the resolution is carried:
- (a) The resolution must not be carried into effect until the motion of rescission has been dealt with, or is withdrawn by notice given in accordance with Council's code of meeting practice.
- (b) The rescission may be dealt with at an extraordinary meeting where the motion is on the agenda.

- (3) If a motion has been negated by a Council, a motion having the same effect must not be considered unless notice of it has been duly given in accordance with the Council's code of meeting practice.
  - (4) A notice of motion to alter or rescind a resolution, and a notice of motion which has the same effect as a motion which has been negated by the Council, must be signed by 3 Councillors if less than 3 months has elapsed since the resolution was passed, or the motion was negated, as the case may be.
  - (5) If a motion to alter or rescind a resolution has been negated, or if a motion which has the same effect as a previously negated motion, is negated, no similar motion may be brought forward within 3 months. This subs. may not be evaded by substituting a motion differently worded, but in principle the same.
  - (6) A motion to which the section applies may be moved on the report of a Committee of the Council and any such report must be recorded in the minutes.
  - (7) The provisions of this s. concerning negated motions do not apply to motions of adjournment.
- (s.372)
- (8) Generally speaking, the Chairperson should not accept a motion that is inconsistent with a resolution previously adopted. The existing resolution should first be formally rescinded. If however, an inconsistent resolution is passed, the original resolution becomes void to the extent of the inconsistency. This is called rescission by implication or rescission by inference.
  - (9) If it is wished to stop any planning resolution being put into effect, a notice of motion to rescind or alter a planning resolution must be given to the General Manager by 11.00am the day following the meeting in which the resolution was carried. In all other matters a motion to rescind will not be accepted if a resolution has been acted upon.
  - (10) In the case of a motion of alteration, the stay of action provided by subclause 8 above, if it is carried, applies only to the extent that the resolution of Council would be affected by the motion of alteration.
  - (11) The General Manager shall advise Councillors of a motion to rescind or alter a resolution within 24 hours of receipt of such a motion or as soon as practicable.
  - (12) A notice of motion to alter or rescind a resolution may be withdrawn by notice in writing to the General Manager signed by the same three Councillors who signed the original notice of motion in accordance with subclause (4) above. The withdrawal of the notice of motion to alter or rescind a resolution shall take effect at the time and date of official receipt by the General Manager of the written notice of withdrawal.
  - (13) A notice of motion to alter or rescind a resolution shall be accompanied in the agenda by the wording of the adopted resolution which it is intended to alter or rescind.

## **RECOMMITTAL FOR DISCUSSION**

39. (1) If one or more Councillors have second thoughts about a resolution passed earlier in the meeting it may be desired to recommit the matter for further attention. Dependent upon the circumstances and the intent this may be achieved by either:
- (a) A motion of recommitment for discussion purposes only.
  - (b) A motion of rescission either during or after the meeting.
- (2) If, after discussion, the original resolution is no longer supported then a Rescission Motion is necessary to either, remove, replace or alter it; which may be raised in accordance with Clause 38 of this Code.

## **QUESTIONS MAY BE PUT TO COUNCILLORS AND COUNCIL EMPLOYEES**

40. (1) A Councillor:
- (a) May, through the Chairperson, put a question to another Councillor.
  - (b) May, through the General Manager, put a question to a Council employee.
- (2) However, a Councillor or Council employee to whom a question is put is entitled to be given reasonable notice of the question and, in particular, sufficient notice to enable reference to be made to other persons or to documents.
- (3) The Councillor must put every such question directly, succinctly and without argument.
- (4) The Chairperson must not permit discussion on any reply or refusal to reply to a question put to a Councillor or Council employee under this clause.
- (cl.249)

## **ADDRESSING EACH OTHER**

41. (1) During Council meetings Councillors and staff shall at all times address other Councillors and staff by their official designation, as Mayor, Chairperson or Councillor, as the case may be; and with the exception of the Chairperson, or any Councillor prevented by physical infirmity, may stand when speaking. Staff are not required to stand.
- (2) During Committee meetings a less formal method of address is appropriate and there is no need to rise to speak.

## **LIMITATION AS TO NUMBER OF SPEECHES**

42. (1) A Councillor who, during a debate at a meeting of the Council, moves an original motion has the right of general reply, to all observations that are made by another Councillor during the debate in relation to the motion and to any amendment to it, as well as the right to speak on any such amendment. A right of reply is limited to three (3) minutes duration.
- (2) A Councillor other than the mover of an original motion has the right to speak once on the motion and once on each amendment to it.

- (3) A Councillor must not, without the consent of the Council, speak more than once on a motion or an amendment, or for longer than five (5) minutes at any one time. However, the Chairperson may permit a Councillor who claims to have been misrepresented or misunderstood to speak more than once on a motion or an amendment and for longer than five minutes on that motion or amendment to enable the Councillor to make a statement limited to explaining the misrepresentation or misunderstanding.
- (4) Despite subclauses (1) and (2), any Councillor may move that a motion or an amendment be now put:
  - (a) If the mover of the motion or amendment has spoken in favour of it and no Councillor expresses an intention to speak against it.
  - (b) If at least 2 Councillors have spoken in favour of the motion or amendment and at least 2 Councillors have spoken against it.
- (5) The Chairperson must immediately put to the vote, without debate, a motion moved under subclause (4) a seconder is not required for such a motion.
- (6) If a motion that the original motion or an amendment be now put is passed, the Chairperson must, without further debate, put the original motion or amendment to the vote immediately after the mover of the original motion has exercised his or her right of reply under subclause (1).
- (7) If a motion that the original motion or an amendment be now put is rejected, the Chairperson must allow the debate on the original motion or the amendment to be resumed.

(cl.250)

## **VOTING AT COUNCIL MEETINGS**

43. (1) A Councillor who is present at a meeting of the Council but who fails to vote on a motion put to the meeting is taken to have voted against the motion.
- This subclause does not apply to a Councillor who does not vote because he or she has a pecuniary interest in the subject-matter of the motion.
- (2) If a Councillor who has voted against a motion put at the Council meeting so requests, the General Manager must ensure that the Councillor's dissenting vote is recorded in the Council's minutes.
  - (3) The decision of the Chairperson as to the result of a vote is final, unless the decision is immediately challenged and not fewer than two Councillors rise and call a division.
  - (4) When a division on a motion is called, the Chairperson must ensure that the division takes place immediately. The General Manager must ensure that the names of those who vote for the motion and those who vote against it are respectively recorded in the Council's minutes.

- (5) Voting at a Council meeting, including voting in an election at such a meeting is to be by open means (such as on the voices or by show of hands). However, the Council may resolve that the voting in any election by Councillors for Mayor or Deputy Mayor is to be by secret ballot.
  - (6) Councillors will raise their hands to indicate their voting intent on each item, and their votes will be recorded in the minutes.
- (cl.251)

#### **RESOLUTIONS PASSED AT CLOSED MEETINGS TO BE MADE PUBLIC**

- 44. If a Council passes a resolution during a meeting, or a part of a meeting, that is closed to the public, the Chairperson must make the resolution public as soon as practicable after the meeting or part of the meeting has ended.
- (cl.253)

#### **CARETAKER ROLE DURING ELECTIONS**

- 45. (1) The Act does not impose limits on the decisions a council can make before an ordinary election is held, however, like Commonwealth and State Governments, councils are expected to assume a “caretaker” role during election periods to ensure that major decisions are not made which limit the actions of an incoming council.
- (2) Although the decisions of a council do not lapse after an election is held, there will be some opportunities for the new council to review earlier decisions.

## **PART 4 – KEEPING ORDER AT MEETINGS**

#### **QUESTIONS OF ORDER**

- 46. (1) The Chairperson, without the intervention of any other Councillor, may call any Councillor to order whenever, in the opinion of the Chairperson, it is necessary to do so.
  - (2) A Councillor who claims that another Councillor has committed an act of disorder, or is out of order, may call the attention of the Chairperson to the matter.
  - (3) The Chairperson must rule on a question of order immediately after it is raised but, before doing so, may invite the opinion of the Council.
  - (4) The Chairperson’s ruling must be obeyed unless a motion dissenting from the ruling is passed.
- (cl.255)
- (5) The Chairperson may reject any motion, amendment or other matter which is, in the opinion of the Chairperson, out of order.
  - (6) The chamber is called to order when the Chairperson rises to their feet - the proceedings of the meeting at hand must cease until resumed by order of the Chairperson.

## **ACTS OF DISORDER**

47. (1) Councillors must act honestly and exercise a reasonable degree of care and diligence in carrying out of their functions.

(s.439)

- (2) A Councillor commits an act of disorder if the Councillor, at a meeting of the Council or a Committee of the Council:

- (a) Contravenes the Local Government Act or any regulation in force under the Local Government Act.
- (b) Assaults or threatens to assault another Councillor or person present at the meeting.
- (c) Moves or attempts to move a motion or an amendment that has an unlawful purpose or an amendment that has an unlawful purpose or that deals with a matter that is outside the jurisdiction of the Council or Committee or addresses or attempts to address the Council or Committee, on such a motion, amendment or matter.
- (d) Insults or makes personal reflections on or imputes improper motives to any other Councillor, or any other person.
- (e) Says or does anything that is inconsistent with maintaining order at the meeting or is likely to bring the Council or Committee into contempt.
- (f) Makes personal attacks upon staff at meetings. Complaints about a member of staff must be addressed in writing to the General Manager.

- (3) The Chairperson may require a Councillor:

- (a) To apologise without reservation for an act of disorder referred to in subclause (2) (a) or (b).
- (b) To withdraw a motion or an amendment referred to in subclause (2) (c) and, where appropriate, to apologise without reservation.
- (c) To retract and apologise for an act of disorder referred to in subclause (2) (d) or (e).

- (4) A Councillor may, as provided by s. 10(2) (a) or (b) of the Act, be expelled from a meeting of a Council for having failed to comply with a requirement under subclause (2). The expulsion of a Councillor from the meeting for that reason does not prevent any other action from being taken against the Councillor for the act or disorder concerned.

(cl.256 (3) and s.10 (2))

- (5) Breaches of Council's Code of Conduct during a meeting of Council or Council Committee are deemed to be acts of disorder under the provisions of this Code.

## **HOW DISORDER AT A MEETING MAY BE DEALT WITH**

48. (1) If disorder occurs at a meeting of the Council, the Chairperson may adjourn the meeting for a period of not more than 15 minutes and leave the chair. The Council, on reassembling, must, on a question put from the chair, decide without debate whether the business is to be proceeded with or not. This subclause applies to disorder arising from the conduct of members of the public as well as disorder arising from the conduct of Councillors.

- (2) A member of the public may, as provided by s. 10(2) (a) or (b) of the Act, be expelled from a meeting of a Council for engaging in or having engaged in disorderly conduct at the meeting.
- (cl.257)

- (3) Public members who insult or make personal reflections or impute improper motives to Council or Councillors, or do or say anything that is inconsistent with maintaining order will be deemed acts of disorder, or any other behaviour deemed disorderly by the Council.

