

# **ATTACHMENT BOOKLET**

## **Corporate & Legal**

**ORDINARY COUNCIL MEETING**

**TUESDAY 26 JULY 2022**

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# **The Northern Beaches Council Code of Conduct**

**2022**

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## PART 1 INTRODUCTION

The Northern Beaches Code of Conduct ("the Code of Conduct") is aligned to the Model Code of Conduct for Local Councils in NSW ("the Model Code of Conduct") which is made under section 440 of the *Local Government Act 1993* ("LGA") and the *Local Government (General) Regulation 2021* ("the Regulation").

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

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

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

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

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

Failure by a member of staff to comply with a Council's Code of Conduct may give rise to disciplinary action.

## PART 2 DEFINITIONS

In this Code of Conduct, the following terms have the following meanings:

administrator	an administrator of a council appointed under the LGA other than an administrator appointed under section 66
CEO	the Chief Executive Officer (carries out the role of the general manager of a council in accordance with the Local Government Act 1993) includes the executive officer of a joint organisation.

committee	see the definition of “council committee”
complaint	a Code of Conduct complaint made for the purposes of clauses 4.1 and 4.2 of the Procedures.
conduct	includes acts and omissions
council	includes county councils and joint organisations
council committee	a committee established by Council comprising of councillors, staff or other persons that Council has delegated functions to and Council’s Audit, Risk and Improvement Committee
council committee member	a person other than a councillor or member of staff of a council who is a member of a council committee other than a wholly advisory committee, and a person other than a councillor who is a member of Council’s Audit, Risk and Improvement Committee
council official	includes councillors, members of staff of a council, administrators, council committee members, delegates of council and, for the purposes of clause 4.16, council advisers
councillor	any person elected or appointed to civic office, including the Mayor and includes members and chairpersons of county councils and voting representatives of the boards of joint organisations and chairpersons of joint organisations
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	a person referred to in clause 4.8
election campaign	includes council, state and federal election campaigns
environmental planning instrument	has the same meaning as it has in the <i>Environmental Planning and Assessment Act 1979</i>
joint organisation	a joint organisation established under section 400O of the LGA
LGA	<i>Local Government Act 1993</i>
local planning panel	a local planning panel constituted under the <i>Environmental Planning and Assessment Act 1979</i>

Mayor	includes the chairperson of a county council or a joint organisation
members of staff of a council	includes members of staff of county councils and joint organisations
the Office	Office of Local Government
personal information	information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion
the Procedures	the <i>Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW</i> prescribed under the Regulation
the Regulation	the <i>Local Government (General) Regulation 2021</i>
voting representative	a voting representative of the board of a joint organisation
wholly advisory committee	a council committee that Council has not delegated any functions to

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

#### General conduct

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

#### Fairness and equity

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

#### Harassment and discrimination

- 3.6 You must not harass or unlawfully discriminate against others, or support others who harass or unlawfully discriminate against others, on the grounds of age, disability, race (including colour, national or ethnic origin or immigrant status), sex, pregnancy, marital or relationship status, family responsibilities or breastfeeding, sexual orientation, gender identity or intersex status or political, religious or other affiliation.
- 3.7 For the purposes of this Code, "harassment" is any form of behaviour towards a person that:
- a) is not wanted by the person
  - b) offends, humiliates or intimidates the person, and
  - c) creates a hostile environment.

Bullying

3.8 You must not engage in bullying behaviour towards others.

3.9 For the purposes of this Code, “bullying behaviour” is any behaviour in which:

- a) a person or a group of people repeatedly behaves unreasonably towards another person or a group of persons, and
- b) the behaviour creates a risk to health and safety.

3.10 Bullying behaviour may involve, but is not limited to, any of the following types of behaviour:

- a) aggressive, threatening or intimidating conduct
- b) belittling or humiliating comments
- c) spreading malicious rumours
- d) teasing, practical jokes or ‘initiation ceremonies’
- e) exclusion from work-related events
- f) unreasonable work expectations, including too much or too little work, or work below or beyond a worker's skill level
- g) displaying offensive material
- h) pressure to behave in an inappropriate manner.

3.11 Reasonable management action carried out in a reasonable manner does not constitute bullying behaviour for the purposes of this Code. Examples of reasonable management action may include, but are not limited to:

- a) performance management processes
- b) disciplinary action for misconduct
- c) informing a worker about unsatisfactory work performance or inappropriate work behaviour
- d) directing a worker to perform duties in keeping with their job
- e) maintaining reasonable workplace goals and standards
- f) legitimately exercising a regulatory function
- g) legitimately implementing a council policy or administrative processes.