#### **POWER TO REMOVE PERSONS FROM MEETING AFTER EXPULSION RESOLUTION**

49. If a Councillor or a member of the public fails to leave the place where a meeting of a Council is being held:

- (1) Immediately after the Council has passed a resolution expelling the Councillor or member from the meeting.
- (2) Where the Council has authorised the person presiding at the meeting to exercise the power of expulsion, immediately after being directed by the person presiding to leave the meeting.
- (3) A police officer, or any person authorised for the purpose by the Council or person presiding, may, by using only such force as is necessary, remove the Councillor or member from that place and, if necessary, restrain the Councillor or member from re-entering that place.

(cl.258)

## **PART 5 – COMMITTEES**

#### **COUNCIL MAY ESTABLISH COMMITTEES**

50. (1) A Council may, by resolution, establish such Committees as it considers necessary.
- (2) A Committee is to consist of the Mayor and such other Councillors as are elected by the Councillors or appointed by the Council.
- (3) The quorum for a meeting of a Committee is to be:
- (a) Such number of members as the Council decides.
- (b) If the Council has not decided a number – a majority of the members of the Advisory Committee.
- (cl.260)
- (4) A Committee may appoint sub-Committees or Advisory Groups which report direct to it rather than direct to Council.
- (5) The Council may appoint sunset Committees from time to time to deal with one-off specific issues which have a limited lifespan.



- (6) Local Management Committees which may comprise of Councillors, residents and representatives of user groups, may be appointed to have the care, control and management of specific facilities and Council may delegate its authority to the Committee, to act on its behalf in certain matters.
- (7) Pursuant to sub-clause 6, a committee can exercise a council's regulatory functions under Chapter 7 of the Act only if all of its members are either Councillors or council employees. A Committee with members of the public on it cannot exercise a regulatory function under Chapter 7 of the Act.

(s.379(1))

#### **FUNCTIONS OF COMMITTEES**

- 51. (1) Council must specify the functions of each of its Committees when the Committee is established, but may from time to time amend those functions.

(cl.261)
- (2) Committees which undertake a role/function of Council shall comply with the provisions of the Act, Regulations and this Code of Meeting Practice.

#### **NOTICE OF COMMITTEE MEETINGS TO BE GIVEN**

- 52. (1) The General Manager of the Council must send to each Councillor, at least three days before each meeting of the Committee, a notice specifying:
  - (a) The time and place at which and the date on which the meeting is to be held, and
  - (b) The business proposed to be transacted at the meeting.
- (2) However, notice of less than three days may be given of a Committee meeting called in an emergency.

(cl.262)
- (3) When Committee meetings are held in succession, there will be a 5 minute period between the closing of one meeting and the opening of the next meeting.

#### **NON-MEMBERS ENTITLED TO ATTEND COMMITTEE MEETINGS**

- 53. (1) A Councillor who is not a member of a Committee of the Council is entitled to attend and speak at, a meeting of the Committee.
- (2) However, the Councillor is not entitled:
  - (a) To give notice of business for inclusion in the agenda for the meeting.
  - (b) To move or second a motion at the meeting.
  - (c) To vote at the meeting.

(cl.263)



## **PROCEDURE IN COMMITTEES**

54. (1) Subject to Sub-clause (3) each Committee of the Council may regulate its own procedure.
- (2) Without limiting sub-clause (1), a committee of a council may decide that, whenever the voting on a motion put to a meeting of the committee is equal, the chairperson of the committee is to have a casting vote as well as an original vote.
- (3) Voting at a Committee meeting is to be by open means (such as by voice or by show of hands) (cl.265)
- (4) In the absence of specific procedures for any Committee being adopted, the general provisions of this code apply to meetings of any Committee.

## **MINUTES OF COMMITTEE**

55. (1) Each Committee of a Council must ensure that full and accurate minutes of the proceedings of its meetings are kept. In particular, a committee must ensure that the following matters are recorded in the committee's minutes:
- (a) Details of each motion moved at a meeting and of any amendments moved to it
  - (b) The names of the mover and seconder of the motion or amendment
  - (c) Whether the motion or amendment is passed or lost
  - (d) The names of the Councillors who voted for a motion for a planning decision and those who voted against it. Such voting must be conducted by way of a division.
  - (e) The grounds for closing part of a committee meeting to the public
  - (f) The disclosure to a committee meeting by a councillor of a pecuniary interest
- (2) As soon as the minutes of an earlier meeting of a Committee of the Council have been confirmed at a later meeting of the Committee, the person presiding at the later meeting must sign the minutes of the earlier meeting. (cl.266)

## **CHAIRPERSON AND DEPUTY OF COMMITTEES**

56. (1) The Chairperson of each Committee of the Council must be:
- (a) The Mayor, or
  - (b) If the Mayor does not wish to be the Chairperson of a Committee – a member of the Committee elected by the Council, or
  - (c) If the Council does not elect such a member – a member of the Committee elected by the Committee.
- (2) Council may elect a member of a Committee of the Council as Deputy Chairperson of the Committee. If the Council does not elect a Deputy Chairperson of such a Committee, the Committee may elect a Deputy Chairperson.
- (3) If neither the Chairperson nor the Deputy Chairperson of a Committee of the Council is able or willing to preside at a meeting of the Committee, the Committee must elect a member of the Committee to be acting Chairperson of the Committee.

- (4) The Chairperson is to preside at a meeting of a Committee of the Council. If the Chairperson is unable or unwilling to preside, the Deputy Chairperson (if any) is to preside at the meeting, but if neither the Chairperson nor the Deputy Chairperson is able or willing to preside, the acting Chairperson is to preside at the meeting. (cl.267)
- (5) The Mayor by virtue of holding that office is a member of each Committee of the Council.

#### **ABSENCE FROM COMMITTEE MEETINGS**

- 57. (1) A member ceases to be a member of a Committee if the member (other than the Mayor):
  - (a) Has been absent from three consecutive meetings of the Committee without having given reasons acceptable to the Committee for the member's absences, or
  - (b) Has been absent from at least half of the meetings of the Committee held during the immediately preceding year ended 30 June without having given to the Committee acceptable reasons for the member's absences.
- (2) Subclause (1) does not apply if all the members of the Council are members of the Committee. (cl.268)

#### **REPORTS OF COMMITTEES**

- 58. (1) If in a report of a Committee of the Council distinct recommendations are made, the decision of the Council may be made separately on each recommendation.
- (2) The recommendations of a Committee of the Council are, so far as adopted by the Council, resolutions of the Council.
- (3) The recommendation shown in the agenda should be the same as the one decided by the Committee.
- (4) If a Committee of a Council makes a recommendation, during a meeting, or a part of a meeting, that is closed to the public, the Chairperson must:
  - (a) Make the recommendation public as soon as practicable after the meeting or part of the meeting has ended, and
  - (b) Report the recommendation to the next meeting of the Council. (cl.269)

#### **DISORDER IN COMMITTEE**

- 59. The provisions of the Act and of this Regulation and Code relating to the maintenance of order in Council meetings apply to meetings of any Committee of the Council in the same way as they apply to meetings of the Council. (cl.270)

## **COMMITTEE MAY EXCLUDE CERTAIN PERSONS FROM ITS MEETINGS**

60. (1) If a meeting or part of a meeting of a Committee of a Council is closed to the public in accordance with s. 10A(2) of the Act, any person who is not a Councillor may be excluded from the meeting as provided by s. 10(2)(a) or (b) of the Act.
- (2) If any such person, after being notified of a resolution or direction excluding him or her from the meeting, fails to leave the place where the meeting is being held, a police officer, or any persons authorised for the purpose by the Council, Committee or person presiding, may, by using only such force as is necessary, remove the first-mentioned person from that place and, if necessary, restrain that person from re-entering that place.

(cl.271)

## **PART 6 –CONFIDENTIAL MATTERS**

### **CLOSED MEETING OF COUNCIL**

61. (1) The Council, during a Council meeting, may resolve into “Closed Meeting of Council” closing the meeting to the public only for the receipt or discussion of, and recommendation resolutions upon, any of the matters listed in Section 10A(2) of the Act.
- (2) All provisions of this Code relating to meetings of the Council, so far as they are applicable, extend to and govern the proceedings of the Council when in a Closed Meeting of Council or a Committee Meeting.
- (3) The General Manager, or in the absence of the General Manager, an employee of the Council designated by the General Manager, is responsible for reporting to the Council the business and any resolutions arising from the “Closed Meeting of Council”.
- (4) The Council must ensure that a report of the proceedings (including any resolutions of the Closed Meeting of Council) is recorded in the Council’s Minutes.
- (5) Resolutions made at a closed part of a Council meeting must be made public by the Chairperson of the meeting as soon as practical after the closed part of the meeting has ended.
- (6) Even if the item is listed in a confidential business paper the Council could disagree with this assessment and discuss the matter in an open part of the meeting.
- (7) Council may allow members of the public the opportunity to make a statement as to why part of a meeting should be closed.

(s10A (4)) (cl.252)

### **EXCLUSION OF PRESS AND PUBLIC**

62. (1) A Council or Committee of the Council of which all the members are Councillors, may close to the public so much of its meeting as comprises:
- (a) The discussion of any of the matters listed in subclause (2).
- (b) The receipt or discussion of any of the information so listed.

- (2) The matters and information are the following:
- (a) Personnel matters concerning particular individuals.
  - (b) The personal hardship of any resident or ratepayer.
  - (c) Information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.
  - (d) Commercial information of a confidential nature that would, if disclosed
    - (i) Prejudice the commercial position of the person who supplied it, or
    - (ii) Confer a commercial advantage on a competitor of the Council, or
    - (iii) Reveal a trade secret.
  - (e) Information that would, if disclosed, prejudice the maintenance of law.
  - (f) Matters affecting the security of the Council, Councillors, Council staff or Council property.
  - (g) Advice concerning litigation or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.
- (s.10A)

#### **CLOSED MEETING AGENDA**

63. (1) If, in the opinion of the General Manager, business to be transacted at a meeting of the Council or of a Committee of the Council is a kind of business referred to in s. 10A(2) of the Act, the business may be included in a confidential agenda. All other business to be transacted at the meeting must be included in an ordinary agenda.
- (2) If a confidential agenda is prepared for a kind of business referred to in s. 10A (2) of the Act, the business must be referred to in the ordinary agenda prepared for the same meeting.
- (3) A representation at a Council meeting by a member of the public as to whether a part of the meeting should be closed to the public can only be made for a fixed period immediately after the motion to close the part of the meeting is moved and seconded.
- (4) That period is as fixed by the Council's code of meeting practice or as fixed by resolution of the council. Different periods can be fixed according to the different types of matters to be discussed or received and discussed at closed parts of meetings.
- (cl.252)
- (5) Nothing in this clause limits the powers of the Chairperson under clause 21 of this code.

#### **DISCLOSURE AND MISUSE OF INFORMATION**

64. (1) A person must not disclose any information obtained in connection with the administration or execution of the Act unless that disclosure is made:
- (a) With the consent of the person from whom the information was obtained
  - (b) In connection with the administration or execution of the Act.
  - (c) For the purpose of any legal proceedings arising out of the Act or of any report of any such proceedings.
  - (d) In accordance with a requirement imposed under the *Government Information (Public Access) Act 2009*.
  - (e) With other lawful excuse.

- (2) In particular, if a meeting or part of a meeting of a Council or a Committee of a Council is closed to the public in accordance with s. 10A (1) of the Act, a person must not, without the authority of the Council or the Committee, disclose (otherwise than to the Council or a Councillor of the Council) information with respect to the discussion at, or the business of, the meeting.
- (3) Subsection (2) does not apply to:
  - (a) The report of a Committee of a Council after it has been presented to the Council.
  - (b) Disclosure made in any of the circumstances referred to in subs. 1(a)-(e).
  - (c) Disclosure made in circumstances prescribed by the regulations
  - (d) Any agenda, resolution or recommendation of a meeting that a person is entitled to inspect in accordance with the *Government Information (Public Access) Regulation 2009*.
- (4) A person acting in the administration or execution of the Act must not use, either directly or indirectly, information acquired by the person in that capacity, being information that is not generally known but if generally known might reasonably be expected to affect materially the market value or price of any land, for the purpose of gaining either directly or indirectly an advantage for the person, the person's spouse or de facto partner or a relative of the person.
- (5) A person acting in the administration or execution of the Act, and being in a position to do so, must not, for the purpose of gaining either directly or indirectly an advantage for the person, the person's spouse or de facto partner or a relative of the person, influence:
  - (a) The determination of an application for an approval
  - (b) The giving of an order

(s.664)

## PART 7 – WORKSHOPS

65. (1) A council can hold a workshop (sometimes called a briefing session) under its general powers as a body politic. Workshops are informal gatherings and can provide useful background information to councillors on issues. A workshop may involve Councillors, council staff and invited participants.
- (2) Workshops should not be used for detailed or advanced discussions where agreement is reached and/or a (de-facto) decision is made. Any detailed discussion or exchange of views on an issue, and any policy decision from the options, should be left to the open forum of a formal council or committee meeting. Workshops are merely a means which enable councillors to bring an informed mind to the appropriate decision-making forum.
- (3) Workshops must be chaired by the General Manager, Executive Director/ Director or a senior council officer.
- (4) Workshops are for information and training purposes only. Workshop briefing papers will contain no recommendations, and no agreement will be sought from the Councillors or other workshop participants in the course of the workshop.

- (5) Meeting attendance books must be signed by Councillors and other workshop participants.
- (6) Any document produced in relation to a workshop is a document of the council. These documents could be inspected and copied in accordance with the Government Information (Public Access) Act 2009 (GIPAA). The provisions of 664(1) and 664(2) of the Act apply to workshops, but as they cannot be closed under section 10A of the Act, the confidentiality provisions of sections 664(1)(a) and 664(1)(b) do not apply.

## **PART 8 – MISCELLANEOUS**

### **INSPECTION OF THE MINUTES OF THE COUNCIL**

66. (1) Everyone is entitled to inspect the current version of the following documents free of charge:
- Agendas for Council and Committee meetings (but not including “agendas” for matters considered when a meeting is closed to the public).
- Minutes of Council and Committee meetings, but restricted (in the case of any meeting or part of a meeting that is closed to the public).
- (2) The documents may be inspected at the office of the Council; during ordinary office hours.
  - (3) The Council must have copies of the documents available for taking away by anyone who asks for a copy.
  - (4) An inspection of the minutes of the Council or Committee of the Council is to be carried out under the supervision of the General Manager or a staff member of the Council designated by the General Manager to supervise inspections of those minutes.
  - (5) The General Manager must ensure that the minutes of the Council and any minutes of a Committee of the Council are kept secure and in safe custody and that no unauthorised person is allowed to interfere with them.  
(cl.272)
  - (6) A Council and a Committee of which all the members are Councillors must, during or at the close of a meeting, or during the business day following the meeting, give reasonable access to any person to inspect correspondence and reports tabled at, or submitted to, the meeting.
  - (7) Subclause (4) does not apply if the correspondence or reports:
    - (a) Relate to a matter that was received or discussed; or
    - (b) Were tabled at, or submitted to, the meeting, when the meeting was closed to the public.

- (8) Subclause (4) does not apply if the Council or Committee resolved at the meeting, when open to the public, that the correspondence or reports, because they relate to a matter specified in s. 10 A(2) of the Local Government Act, are to be treated as confidential.

(s.11)

## **ACCESS TO RECORDS**

67. (1) The General Manager may allow or refuse to allow any Councillor to inspect any record of the Council that the Councillor requests to see.
- (2) If the General Manager refuses to allow a Councillor to inspect any such record, the Councillor may, at a meeting of the Council, move for the production of the document. However, the Councillor must give notice of intention to move the motion.
- (3) If the Council passes a motion for the production of a Council record, the Council must ensure that the record:
- (a) Is produced immediately and laid on the table for inspection by the Councillors, and
  - (b) Is made available for inspection by any Councillor on reasonable notice to the General Manager during the Council's ordinary office hours on any day that is within one month after the passing of the motion.
- (4) A Council and a Committee of which all the members are Councillors must, during or at the close of a meeting, or during the business day following the meeting, give reasonable access to any person to inspect correspondence and reports tabled at, or submitted to, the meeting.
- (5) This section does not apply if the correspondence or reports that:
- (a) Relate to a matter that was received or discussed.
  - (b) Were tabled at, or submitted to, the meeting.
- when the meeting was closed to the public.
- (6) This section does not apply if the Council or Committee resolves at the meeting, when open to the public, that the correspondence or reports, because they relate to a matter specified in section 10A (2), are to be treated as confidential.
- (7) Where a meeting resolves under subclause 6 that correspondence or reports are to be treated as confidential, the meeting shall also resolve the period during which the correspondence or reports shall remain subject to subclause 5. This resolution shall be an authority of the Council or a Committee.

## **RECORDING, WEBCASTING AND PHOTOGRAPHY AT MEETINGS OF COUNCIL**

68. (1) Council will record and webcast live on Council's website the Ordinary or Extraordinary Meetings of Council held in open session. Confidential meetings of Council will not be recorded or webcast. The purpose of the webcast and recordings is to facilitate community access to meetings.



- (2) Members of the public are advised, in accordance with Section 18 of the Privacy and Personal Information Protection Act 1998 (PPIPA), that the Ordinary/Extraordinary Meeting is live webcast and is publically available. By attending a Council Meeting personal information may be recorded, publicly broadcast and archived.
- (3) Speakers addressing the Council do not have absolute privilege in respect of opinions expressed or comments made or material presented. Council accepts no responsibility for any defamatory comments in this regard.
- (4) At the start of each Meeting that will be webcast, the Chairperson must advise the Meeting room that the Meeting will be webcast.
- (5) The General Manager must ensure that persons in the Meeting room are advised that the Meeting may be webcast by providing notification on signs in the Meeting room, in the Ordinary Meeting Agenda and such other notices as required in relation to sub-clauses 2 and 3.
- (6) Webcasting is terminated if, at a particular point in a meeting, the Chairperson is of the opinion that continued webcasting may prejudice the meeting or infringe the rights or safety of an individual.
- (7) Webcast recordings will be made available to the public for viewing on Council's website for at least 8 years. An archive of webcast recordings in Council's electronic record keeping system will also be kept.
- (8) Written transcripts of proceedings will not be available.
- (9) The webcasts and recordings of proceedings are not an official record of the meeting nor do they convey the official Minutes of a Council meeting or the position of Council. Recordings are not to be used except in accordance with this Code.
- (10) The electronic transmissions (webcasts) and webcast recordings are protected by copyright and owned by Wollondilly Shire Council. No part of the proceedings of a meeting of the Council may be recorded, copied or made available to others without the authority of the Council however councillors may use unedited extracts of the webcast recordings for the purposes of engaging with the community and informing them of their actions.
- (11) Photography at Meetings of Council will generally be permitted with the authority of the Council.
- (12) A person may be, as provided by section 10(2) (a) or (b) of the Act, expelled from a meeting of the Council for using or having used a recording device or taken photographs in contravention of this clause.
- (13) If any such person, after being notified of a resolution or direction expelling him or her from the meeting, fails to leave the place where the meeting is being held, a Police Officer, or any person authorised for the purpose by the Council or person presiding, may, by using only such force as is necessary, remove the first-mentioned person from that place and, if necessary, restrain that person from re-entering that place.



- (14) For the purposes of this clause a recording device includes a video camera, sound recorder, mobile phone, laptop, tablet or any other electronic device which is recording speech and/or images without the authority of the Council.
- (cl.273)

## DEFAMATION, OFFENCE AND EMBARRASSMENT

69. The NSW Ombudsman publication *Better Service and Communication for Council's* provides information about defamation. It states:

"A statement may be defamatory of a person if it is likely to cause an ordinary reasonable member of the community to think less of a person or to shun or avoid the person"

Councillors, staff and members of the public can seek legal compensation, apology etc if they are defamed.

- (1) Councillors acting within their official capacity at meetings of Council or Council Committees have a defence of 'qualified privilege' to actions in defamation. This recognises that Councillors may need to speak freely and publicly in carrying out their duties however qualified privilege needs to be treated with great caution. It only covers statements made at a Council or Committee meeting whilst carrying out the duties and on business relevant to the Council. Statements also need to be made with good intentions, not malice.
- (2) A statement made outside a Council or Committee meeting will not be protected by qualified privilege, but may be protected under the *Defamation Act 1974*. Councillors should be guided by their own legal advice on defamation issues.
- (3) The chairperson of a Council meeting is responsible for making sure that the council carries out its meeting in line with its Meeting Code and any relevant legislation. This may be done by:
  - (a) Maintaining order at meetings.
  - (b) Requiring a Councillor to apologise for insults, personal comments, or implying improper motives with respect to another Councillor.
  - (c) Calling a Councillor to order whenever they believe it is necessary to do so.
  - (d) Ask a Councillor to take back a statement and apologise.
- (4) A Councillor who refuses to comply with cl 3 may be expelled from the meeting for an act of disorder (see 46 (4)) of this Code. This does not prevent legal action from being taken against a Councillor by council or by another Councillor; a member of council staff or a member of the public under the *Defamation Act 1974* or the common law.

(cl.256 (3) & s.10 (2))

## PETITION

70. A Councillor may present a petition to the Council. The Chairperson must not permit discussion or debate on the petition.

## **MAYORAL ACTIONS**

71. When necessary the Mayor may exercise the policy-making functions of the Council between meetings. It is not necessary for the Council to formalise this, but good practice for the Mayor to report their actions to the next Council meeting.
- (s.226)

## **AMENDMENTS TO THIS MEETINGS CODE**

72. (1) A Council may amend a code adopted in accordance with the Act by means only of a code so adopted.
- (s.363)
- (2) Before adopting an amendment to this Meetings Code, Council must prepare a draft amendment.
- (3) The Council must give public notice of the draft amendment after it is prepared.
- (4) The period of public exhibition must not be less than 28 days.
- (5) The public notice must also specify a period of not less than 42 days after the date on which the draft amendment is placed on public exhibition during which submissions may be made to the Council.
- (6) With the exception of the provisions of subclause 7, Council must publicly exhibit the draft amendment in accordance with its notice.
- (7) Notwithstanding subclauses 4 and 5, if Council is of the opinion that an amendment is not substantial, it may adopt the amendment following public notice and without public exhibition.
- (8) This Code is to be reviewed annually and addressed quarterly against legislative changes to the Act and the Regulations.