Work health and safety

3.12 All council officials, including councillors, owe statutory duties under the *Work Health and Safety Act 2011* (WHS Act). You must comply with your duties under the WHS Act and your responsibilities under any policies or procedures adopted by Council to ensure workplace health and safety. Specifically, you must:

- a) take reasonable care for your own health and safety
- b) take reasonable care that your acts or omissions do not adversely affect the health and safety of other persons
- c) comply, so far as you are reasonably able, with any reasonable instruction that is given to ensure compliance with the WHS Act and any policies or procedures adopted by Council to ensure workplace health and safety
- d) cooperate with any reasonable policy or procedure of Council relating to workplace health or safety that has been notified to council staff
- e) report accidents, incidents or near misses to the CEO or such other staff member nominated by the CEO, and take part in any incident investigations

- f) so far as is reasonably practicable, consult, co-operate and coordinate with all others who have a duty under the WHS Act in relation to the same matter.

Land use planning, development assessment and other regulatory functions

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

Binding caucus votes

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

Obligations in relation to meetings

- 3.19 You must comply with rulings by the chair at council and committee meetings or other proceedings of Council unless a motion dissenting from the ruling is passed.
- 3.20 You must not engage in bullying behaviour (as defined under this Part and Council's Prevention of Discrimination, Bullying and Harassment in the Workplace Policy) towards the chair, other council officials or any members of the public present during council or committee meetings or other proceedings of Council (such as, but not limited to, workshops and briefing sessions).
- 3.21 You must not engage in conduct that disrupts council or committee meetings or other proceedings of Council (such as, but not limited to, workshops and briefing sessions), or that would otherwise be inconsistent with the orderly conduct of meetings.

- 3.22 If you are a councillor, you must not engage in any acts of disorder or other conduct that is intended to prevent the proper or effective functioning of Council or of a committee of Council. Without limiting this clause, you must not:
- a) leave a meeting of Council or a committee for the purposes of depriving the meeting of a quorum, or
  - b) submit a rescission motion with respect to a decision for the purposes of voting against it to prevent another councillor from submitting a rescission motion with respect to the same decision, or
  - c) deliberately seek to impede the consideration of business at a meeting.

## PART 4 PECUNIARY INTERESTS

### What is a pecuniary interest?

- 4.1 A pecuniary interest is an interest that you have in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to you or a person referred to in clause 4.34.
- 4.2 You will not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision you might make in relation to the matter, or if the interest is of a kind specified in clause 4.6.
- 4.3 For the purposes of this Part, you will have a pecuniary interest in a matter if the pecuniary interest is:
- (a) your interest, or
  - (b) the interest of your spouse or de facto partner, your relative, or your partner or employer, or
  - (c) a company or other body of which you, or your nominee, partner or employer, is a shareholder or member.
- 4.4 For the purposes of clause 4.3:
- (a) Your “relative” is any of the following:
    - i) your parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant, adopted or foster child
    - ii) your spouse’s or de facto partner’s parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant, adopted or foster child
    - iii) the spouse or de facto partner of a person referred to in paragraphs (i) and (ii).
  - (b) “de facto partner” has the same meaning as defined in section 21C of the *Interpretation Act 1987*.
- 4.5 You will not have a pecuniary interest in relation to a person referred to in subclauses 4.3(b) or (c):
- (a) if you are unaware of the relevant pecuniary interest of your spouse, de facto partner, relative, partner, employer or company or other body, or
  - (b) just because the person is a member of, or is employed by, a council or a statutory body, or is employed by the Crown, or
  - (c) just because the person is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.

### What interests do not have to be disclosed?

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



to the public generally, or to a section of the public that includes persons who are not subject to this Code

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

- (n) an interest arising from being covered by, or a proposal to be covered by, indemnity insurance as a councillor or a council committee member
- (o) an interest arising from the appointment of a councillor to a body as a representative or delegate of Council, whether or not a fee or other recompense is payable to the representative or delegate.

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

What disclosures must be made by a designated person?