# GO4 Attachment

1. The General Manager's Instrument of Delegation

**Monday 18 September 2017**

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GO4 – Review of Council Delegations

In order to provide for the expedient exercise and performance of its powers and duties and the efficient management of its business and responsibilities, Council hereby delegates under Section 377 of the Local Government Act 1993, to the position of General Manager and to the person holding the aforementioned position in an acting capacity, the exercise of Council's powers, functions, duties and authorities contained in legislation and matters specified in Schedule 1 subject to the limitations specified in Schedule 2.

This delegation commences on 18 September 2017 and remains in force until specifically altered or revoked in writing.

**SCHEDULE 1 – (AUTHORITY)**

The functions of the Council as specified in:-

1. The *Local Government Act 1993*, its Regulations, Cognate and Related Legislation; and
2. Other Legislation under which Council has powers, authorities, duties and functions; and
3. Council's adopted Codes, Policies and Procedures; and
4. The Responsibilities, Accountabilities (Inputs) and Performance Objectives (Outputs) as listed from time to time in the General Managers Contract of Employment.

**SCHEDULE 2 – (EXCLUSIONS)**

1. Subject to the provisions of the *Local Government Act 1993* and any other legislation relevant to the delegations.
2. Council may by resolution direct the General Manager in the exercise of any function herein delegated.
3. The General Manager shall exercise the functions herein delegated in accordance with and subject to:-
  - a) The provisions of the *Local Government Act 1993* as amended;
  - b) All and every policy of the Council adopted by resolution and current at the time of the exercise of the functions herein delegated.
4. The power to make or amend Council policy.
5. The approval of the organisation structure down to manager level.
6. The carrying out new or non core services not already being undertaken by Council.
7. Significant variation to any existing Council service that would have ongoing implications for Council in terms or cost or service delivery.

### **FINANCIAL DELEGATION**

In accordance with Section 55 of the *Local Government Act 1993*, the *Local Government (General) Regulation* (Part 7, Tendering) and Council's Purchasing Policy.

**AUTHORISED BY COUNCIL RESOLUTION ON 18 SEPTEMBER 2017**

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Luke Johnson  
General Manager

---

Cr Judith Hannan  
Mayor

**Note:**

The signed Delegation will be filed in the Delegations Register in Governance and may be inspected at any time.

# GO5 Attachments

1. Summary of changes table
2. Draft Code of Conduct
3. Circular to Councils – 16-42

**Monday 18 September 2017**

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GO5 – Review of Code of Conduct and Procedures for the  
Administration of the Code of Conduct

## SUMMARY OF CHANGES – CODE OF CONDUCT

Location	Previous Wording	New Wording	Reasoning
Page 2 – Contents	Harassment and discrimination  Councillors to and administrators	<u>Bullying, Harassment and discrimination</u>  Councillors and administrators	Table of contents updated  Grammatical error amended
Page 4 – Part 3.6	Harassment and discrimination  You must not harass, discriminate against, or support others who harass, and discriminate against colleagues or members of the public.	<b>Bullying, harassment and discrimination</b>  You must not <b>bully,</b> harass, discriminate against, or support others who <b>bully,</b> harass, and discriminate against colleagues or members of the public.	Changes made to align with Administrative Protocol “ <i>Respectful Behaviours</i> ”
Page 4 - Footnote	Nil	<sup>1</sup> <i>Bullying is defined as repeated unreasonable behaviour by an individual or group of individuals towards a worker or group of workers in the workplace, where the behaviour creates a risk to the health and safety of workers.</i>	Definition of Bullying as per the Respectful Behaviours Protocol
Page 5	Nil	You must comply with the corruption prevention and fraud control responsibilities and strategies within Council's Corruption Prevention and Fraud Control Policy.  You must report all instances of suspected or actual fraud or corrupt conduct in accordance with Council's Corruption Prevention and Fraud Control Policy.	Align with best practice recommendations from Audit Office of New South Wales

Page 5	Nil	<p>You must take reasonable care for your own safety and the safety of others in the workplace who may be affected by your acts or admissions at work.</p> <p>You must comply with all reasonable directions contained within any policy or procedure created to ensure a safe system of work or work practice is implemented and followed. Refer to Council's Work Health and Safety Policy and Administrative Protocol Work Health and Safety Responsibilities for Councillors.</p>	To ensure compliance with Work Health and Safety Act 2011 and promote commitment to health and safety in workplace.
Page 10 – Part 6.3	...where a record of attendance hasn't otherwise.....	...where a record of attendance has not otherwise...	Change to punctuation
Page 12 – Heading Part 7.7	Councillors to and administrators	Councillors and administrators	Grammatical error amended



# Code of Conduct

# DRAFT

WOLLONDILLY SHIRE COUNCIL

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*Rural Living*

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## PART 1 INTRODUCTION

The Model Code of Conduct for Local Councils in NSW ("the Model Code of Conduct") is made for the purpose 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 and 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 purpose 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 civic office for five years.

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

## PART 2 PURPOSE OF THE CODE OF CONDUCT

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

The Council's Code of Conduct has been developed to assist council officials to:

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

## PART 3 GENERAL CONDUCT OBLIGATIONS

### General conduct

- 3.1 You must not conduct yourself in carrying out your functions in a manner that is likely to bring the council or holders of civic office into disrepute. Specifically, you must not act in a way that:
- a) Contravenes the Act, associated regulations, council's relevant administrative requirements and policies
  - b) Is detrimental to the pursuit of the charter of a council
  - c) Is improper or unethical
  - d) Is an abuse of power or otherwise amounts to misconduct
  - e) Causes, comprises or involves intimidation, harassment or verbal abuse

- f) Causes, comprises or involves discrimination, disadvantage or adverse treatment in relation to employment
- g) Causes, comprises or involves prejudice in the provision of a service to the community. (*Schedule 6A*)

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

3.3 You must treat others with respect at all times.

### **Fairness and equity**

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

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

### **Bullying, harassment and discrimination**

3.6 You must not **bully**<sup>1</sup>, harass, discriminate against, or support others who **bully**, harass, and discriminate against colleagues or members of the public. This includes, but is not limited to harassment and discrimination on the grounds of sex, pregnancy, age, race, responsibilities as a carer, marital status, disability, homosexuality, transgender grounds or if a person has an infectious disease.

### **Development decisions**

3.7 You must ensure that development decisions are properly made and that parties involved in the development process are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the development assessment process.

3.8 In determining development applications, you must ensure that no action, statement or communication between yourself and applicants or objectors conveys any suggestion of willingness to provide improper concessions or preferential treatment.

### **Binding caucus votes**

3.9 You must not participate in binding caucus votes in relation to matters to be considered at a council or committee meeting.

3.10 For the purpose 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.

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<sup>1</sup> Bullying is defined as repeated unreasonable behaviour by an individual or group of individuals towards a worker or group of workers in the workplace, where the behaviour creates a risk to the health and safety of workers.

- 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.

### **Corruption Prevention and Fraud Control**

- 3.13 You must comply with the corruption prevention and fraud control responsibilities and strategies within Council's Corruption Prevention and Fraud Control Policy.
- 3.14 You must report all instances of suspected or actual fraud or corrupt conduct in accordance with Council's Corruption Prevention and Fraud Control Policy.

### **Work Health and Safety**

- 3.15 You must take reasonable care for your own safety and the safety of others in the workplace who may be affected by your acts or admissions at work.
- 3.16 You must comply with all reasonable directions contained within any policy or procedure created to ensure a safe system of work or work practice is implemented and followed. Refer to Council's Work Health and Safety Policy and Administrative Protocol Work Health and Safety Responsibilities for Councillors.

## **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:
- Councillors and designated persons lodge an initial and an annual written disclosure of interests that could potentially be in conflict with their public or professional duties (*section 449*)
  - Councillors and members of council committees disclose an interest and the nature of that interest at a meeting, leave the meeting and be out of sight of the meeting and not participate in discussions or voting on the matter. (*section 451*)

- c) Designated persons immediately declare, in writing, any pecuniary interest. (*section 459*)

4.8 Designated persons are defined at section 441 of the Act, and include, but are not limited to, the general manager and other senior staff of the council.

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

#### **What are non-pecuniary interests?**

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

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

#### **Managing non-pecuniary conflict of interests**

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

4.13 If a disclosure is made at a council or committee meeting, both the disclosure and the nature of the interest must be recorded in the minutes. This disclosure constitutes disclosure in writing for the purpose 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 interest 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 a significant and does not require further action, you must provide an explanation of why you consider that the conflict does not require further action in the circumstances.
- 4.18 If you are a member of staff of council, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with your manager.
- 4.19 Despite clause 4.16(b), a councillor who has disclosed that a significant non-pecuniary conflict of interests exists may participate in a decision to delegate council's decision-making role to council staff through the general manager, or appoint another person or body to make the decision in accordance with the law. This applies whether or not council would be deprived of a quorum if one or more councillors were to manage their conflict of interests by not voting on a matter in accordance with clause 4.16(b) above.

#### Reportable political donations

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



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

- 4.25 Where a majority of councillors are precluded under this Part from consideration of a matter the council or committee must resolve to delegate consideration of the matter in question to another person.
- 4.26 Where a majority of councillors are precluded under this Part from consideration of a matter and the matter in question concerns the exercise of a function that may not be delegated under section 377 of the Act, the councillors may apply in writing to the Chief Executive to be exempted from complying with a requirement under this Part relating to the management of a non-pecuniary conflict of interests.
- 4.27 The Chief Executive will only exempt a councillor from complying with a requirement under this Part where:
- a) Compliance by councillors with a requirement under the Part in relation to a matter will result in the loss of a quorum, and
  - b) The matter relates to the exercise of a function of the council that may not be delegated under section 377 of the Act.
- 4.28 Where the Chief Executive exempts a councillor from complying with a requirement under this Part, the councillor must still disclose any interests they have in the matter the exemption applies to in accordance with the requirements of this Part.
- 4.29 A councillor, who would otherwise be precluded from participating in the consideration of a matter under this Part because they have a non-pecuniary conflict of interests in the matter, is permitted to participate in consideration of the matter, if:
- a) The matter is a proposal relating to:
    - i) The making of a principal environmental planning instrument applying to the whole or a significant part of the council's area, or
    - ii) The amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant part of the council's area, and
  - b) The 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*)
- 4.31 As a member of staff, you must ensure that any outside employment or business you engage in will not:
- a) Conflict with your official duties
  - b) Involve using confidential information or council resources obtained through your work with the council
  - c) Require you to work while on council duty
  - d) Discredit or disadvantage the council.



**Personal dealings with council**

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

**PART 5 PERSONAL BENEFIT**

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

**Gifts and Benefits**

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

**Token Gifts and Benefits**

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

**Gifts and benefits of value**

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

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

- 5.5 You must not:
- a) Seek or accept a bribe or other improper inducement
  - b) Seek gifts or benefits of any kind
  - c) Accept any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your public duty
  - d) Accept any gift or benefit of more than token value
  - e) Accept an offer of cash or a cash-like gift, regardless of the amount.
- 5.6 For the purpose of clause 5.5(e), a “cash-like gift” includes but is not limited to gift vouchers, credit cards, debit cards with credit on them, prepayments such as phone or internal credit, memberships or entitlements to discounts.
- 5.7 Where you receive a gift or benefit of more than token value that cannot reasonably be refused or returned, this must be disclosed promptly to your supervisor, the Mayor or the general manager. The recipient, supervisor, Mayor or general manager must ensure that any gifts or benefits of more than token value that are received are recorded in a Gifts Register. The gift or benefit must be surrendered to council, unless the nature of the gift or benefit makes this impractical.