4.8 Designated persons include:

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

4.9 A designated person:

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

4.10 A designated person must disclose in writing via the NBC Disclosures Application to the CEO (or, if the person is the CEO, to Council) the nature of any pecuniary interest the person has in any council matter with which the person is dealing as soon as practicable after becoming aware of the interest.

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

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

4.13 A disclosure by the CEO must, as soon as practicable after the disclosure is made, be laid on the table at a meeting of Council and Council must deal with

the matter to which the disclosure relates or refer it to another person to deal with.

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

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

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

What disclosures must be made by council advisers?

4.16 A person who, at the request or with the consent of Council or a council committee, gives advice on any matter at any meeting of Council or committee, must disclose the nature of any pecuniary interest the person has in the matter to the meeting at the time the advice is given. The person is not required to disclose the person's interest as an adviser.

4.17 A person does not breach clause 4.16 if the person did not know, and could not reasonably be expected to have known, that the matter under consideration at the meeting was a matter in which they had a pecuniary interest.

What disclosures must be made by a council committee member?

4.18 A council committee member must disclose pecuniary interests in accordance with clause 4.28 and comply with clause 4.29.

4.19 For the purposes of clause 4.18, a "council committee member" includes a member of staff of Council who is a member of the committee.

What disclosures must be made by a councillor?

4.20 A councillor:

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

Disclosure of interests in written returns

4.21 A councillor or designated person must make and lodge with the CEO a return disclosing the councillor's or designated person's interests as specified in schedule 1 to this Code within 3 months after:

- (a) becoming a councillor or designated person, and
- (b) 30 June of each year, and
- (c) the councillor or designated person becoming aware of an interest they are required to disclose under schedule 1 that has not been previously disclosed in a return lodged under paragraphs (a) or (b).

The returns of interests referred to in this section should be made using the NBC Disclosures Application. In the event that there is a difficulty in using this Application, the paper form set out in schedule 2 to this Code may be used.

- 4.22 A person need not make and lodge a return under clause 4.21, paragraphs (a) and (b) if:
- (a) they made and lodged a return under that clause in the preceding 3 months, or
  - (b) they have ceased to be a councillor or designated person in the preceding 3 months.
- 4.23 A person must not make and lodge a return that the person knows or ought reasonably to know is false or misleading in a material particular.
- 4.24 The CEO must keep a register of returns required to be made and lodged with the CEO.
- 4.25 Returns required to be lodged with the CEO under clause 4.21(a) and (b) must be tabled at the first meeting of Council after the last day the return is required to be lodged.
- 4.26 Returns required to be lodged with the CEO under clause 4.21(c) must be tabled at the next council meeting after the return is lodged.
- 4.27 Information contained in returns made and lodged under clause 4.21 is to be made publicly available in accordance with the requirements of the *Government Information (Public Access) Act 2009*, the *Government Information (Public Access) Regulation 2009* and any guidelines issued by the Information Commissioner.

Disclosure of pecuniary interests at meetings

- 4.28 A councillor or a council committee member who has a pecuniary interest in any matter with which Council is concerned, and who is present at a meeting of Council or committee at which the matter is being considered, must disclose the nature of the interest to the meeting as soon as practicable.
- 4.29 The councillor or council committee member must not be present at, or in sight of, the meeting of Council or committee:
- (a) at any time during which the matter is being considered or discussed by Council or committee, or
  - (b) at any time during which Council or committee is voting on any question in relation to the matter.
- 4.30 In the case of a meeting of a board or joint organisation, a voting representative is taken to be present at the meeting for the purposes of clauses 4.28 and 4.29 where they participate in the meeting by telephone or other electronic means.
- 4.31 A disclosure made at a meeting of Council or a council committee must be recorded in the minutes of the meeting.

- 4.32 A general notice may be given to the CEO in writing by a councillor or a council committee member to the effect that the councillor or council committee member, or the councillor's or council committee member's spouse, de facto partner or relative, is:
- (a) a member of, or in the employment of, a specified company or other body, or
  - (b) a partner of, or in the employment of, a specified person.
- Such a notice is, unless and until the notice is withdrawn or until the end of the term of Council in which it is given (whichever is the sooner), sufficient disclosure of the councillor's or council committee member's interest in a matter relating to the specified company, body or person that may be the subject of consideration by Council or the council committee after the date of the notice.
- 4.33 A councillor or a council committee member is not prevented from being present at and taking part in a meeting at which a matter is being considered, or from voting on the matter, merely because the councillor or council committee member has an interest in the matter of a kind referred to in clause 4.6.
- 4.34 A person does not breach clauses 4.28 or 4.29 if the person did not know, and could not reasonably be expected to have known, that the matter under consideration at the meeting was a matter in which they had a pecuniary interest.
- 4.35 Despite clause 4.29, a councillor who has a pecuniary interest in a matter may participate in a decision to delegate consideration of the matter in question to another body or person.
- 4.36 Clause 4.29 does not apply to a councillor who has a pecuniary interest in a matter that is being considered at a meeting if:
- (a) the matter is a proposal relating to:
    - (i) the making of a principal environmental planning instrument applying to the whole or a significant portion of Council's area, or
    - (ii) the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant portion of Council's area, and
  - (b) the pecuniary interest arises only because of an interest of the councillor in the councillor's principal place of residence or an interest of another person (whose interests are relevant under clause 4.3) in that person's principal place of residence, and
  - (c) the councillor made a special disclosure under clause 4.37 in relation to the interest before the commencement of the meeting.
- 4.37 A special disclosure of a pecuniary interest made for the purposes of clause 4.35(c) must:
- (a) be in the form set out in schedule 3 of this Code and contain the information required by that form, and
  - (b) be laid on the table at a meeting of Council as soon as practicable after the disclosure is made, and the information contained in the special disclosure is to be recorded in the minutes of the meeting.

- 4.38 The Minister for Local Government may, conditionally or unconditionally, allow a councillor or a council committee member who has a pecuniary interest in a matter with which Council is concerned to be present at a meeting of Council or committee, to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion:
- (a) that the number of councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business, or
  - (b) that it is in the interests of the electors for the area to do so.
- 4.39 A councillor or a council committee member with a pecuniary interest in a matter who is permitted to be present at a meeting of Council or committee, to take part in the consideration or discussion of the matter and to vote on the matter under clause 4.37, must still disclose the interest they have in the matter in accordance with clause 4.28.

## PART 5 NON-PECUNIARY CONFLICTS OF INTEREST

### What is a non-pecuniary conflict of interest?

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

### Managing non-pecuniary conflicts of interest

- 5.6 Where you have a non-pecuniary conflict of interest in a matter for the purposes of clause 5.2, you must disclose the relevant private interest you have in relation to the matter fully and in writing via the NBC Disclosures Application as soon as practicable after becoming aware of the non-pecuniary conflict of interest and on each occasion on which the non-pecuniary conflict of interest arises in relation to the matter. In the case of members of council staff other than the CEO, such a disclosure is to be made to the staff member's manager. In the case of the CEO, such a disclosure is to be made to the Mayor. In the event that there is a difficulty in using this Application, the disclosure should be made in writing.
- 5.7 If a disclosure is made at a council or committee meeting, both the disclosure and the nature of the interest must be recorded in the minutes on each occasion on which the non-pecuniary conflict of interest arises. This disclosure constitutes disclosure in writing for the purposes of clause 5.6.
- 5.8 How you manage a non-pecuniary conflict of interest will depend on whether or not it is significant.



- 5.9 As a general rule, a non-pecuniary conflict of interest will be significant where it does not involve a pecuniary interest for the purposes of clause 4.1, but it involves:
- a) a relationship between a council official and another person who is affected by a decision or a matter under consideration that is particularly close, such as a current or former spouse or de facto partner, a relative for the purposes of clause 4.4 or another person from the council official's extended family that the council official has a close personal relationship with, or another person living in the same household
  - b) other relationships with persons who are affected by a decision or a matter under consideration that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship.
  - c) an affiliation between a council official and an organisation (such as a sporting body, club, religious, cultural or charitable organisation, corporation or association) that is affected by a decision or a matter under consideration that is particularly strong. The strength of a council official's affiliation with an organisation is to be determined by the extent to which they actively participate in the management, administration or other activities of the organisation.
  - d) membership, as Council 's representative, of the board or management committee of an organisation that is affected by a decision or a matter under consideration, in circumstances where the interests of Council and the organisation are potentially in conflict in relation to the particular matter
  - e) a financial interest (other than an interest of a type referred to in clause 4.6) that is not a pecuniary interest for the purposes of clause 4.1
  - f) the conferral or loss of a personal benefit other than one conferred or lost as a member of the community or a broader class of people affected by a decision.
- 5.10 Significant non-pecuniary conflicts of interest must be managed in one of two ways:
- a) by not participating in consideration of, or decision making in relation to, the matter in which you have the significant non-pecuniary conflict of interest and the matter being allocated to another person for consideration or determination, or
  - b) if the significant non-pecuniary conflict of interest arises in relation to a matter under consideration at a council or committee meeting, by managing the conflict of interest as if you had a pecuniary interest in the matter by complying with clauses 4.28 and 4.29.
- 5.11 If you determine that you have a non-pecuniary conflict of interest in a matter that is not significant and does not require further action, when disclosing the interest you must also explain in writing why you consider that the non-pecuniary conflict of interest is not significant and does not require further action in the circumstances.