**Improper and undue influence**

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

**PART 6 RELATIONSHIP BETWEEN COUNCIL OFFICIALS****Obligations of councillors and administrators**

- 6.1 Each council is a body politic. The councillors or administrators 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 issues 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.

- 6.3 The meeting register be signed for strategic meetings where Councillors and external stakeholders are present and only where a record of attendance has **not** otherwise been taken.

### **Obligations of staff**

- 6.4 The general manager is responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation of the decisions of the council without delay.
- 6.5 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**

- 6.6 You must act in accordance with council's Code of Meeting Practice, if council has adopted one and the *Local Government (General) Regulation 2005* during council and committee meetings.
- 6.7 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**

- 6.8 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 public forum.
  - g) Councillors and administrators directing or pressuring council staff in the performance of their work, or recommendations they should make.

- h) Council staff providing ad hoc advice to councillors and administrators without recording or documenting the interaction as they would if the advice was provided to a member of the community.
- i) Council staff meeting with applicants or objectors alone AND outside office hours to discuss applications or proposals.
- j) Councillors attending on-site inspection meetings with lawyers and/or consultants engaged by council associated with current or proposed legal proceedings unless permitted to do so by council's general manager or, in the case of the Mayor or administrator, exercising their power under section 226 of the Act.

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

### **Councillor and administrator access to information**

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

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

- 7.7 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**

- 7.8 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 reason for the decision if access is refused.

### **Use of certain council information**

- 7.9 In regard to information obtained in your capacity as a council official, you must:
  - a) Only access council information needed for council business
  - b) Not use that council information for private purposes

- c) Not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for yourself, or any other person or body, from any information to which you have by virtue of your office or position with council
- d) Only release council information in accordance with established council policies and procedures and in compliance with relevant legislation.

### Use and security of confidential information

- 7.10 You must maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible.
- 7.11 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

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

### Use of council resources

- 7.13 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.
- 7.14 Union delegates and consultative committee members may have reasonable access to council resources for the purpose 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.
- 7.15 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.

- 7.16 You must avoid any action or situation that could create the appearance that council property, official services or public facilities are being improperly used for your benefit or the benefit of any other person or body.
- 7.17 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.
- 7.18 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
- 7.19 You must not convert any property of the council to your own use unless properly authorised.
- 7.20 You must not use council's computer resources to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature.

**Councillor access to council buildings**

- 7.21 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 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.
- 7.22 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.
- 7.23 Councillors and administrators must ensure that when they are within a staff area they avoid giving rise to the appearance that they may improperly influence council staff decisions.

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

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

**Complaints made for an improper purpose**

- 8.2 You must not make a complaint or cause a complaint to be made under this code for an improper purpose.
- 8.3 For the purposes of clause 8.2, a complaint is made for an improper purpose when 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 this code.
- 8.6 For the purpose of clause 8.4 and 8.5 detrimental action is an action causing, comprising or involving any of the following:
- a) Injury, damage or loss,
  - b) Intimidation or harassment,
  - c) Discrimination, disadvantage or adverse treatment in relation to employment,
  - d) Dismissal from, or prejudice in, employment,
  - e) Disciplinary proceedings.

**Compliance with requirements under this code**

- 8.7 You must not engage in conduct that is calculated to impede or disrupt the consideration of a matter under this code.
- 8.8 You must comply with a reasonable and lawful request made by a person exercising a function under this code.
- 8.9 You must comply with a practice ruling made by the 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.

## PART 9 DEFINITIONS

In the Council's 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 <i>the Local Government (General) Regulation 2005</i>
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 council is delegated
Designated person	see the definition in section 441 of the Act
Election campaign	includes council, State and Federal election campaigns
Personal information	information or an opinion about a person whose identity is apparent, or can be ascertained from the information or opinion



The Regulation *the Local Government (General) Regulation 2005*

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

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

DRAFT

<b>Circular Details</b>	Circular No 16-42 / 3 November 2016 / A515866
<b>Previous Circular</b>	16/30 Local Government Amendment (Governance and Planning) Act 2016
<b>Who should read this</b>	Councillors / General Managers / Complaints Coordinators/ Conduct Reviewers
<b>Contact</b>	Council Governance Team – 02 4428 4100
<b>Action required</b>	Response to OLG

## Review of the Model Code of Conduct and Procedures for the Administration of the Model Code of Conduct

### What's new or changing

- The recent amendments to the *Local Government Act 1993* (the Act) will see the pecuniary interest provisions of the Act and the *Local Government (General) Regulation 2005* incorporated into the *Model Code of Conduct for Local Councils in NSW* (the Model Code).
- Once commenced, these reforms will consolidate all ethical standards for council officials into a single statutory instrument. They will also mean that breaches of pecuniary interest obligations by councillors are treated as misconduct under the Act and will be subject to the “three strikes” misconduct rules.
- As part of the process of incorporating the pecuniary interest obligations in the Act and Regulation into the Model Code, the Office of Local Government is undertaking an implementation review of the Model Code and the associated *Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW* (the Procedures).
- The Office is also undertaking a review of the requirements for the disclosure of interests by councillors and designated persons in returns of interests currently submitted under section 449 of the Act

### What this will mean for your council

- The Office is seeking the assistance of councils and conduct reviewers in undertaking its review. In particular, the Office is seeking suggestions for improvement from councils and conduct reviewers in relation to the following:
  - The ethical standards prescribed under the Model Code.
  - The operation of the Procedures.
  - Requirements for the disclosure of interests by councillors and designated persons in returns of interests currently submitted under section 449 of the Act.

### Key points

- Submissions may be made by email to [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au).
- Submissions should be labelled “code of conduct review” and marked to the attention of the Office’s Council Governance Team.
- Council complaints coordinators should bring this circular to the attention of their council’s conduct reviewers so that they may make submissions.

- Submissions should be made before **2 December 2016**.

**Where to go for further information**

- For further information, contact the Office's Council Governance Team on 02 4428 4100.



**Tim Hurst**  
**Chief Executive**

# EN1 Attachments

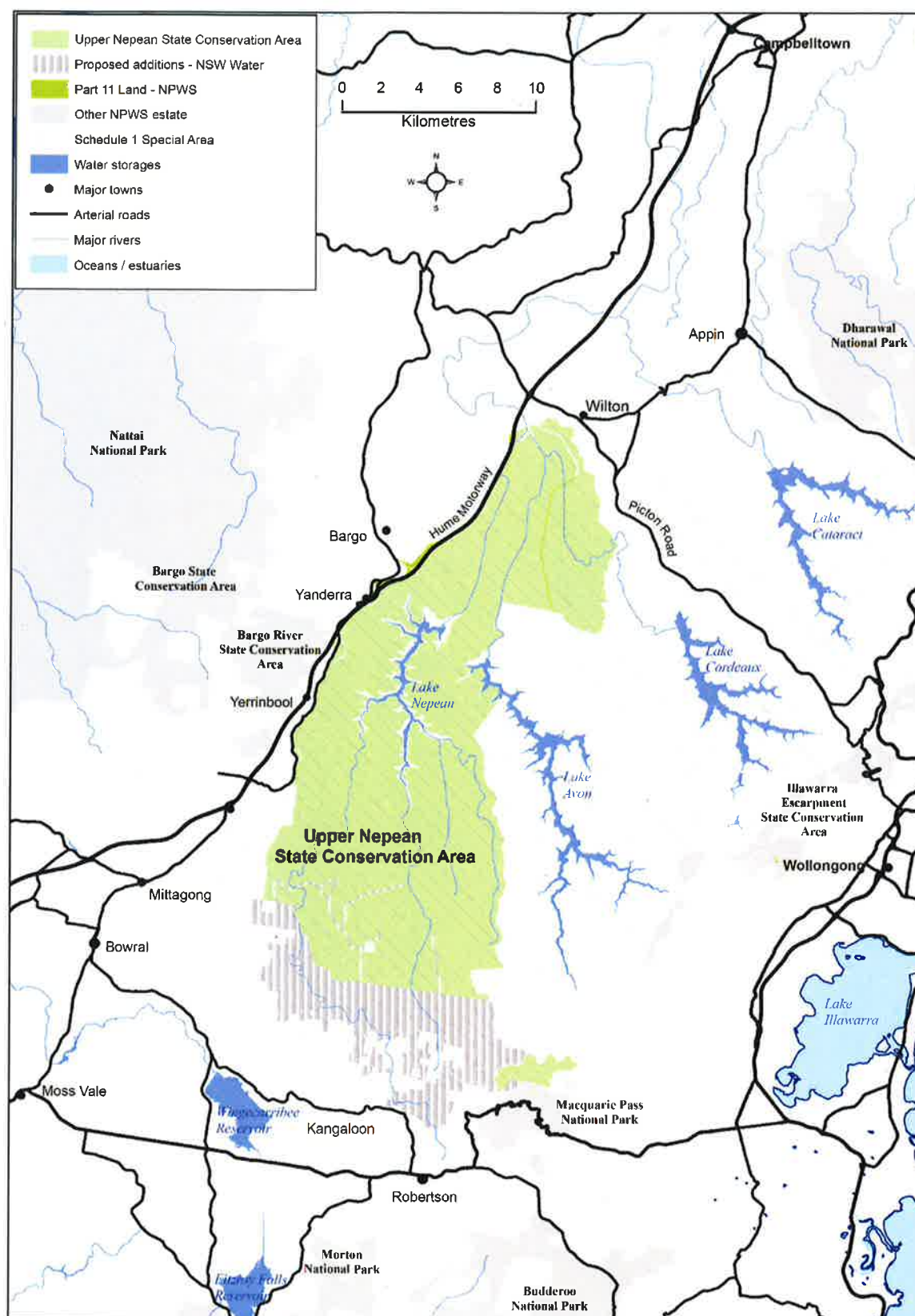
1. Location map of the Upper Nepean State Conservation Area (Map 1).
2. Map showing the location of the SCA in relation to the Nepean- Bargo River Gorge (Map 2).
3. Implementation Schedule of the draft Plan of Management.
4. Draft submission on the draft Plan of Management.

**Monday 18 September 2017**

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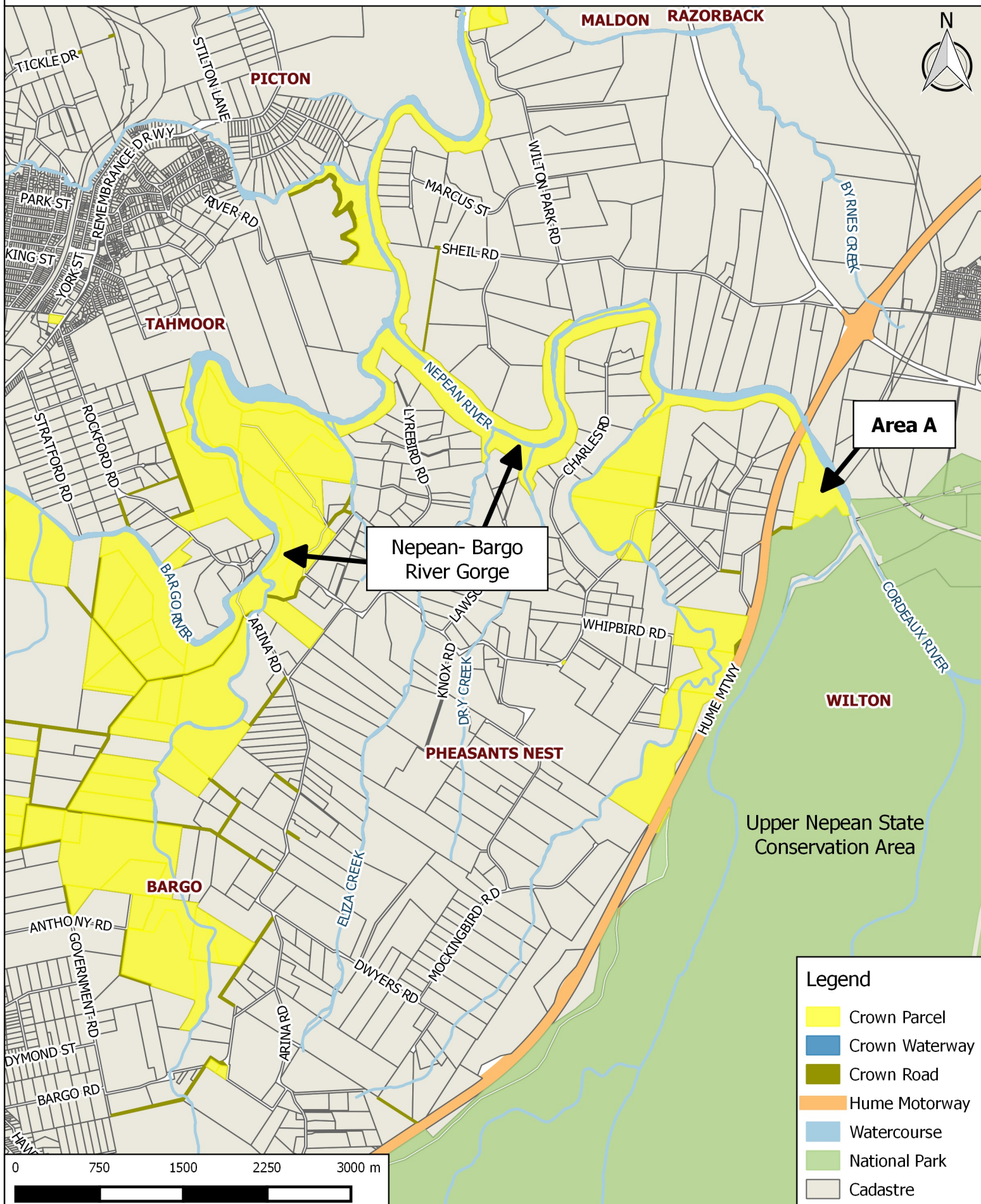
EN1 – Plan of Management for the Upper Nepean State  
Conservation Area

Figure 1. Location map





## Map 2 Linkage between SCA and Bargo- Nepean River Gorge



## 6. Implementation

This plan of management establishes a scheme of operations for the park..

Identified activities for implementation are listed in the table below. Relative priorities are allocated against each activity as follows:

- **High priority** activities are essential to achieve the objectives and desired outcomes. They must be undertaken in the near future to avoid significant deterioration in natural, cultural or management resources
- **Medium priority** activities are necessary to achieve the objectives and desired outcomes but not urgent.
- **Low priority** activities are desirable to achieve the objectives and desired outcomes but can be deferred in preference to other priorities.
- **Ongoing** activities are undertaken on an annual basis or in response to an issue that arises.

This plan of management does not have a specific term and will stay in force until amended or replaced in accordance with the National Parks and Wildlife Act.

Action no.	Management responses	Priority
<b>3.1 Geodiversity</b>		
3.1.1	Minimise disturbance of significant landforms, particularly the volcanic features, upland swamps and gorges, in order to protect geodiversity and the park's natural landscapes.	Ongoing
3.1.2	As far as practicable, avoid earthworks in areas and soils identified as having very high erosion hazards. Apply appropriate erosion and sediment controls for all works, including maintenance activities. Revegetate disturbed areas where appropriate.	High
3.1.3	Confine any new infrastructure to previously disturbed sites wherever possible.	Ongoing
<b>3.2 Water supply and water quality</b>		
3.2.1	Ensure management operations are planned and undertaken to avoid adverse impacts on water quality using best practice and up-to-date knowledge, including the results of Water NSW water quality monitoring. Include in any environmental assessment for an activity in the park an assessment of whether it will have a neutral or beneficial effect on water quality.	High
3.2.2	Maintain and, where necessary, upgrade drains, causeways and culverts on management trails.	High
3.2.3	Continue to adhere to the Water NSW access policy and protocol that restricts vehicular access for authorised stakeholders during and immediately following threshold rainfall events.	Ongoing
3.2.4	In conjunction with Water NSW, encourage neighbouring landowners to participate in programs like the Healthy Catchments Program to help protect water quality.	Low
3.2.5	Participate in the development of water-sharing plans or other initiatives as appropriate, to ensure the needs of water-dependent ecosystems are adequately protected through environmental flow regimes.	Medium
<b>3.3 Native plants</b>		
3.3.1	Implement relevant recovery actions in the <i>Priorities Action Statement</i> for threatened plants and communities occurring in the park.	High

Action no.	Management responses	Priority
3.3.2	As far as possible, protect threatened ecological communities and other priority habitats, such as riparian vegetation, from disturbance.	High
3.3.3	Prioritise the restoration of those cleared and disturbed areas where threatened ecological communities occur.	Medium
<b>3.4 Native animals</b>		
3.4.1	Implement relevant recovery actions from the <i>Priorities Action Statement</i> and recovery plans for threatened native animal species occurring in the park.	High
3.4.2	Liaise with Water NSW, local Councils and adjoining landholders to encourage catchment and land management practices that protect and conserve threatened native animal species and enhance habitat connectivity across the landscape.	Low
3.4.3	In liaison with Water NSW, encourage research that improves understanding of the significance of the park for platypus and informs future management of the headwaters of the Nepean River within the park.	High
3.4.4	Investigate the feasibility and suitability of re-introducing species to the park that have become locally extinct.	Low
3.4.5	Replace creek crossings on management trails with crossings that will improve fish-passage when the crossings need to be upgraded or replaced.	Low
<b>3.5 Cultural heritage</b>		
3.5.1	Consult and involve relevant groups, including Illawarra and Tharawal local Aboriginal land councils, in all aspects of management of Aboriginal cultural values.	High
3.5.2	Conduct a site assessment for Aboriginal or historic heritage before all new ground-disturbance work.	Ongoing
3.5.3	Assess the condition of 5 to 10 Aboriginal sites each year. If needed, develop management strategies for Aboriginal sites to ensure their protection.	Medium
3.5.4	Seek to rename the park with an Aboriginal name in consultation with Aboriginal communities, in recognition of Aboriginal people's connections to the area.	Medium
3.5.5	Protect and conserve historic heritage values based on their heritage significance.	Ongoing
3.5.6	Prepare conservation management plans for heritage items listed on the State Heritage Register.	Medium
3.5.7	Maintain safety fencing and signage in the 'Diamond Fields' area and at Mount Cotopaxi.	Medium
3.5.8	Undertake priority actions from the heritage assessment report for the Nepean Dam model spillway.	Low
<b>3.6 Public use and research</b>		
3.6.1	Water NSW will continue to manage access to the park in accordance with the agreed access policy and protocol.	Ongoing
3.6.2	Liaise with Water NSW regarding the provision of information to the public about the park and its natural, cultural and water quality values at the Nepean Dam picnic area. Consider providing information at other locations if appropriate.	Medium



Action no.	Management responses	Priority
3.6.3	In conjunction with Water NSW, permit research that is aimed at enhancing understanding of the park's values and informing future management. Research that is unrelated to the park or to water supply or water quality issues will not be permitted.	Ongoing
<b>4.1 Pests</b>		
4.1.1	Manage pest species in accordance with the regional pest management strategy and other strategies as relevant.	Ongoing
4.1.2	Continue to monitor pests and to undertake targeted pest control programs in collaboration with Water NSW, owners of third party infrastructure and adjoining landowners where relevant.	High
4.1.3	Liaise with road and rail authorities in relation to controlling weeds and rubbish dumping along the western boundary of the park.	Medium
<b>4.2 Fire management</b>		
4.2.1	Undertake fire management in accordance with the park fire management strategy and integrate it with fire management for the remainder of the Metropolitan Special Area.	Ongoing
4.2.2	Prepare and implement annual fire management works schedules in accordance with the fire management strategy and in consultation with Water NSW where needed.	High
4.2.3	During wildfire planning and suppression, seek to maintain a proportion of core habitat for koalas as unburnt.	High
4.2.4	Wherever possible, avoid the use of heavy machinery for fire suppression in wetlands, threatened ecological communities and areas with threatened plant species or archaeological sites.	Ongoing
4.2.5	Rehabilitate areas disturbed by fire suppression operations as soon as practical after fire to facilitate recovery and minimise impacts on water quality.	Medium
4.2.6	Support research to guide fire management in the park, including post-fire monitoring where needed.	Low
4.2.7	Participate on the Southern Highlands Bush Fire Management Committee to ensure a coordinated approach to bushfire planning and management and practices that recognise the park's natural, cultural and water catchment values.	High
4.2.8	Continue to work collaboratively with Water NSW to provide and support specialised rapid response remote area fire teams.	Ongoing
<b>4.3 Climate change</b>		
4.3.1	Continue fire, pest and weed management, public access restrictions and other programs, and adapt where required, to minimise climate change induced threats and protect water quality.	Ongoing
<b>5.1 Management operations and facilities</b>		
5.1.1	In liaison with Water NSW, ensure that management operations avoid adverse impacts on the park's values and complement the protection and management of the Metropolitan Special Area to the east of the park.	Ongoing
5.1.2	Work collaboratively with Water NSW on programs such as pest control, fire management and law enforcement.	Ongoing
5.1.3	Maintain the network of management trails shown in Figure 2 to an appropriate standard to avoid impacts on conservation or water quality values.	High

Action no.	Management responses	Priority
5.1.4	In conjunction with Water NSW, regularly review the management trail network. Close any trails no longer required for management purposes and allow them to regenerate. Seek to minimise trails, especially through upland swamps or other dense vegetation, to protect habitat continuity and hinder movement of introduced predators.	Medium
5.1.5	Continue to allow the maintenance of existing water authority infrastructure in the park. Develop licence agreements where needed to permit upgrading or operation of existing assets and for any new assets that may be proposed.	Low
<b>5.2 Other uses</b>		
5.2.1	Arrange easements, licences or other formal agreements for existing third-party assets where needed, and for any new assets that are developed. Agreements will include, where relevant, measures for maintenance of the facility and the access trail by the licence holder and for minimising impacts on ecological integrity, cultural heritage and water quality.	Low
5.2.2	Ensure applications for mining, mineral exploration or gas exploration and extraction are subject to environmental assessment in accordance with the Memorandum of Understanding between NPWS and former NSW Trade and Investment (now Department of Industry – Resources and Energy). In particular, seek to avoid disturbance to important features and values, including the hydrology of upland swamps and water quality in the park's rivers and streams.	Ongoing
5.2.3	Develop and implement a program for overseeing all aspects of the third-party interests including: <ul style="list-style-type: none"> <li>- an audit of all sites and their associated access trails, carried out in consultation with interest holders</li> <li>- arrangements to address issues of access, maintenance, impacts on conservation and catchment values and other relevant issues</li> <li>- ongoing monitoring of compliance with licence conditions.</li> </ul>	Medium
5.2.4	Continue to permit existing access to private property through the park. Enter into trail maintenance agreements where needed.	Low
5.2.5	Seek to exclude from the park Orfords Road, Rowlands Road and those parts of Tourist Road located within Water NSW's lands identified as additions to the state conservation area.	High
5.2.6	Continue to authorise access for use and maintenance of the trigonometrical stations in accordance with existing or future formal agreements between NPWS and Land and Property Information.	Ongoing
5.2.7	Seek to include within the park the Crown land inholdings and adjacent areas of Crown land.	Low
5.2.8	Complete an assessment of Part 11 lands. Reserve those considered suitable for addition to the park and seek to dispose of the others.	Medium

## Submission on the draft Plan of Management for the Upper Nepean State Conservation Area

This submission provides comments on general and specific aspects of the draft Plan of Management for the Upper Nepean State Conservation Area (SCA). The comments are consistent with the adopted position of Council and expressed views of the local community it represents. This submission provides broad support to the Key Directions and Management Responses of the draft Plan.

### PART A: INTRODUCTION

The primary management function of the SCA is acknowledged to be the protection of drinking water supply catchments. The management of the Upper Nepean SCA is therefore largely viewed as a matter for the National Parks and Wildlife Service (NPWS) in association with Department of Primary Industries Water (DPI Water) and Water NSW.

The SCA is however recognised as having significant biodiversity and hydrological as well as recreational values. The SCA is also considered as having a strong linkage with the Nepean-Bargo River Gorge adjoining the northern boundary from a biodiversity and recreational perspective. The adequate addressing of the values of the SCA by the draft Plan of Management is considered highly important.

The draft Plan has limited direct relevance to Council's responsibilities given the exclusion of public access and absence of any facilities/infrastructure either owned or managed by Council. However, the draft Plan has indirect relevance to the following activities of Council:

- **Bushfire management:** *Council undertakes hazard reduction activities on Crown Land immediately to the north of the SCA CHECK ALEX RE CROWN WHERE NOT CARE AND CONTROL*
- **Weed and feral management:** *Council implements programs to address impacts of weeds and feral animals within the vicinity of the SCA under the guidance and direction of the NSW Department of Primary Industries (NSW DPI).*
- **Road maintenance:** *Council has responsibilities for the management of a number of local roads within the vicinity the SCA.*

Council is invested with responsibilities to respond and advocate on behalf of its local community on matters within Council's scope of influence under various legislation and delegation. In this regard, the retention of the landscape of Wollondilly and protection of local biodiversity and waterways were common themes expressed by the local community during the preparation of Council's updated Community Strategic Plan adopted in June 2017. Council has made a number of resolutions and representations advocating these concerns as discussed in the subsequent section of this submission.

In a related matter, Council has established a Minerals and Energy Resources, Environment and Waste Sub Committee (MEREW Committee), which provides a forum for the discussion of environmental related issues by community members. This submission incorporates comments received from members of this Committee in relation to the draft Plan and issues associated with the Bargo Gorge and SCA in general.

### PART B: THE SUBMISSION

#### 1) Position of Council in relation to key relevant issues within the SCA

(i) *Linkage with the Nepean- Bargo River Gorge Landscape Conservation Area*

The SCA has connectivity with a vegetated corridor adjacent to the Bargo and Nepean Rivers to the west, which extends to Colo Vale within the Wingecarribee Local Government Area. This corridor has significant ecological value on a number of grounds including:

- Achieving a form of connectivity with the Greater Blue Mountains World Heritage Area (GBMWH),
- The recording of a high number of koalas and an identified important corridor for their movement.

The diverse significant values of this Gorge are considered highlighted by the Statement of Significance prepared by the National Trust for its listing on the National Trust Register. This document states *“the Bargo Gorge Landscape Conservation Area (Conservation Area), has aesthetic significance as the most spectacular riverine landscape upstream on the Hawkesbury/Nepean River system from Wallacia”*. The boundary of the Conservation Area defined by this Listing is provided in Map 1 (Attachment 1).

The following provides comments and recommendations for the NPWS in regard to land ownership and protection of koala habitat which are viewed as having strong relevance to the draft Plan.

(a) Land tenure related issues

Description of issue

The northern boundary of the SCA adjoins an approximate 22 ha of Crown Land which Council has care and control management responsibilities for this land as a Trust Manager under the *Crown Lands Act 1989*. This site directly links with a corridor of Crown Land extending west adjacent to the Bargo Gorge (Map 2: Attachment 2).

Council has received a number of representations from the National Parks Association – Macarthur Branch seeking assistance in achieving gazettal of key sections of the Bargo Gorge as a National Park. It is understood that this community group has also made a number of separate representations to Government Agencies and Government Ministers. The broad position of Council regarding this matter is summarised in the following extract from its correspondence to the NPA dated 27 May 2015:

*The establishment of a National Park within the vicinity of the Bargo Gorge is acknowledged by Council Staff as having environmental, cultural and social beneficial outcomes. There is however complexities in the establishment a National Park related to ownership and land use issues as well as significant management costs for the long-term maintenance necessary to achieve desired biodiversity outcomes”.*

Council position regarding the protection of the Nepean-Bargo River Gorge

Council considered a report at its meeting on 18 May 2015 which (in part), identified opportunities and constraints to the establishment of a National Park for the Bargo Gorge area. Council resolved (in part), at this meeting on 20<sup>th</sup> February 2017:

*That Council write to the State Ministers expressing and confirming Council's support for the establishment of Bargo- Nepean River National Park.*

An E-mail correspondence dated 28 April 2017 was received from the Acting Director of the Conservation Branch of the NPWS in response to the above Council resolution. This correspondence states that a *"Conservation Assessment Report regarding the possible establishment of a National Park (for this Area), is nearing completion"*. **Information on the status of this Assessment Report from the NPWS would be appreciated.**

The legitimacy of the constraints provided by the NPWS from mining interests and outstanding Aboriginal land claims in establishing a National Park are fully recognised. The expansion of the SCA to include sections of the Nepean-River Bargo gorge is therefore suggested as an alternate and interim response by the NPWS pending the resolving of these issues.

#### Addressing of the issue by the Plan of Management and recommendations

Section 1.2 of the draft Plan is recognised as stating *"the Park forms part of the Woronora Plateau, listed as a Landscape Conservation Area in recognition of its significant natural heritage values, and is part of an important link to other protected areas, including the World Heritage-listed Greater Blue Mountains"*. However, it is considered that the draft Plan would be enhanced by greater recognition of this linkage in its Outcomes and 'Responses in this Section.

The draft Plan is recognised as only directly applying to the boundaries of the SCA as well as additions being considered. However, it is considered appropriate that the document include reference to the possible future establishment of a National Park within sections of the Bargo Gorge particularly given the advice from NPWS that an assessment regarding this matter was being undertaken.

It is therefore recommended that the draft Plan of Management be amended as follows to enhance consistency with the above position of Council and expressed concerns of the local community:

- The draft Plan be amended to include an action in regard to the investigation of the future establishment of sections of the Bargo Landscape Area as a National Park, (subject to the resolving of constraints regarding this matter provided by the OEH).
- An existing action in the draft Plan be modified to refer to investigating the expansion of the SCA to include at least the eastern portion of the Bargo Landscape Area as an interim arrangement pending the future gazettal of this Area as a National Park.

#### (b) Protection and management of koala habitat

##### Description of issue

There have been recent increased sightings of koalas across a significant portion of the Wollondilly LGA, (including observations reported to Council's Koala Hotline). The protection and management of these species and their habitat has been noted to be of strong concern to the local community as well as of strong interest to the media.

Council participated in a Pilot Project involving surveys at strategically selected locations within the Wollondilly LGA with the Office of Environment and Heritage (OEH) during mid-2016. Council has also recently received funding through OEH's Save our Species Program, to carry out additional koala surveys, (including the use of GPS collar tracking devices), and mapping of koala habitat within the Wollondilly LGA. Funding for more comprehensive mapping and the preparation of a Comprehensive Koala Plan of Management is intended to be sought from any offered future funding rounds of this Program.

The Bargo Gorge has been identified from the above activities as containing a significant number of koalas as well as being an important corridor for their movement of this species. A number of koalas have also noted to have been recorded within the SCA and its immediate vicinity. The SCA is therefore considered to have a strong level of connectivity in koala habitat between the Bargo Gorge as well as significant areas of bushland to the east based on available information.

#### Council position regarding the protection and management of koala habitat

Council's position based on available information can be broadly summarised as increasing the understanding of the movement of koala populations to inform the implementation of measures which adequately protect these populations and identified corridors. This position is implemented as part of Council's development assessment, strategic and on-ground works responsibilities.

Council is in the process of finalising its updated Biodiversity Strategy for the Wollondilly LGA. It is likely that the identification and protection of koala habitat in a landscape context will be a key component of the finalised Strategy. A copy of the adopted Strategy could be provided to the NPWS upon request.

#### Addressing of the issue by the Plan of Management and recommendations

The draft Plan is noted to include the "significant population of koalas" as a significant value of the SCA. Section 3.4 of the draft Plan is also noted to list as a key issue (of relevance) to koalas *"it is vital to maintain habitat linkages to other Parks and special area lands"*. However, it is considered the above statements have not been adequately translated into the 'Desired Outcome' and 'Management Response' section of the draft Plan. **It is consequently recommended that the draft Plan be amended to include::**

- A specific management priority to the effect 'Maintain and enhance the function of the SCA as significant linkage in the koala habitat corridor between the Water Catchment Areas in the east and the Bargo Landscape Area and the Greater Blue Mountains World Heritage Area to the west'.
- An additional action to monitor the populations of koalas and their movement both within the SCA and adjoining bushland areas (including the Bargo Gorge).
- An action which has a specific reference to the protection of koala habitat in a landscape context based on the current listed issue within the draft Plan *"It is vital to maintain habitat linkages to other parks and special area lands"*.

(c) Pedestrian linkage issues

### Description of issue

The Bargo Gorge is considered to have potential suitability for the future installation of a suitability environmental sensitive walking trail which could extend from Tahmoor and Bargo in the West to the Crown Land directly to the north of the Bargo Landscape Area, which is under the Care and Control of Council. There is potential for such a trail to incorporate the section of the Bargo Conservation Area to the west of Bargo.

The installation of such a walking trail is a long-term consideration subject to the addressing of a number of significant constraints including environmental as well as land tenure, (given that Council is not the owner or has care and control responsibilities for any of the public lands). However, it has considered future potential benefits in increasing community awareness of the significance of the area as well as community health subject to sufficient environmental assessment and safeguards as well as adequate design and maintenance.

The draft Plan is noted to state in relation to this matter that Water NSW will only allow access for individuals or groups who meet certain criteria including *"access is for an activity that cannot be carried out elsewhere"*. This statement has been interpreted by Staff as indicating the future extension of the walking trail into parts of the SCA as being unlikely to be approved by either Water NSW or NPWS. **However, clarification over whether NPWS would consider a low impact trail in any part of the SCA under any circumstances would be appreciated.**

### Council position regarding the issue

Council has not adopted formal position regarding the future installation of a walking trail in any part of the Bargo Landscape Area. Such a trail does however have consistency with a key strategy contained in Council's Community Strategic Plan regarding the investigation of eco-tourism opportunities.

Of relevance to this matter, the NPWS is requested to note that Council has lodged an Expression of Interest to participate in the Department of Land's Land Negotiation Program. Council understands the Department of Lands does not intend to provide funds for the on-going management of any Crown Land transferred to local councils under this Project/Program. It is unlikely that Council would not accept ownership of Crown Land within the Bargo Gorge, (if offered) under this arrangement unless an acceptable Biobanking Stewardship Agreement (for a particular site), was achieved. The installation of a low impact walking trail may be considered acceptable in an area covered by such an Agreement by Staff subject to a range of conditions including adequate design and funding (for construction and maintenance).

### Addressing of the issue by the draft Plan

The draft Plan is considered to not contain any measure which specifically prohibits bushwalking style activities within the SCA. It has however been assumed that such activities would not be approved based in large part on the statement within the draft Plan that activities *"which cannot be undertaken elsewhere"* is not permitted.

Section 3.6.2 of the draft Plan is noted to include an Action regarding this matter *"Liaise with Water NSW regarding the provision of information to the public about the SCA and its*

*natural, cultural and water quality values at the Nepean Dam picnic area. Consider providing information at other locations if appropriate".* The draft Plan is recognised as not directly applying to any land outside the boundaries of the SCA. However, the future installation of a potential picnic area style track-head destination in the Crown Reserve immediately to the north of the SCA is considered to have consistencies with this Action.

**Discussion with the NPWS regarding this matter is consequently being sought prior to the finalisation of the draft Plan.** It is considered this could occur as part of the discussions in regard to land tenure and ownership issues associated with the Bargo Gorge requested in a preceding section of this submission

(ii) *Issues associated with impacts of potential mining activity within the SCA and its upland swamps*

#### Description of the issue

Mineral exploration and mining are recognised as being permitted within the SCA under the *National Parks and Wildlife Act 1974*. The draft Plan is noted to state in relation to this matter that *"no underground mining activity has occurred to date within the boundaries of the SCA"*. This issue is considered to have relevance to watercourses downstream, (including Bargo River), based on known research regarding the potential impacts of underground mining operations on surface and groundwater environments as well as their connectivity.

#### Council position

Council, as a broad position, does not oppose undergrounding mining activity provided such activity can occur without adverse impacts to the natural, cultural and built environment. Council has also taken a proactive position in advocating concerns of the local community over potential impacts of mining including upland swamps in the form of representations as well as a range of submissions.

Council has not adopted a specific condition regarding the issue of mining in Drinking Catchment Areas. However, this aspect of the draft Plan is considered to have consistency with the following resolution of Council at its meeting of June 2014, in relation to the undertaking of coal seam gas operations in drinking catchment areas:

*Wollondilly Shire Council joins with Griffith and Wollongong Councils in their action to lobby Federal Government to ban CSG in our drinking water areas.*

The revised biodiversity legislative framework introduced on August 25th 2017 by the NSW Government is noted to contain the *Policy Framework for Biodiversity Offsets for Upland Swamps and Associated Threatened Species (Swamp Policy Framework)*. Council's submission on this framework requested suitably qualified independent advice that the Policy will not result in adverse outcomes to the values and functions of any upland swamp from underground mining operations.

#### Addressing of the issue by the Plan of Management

The regulation of mining activities and development and implementation of specific measures to manage and protect the upland swamps within the SCA is recognised as being outside the responsibilities of the NPWS. The draft Plan is however considered an important document in this regard in implementing measures to manage and protect the swamps within the overall policy framework at the State and Commonwealth level.



Within this context, the draft Plan is considered to have adequately described the significance of the swamps from a biodiversity and hydrological perspective. The management actions are also considered broadly adequate within the context of NPWS's responsibilities. **However, it is suggested that the NPWS consider adopting a position similar to that of Council's regarding the Swamp Policy Framework referred to above . It is further suggested that the draft Plan be amended to incorporate any such position.**

## **PART B: SPECIFIC ASPECTS OF THE DRAFT PLAN**

This section of the submission provides comments on specific aspects of the draft Plan of relevance to the concerns and responsibilities of Council as well as identified recommended amendments.

### **1) Management context**

#### **(i) Policy and Legislative framework**

The draft Plan is noted to state in relation to this matter *"Once the Minister has adopted a Plan, the Plan must be carried out and only those operations that are in accordance with the Plan may be undertaken"*. It is requested that the adoption of the Plan occur as soon as practically possible given this important statutory role. The NPWS is requested to note in this regard that Council resolved at its meeting of 19 June 2017 to write to the Minister for the Environment expressing concern that the draft Plan of Management for Thirlmere Lakes National Park, (publicly exhibited in October 2014), was yet to be endorsed.

#### **(ii) Specific management directions**

The listed specific management directions for application by the draft Plan are considered adequate within the specific context of the SCA. However, Section A of this submission has referred to the considered importance (by Council) of the SCA in providing habitat connectivity with the Bargo Gorge particularly in relation to koalas. **It is consequently recommended that the draft Plan be amended to include a specific management priority to the effect to 'Maintain and enhance the function of the SCA as significant linkage in the koala habitat corridor between the Water Catchment Areas in the east and the Bargo Landscape Area and GBMWA to the west'.**

### **2) Values**

The following provides comments regarding the description of the values of the SCA and intended management response to these values by the draft Plan. Comments in regard to Geodiversity and 'Water supply and water quality' values have been provided in Part A of this submission.

#### **(i) Protection of biodiversity in general**

The draft Plan is noted to contain a number of references to the *Threatened Species Conservation Act 1995* and the associated *Threatened Species Priorities Action Statement*. **It is recommended that the draft Plan be updated to reflect the new biodiversity framework introduced by the NSW Government on 25th August 2017.**

The draft Plan in relation to this matter is considered to provide a comprehensive description of the vegetation communities, flora and fauna species and associated habitat within the SCA as well as their significance. It is noted in this regard that a number of the approximately 60 percent of the 33 ecological communities listed in the draft Plan not classified as threatened are considered to have conservation value. It is considered however, that the actions have an emphasis on threatened species and communities

**The following recommended amendments to the draft Plan are provided for consideration by the NPWS:**

- The desired Outcome *“As far as possible, protect threatened ecological communities and other priority habitats, such as riparian vegetation, from disturbance”* be amended to ‘protect ecological communities of identified conservation value’.
- The actions in relation to the protection of biodiversity be expanded to refer to both threatened and non-threatened ecological communities.

*(ii) Protection of Aboriginal heritage*

The draft Plan is considered to have adequately described the Aboriginal heritage significance of the SCA in terms of sites as well as the role of local Aboriginal groups. Council Staff consider, (based on comments provided by local groups and reviewing archaeological reports), that the SCA has potential Aboriginal heritage significance in a landscape context.

The draft Plan is acknowledged to state in relation to this matter *“Natural values within a landscape are central to Aboriginal spiritually and contribute to Aboriginal identity. NPWS recognises the significance of Aboriginal cultural heritage and the need to ensure that it is managed in an integrated manner in an integrated manner across the landscape”*. However, it is considered these statements could be more adequately represented and more explicit within the Outcomes and Management Responses of the draft Plan regarding this matter.

**It is therefore recommended that the draft Plan be amended as follows in association with local Aboriginal groups and the NSW OEH:**

- The desired outcome *“Aboriginal cultural heritage values are protected and managed in consultation with the Aboriginal community”* be amended to explicitly refer to Aboriginal sites as well as Aboriginal heritage in a landscape context.
- The management response *“Consult and involve relevant groups ..... In all aspects of management of Aboriginal cultural values”* be amended to explicitly refer to Aboriginal sites as well as Aboriginal heritage in a landscape context

**3) Threats**

This section of the draft Plan has relevance to Council’s statutory responsibilities in regard to pest and weed management as well as managing bushfire risk. The following provides comments on Section 4 of the document and recommended amendments within this context.

*(i) Pest management*

The reference of the responses to the Regional Pest Management Strategy and to undertake programs in collaboration with adjoining landowners are considered sufficient to adequately link with Council's activities and responsibilities. **As a general comment however, it is recommended the draft Plan be updated to refer to the Biosecurity Act 2016 and its associated components.**

In relation to aquatic weeds, the draft Plan is noted to state "*An infestation of the aquatic plant marsh *Hypericum* has been identified near the southern edge of the SCA on the Nepean River*". In this regard, there is considered potential for the spread of aquatic weeds identified within the SCA to downstream waterways where Council has management responsibilities. **It is therefore recommended that the draft Plan be amended to include an appropriately worded action which will ensure that Council is notified of any instances of aquatic weeds of concern detected within the SCA.**

(ii) *Fire management*

Council currently prepares and implements an annual hazard reduction program as part of its membership of the Southern Highlands Bush Fire Management Committee. Management Response 4.2.7 of the draft Plan referring to the participation of the NPWS on this Committee to "*ensure a coordinated approach to bushfire planning and management ....*" is therefore supported. Action 4.2.2 "*Prepare and implement annual works schedules in accordance with the fire management strategy and in consultation with Water NSW*" is also supported in principle. However, it is considered appropriate for the draft Plan to require consultation with Wollondilly (as well as potentially Wingecarribee) Shire Councils as needed.

In a related matter, Council has care and control responsibilities for Crown Land adjoining the northern boundary of the SCA and programs hazard reduction activities in this area as part of its overall program. It is assumed that the NPWS is aware that Council does not have such responsibilities for the Crown Land allotments adjoining sections of the western boundary. Consultation with the Department of Lands over hazard reduction activities in these Crown Land allotments would therefore be required.

**It is consequently recommended that the action "*Prepare and implement annual fire management work schedules in accordance with the fire management strategy and in consultation with Water NSW*" be expanded to also refer to Wollondilly and Wingecarribee Shire Councils (as well as the Department of Lands).**

### **Part C: Concluding Statement**

The Upper Nepean State Conservation Area is viewed as having significant natural and cultural values as well as being an important component. Council welcome the preparation of a draft Plan of Management for the Upper Nepean State Conservation Area and provides broad support to the document within this context.

This submission has however identified a number of recommended amendments to enhance consistency with Council's adopted position in relation to the Nepean-Bargo River Gorge given its important connectivity with the SCA. It also refers to the resolution of Council seeking discussions with NPWS Staff over land tenure and ownership issues as well as the management of koala populations and associated habitat as a consequence of this connectivity.

# Map 1: Attachment 1

Extract from the listing prepared by the National Trust



Bargo River Gorge Wildlife Corridor between the Greater Blue Mountains World Heritage Area and The catchment area of the Cataract, Cordeaux, Avon and Nepean Dams



## Map 2 Linkage between SCA and Bargo- Nepean River Gorge