- 5.12 If you are a member of staff of Council other than the CEO, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with and at the direction of your manager. In the case of the CEO, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with and at the direction of the Mayor.
- 5.13 Despite clause 5.10(b), a councillor who has a significant non-pecuniary conflict of interest in a matter, may participate in a decision to delegate consideration of the matter in question to another body or person.
- 5.14 Council committee members are not required to declare and manage a non-pecuniary conflict of interest in accordance with the requirements of this Part where it arises from an interest they have as a person chosen to represent the community, or as a member of a non-profit organisation or other community or special interest group, if they have been appointed to represent the organisation or group on the council committee.

#### Political donations

- 5.15 Councillors should be aware that matters before council or committee meetings involving their political donors may also give rise to a non-pecuniary conflict of interest.
- 5.16 Where you are a councillor and have received or knowingly benefitted from a reportable political donation:
- a) made by a major political donor in the previous four years, and
  - b) the major political donor has a matter before Council,
- you must declare a non-pecuniary conflict of interest in the matter, disclose the nature of the interest, and manage the conflict of interest as if you had a pecuniary interest in the matter by complying with clauses 4.28 and 4.29. A disclosure made under this clause must be recorded in the minutes of the meeting.
- 5.17 For the purposes of this Part:
- a) a “reportable political donation” has the same meaning as it has in section 6 of the *Electoral Funding Act 2018*
  - b) “major political donor” has the same meaning as it has in the *Electoral Funding Act 2018*.
- 5.18 Councillors should note that political donations that are not a “reportable political donation”, or political donations to a registered political party or group by which a councillor is endorsed, may still give rise to a non-pecuniary conflict of interest. Councillors should determine whether or not such conflicts are significant for the purposes of clause 5.9 and take the appropriate action to manage them.
- 5.19 Despite clause 5.16, a councillor who has received or knowingly benefitted from a reportable political donation of the kind referred to in that clause, may participate in a decision to delegate consideration of the matter in question to another body or person.

Loss of quorum as a result of compliance with this Part

5.20 A councillor who would otherwise be precluded from participating in the consideration of a matter under this Part because they have a non-pecuniary conflict of interest in the matter is permitted to participate in consideration of the matter if:

- a) the matter is a proposal relating to:
  - i) the making of a principal environmental planning instrument applying to the whole or a significant portion of Council's area, or
  - ii) the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant portion of Council's area, and
- b) the non-pecuniary conflict of interest arises only because of an interest that a person has in that person's principal place of residence, and
- c) the councillor discloses the interest they have in the matter that would otherwise have precluded their participation in consideration of the matter under this Part in accordance with clause 5.6.

5.21 The Minister for Local Government may, conditionally or unconditionally, allow a councillor or a council committee member who is precluded under this Part from participating in the consideration of a matter to be present at a meeting of the Council or committee, to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion:

- a) that the number of councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business, or
- b) that it is in the interests of the electors for the area to do so.

5.22 Where the Minister exempts a councillor or committee member from complying with a requirement under this Part under clause 5.21, the councillor or committee member must still disclose any interests they have in the matter the exemption applies to, in accordance with clause 5.6.

Other business, employment or volunteering

5.23 The CEO must not engage, for remuneration, in private employment, contract work or other business outside the service of Council without the approval of Council.

5.24 A member of staff must not engage, for remuneration, in private employment, contract work, other business or in a volunteering capacity outside the service of Council that relates to the business of Council or that might conflict with the staff member's Council duties unless they have notified the CEO in writing of the employment, work or business and the CEO has given their written approval for the staff member to engage in the employment, work, business or volunteering. Staff must complete Council's Secondary/Private Employment Request form found on Council's intranet.

5.25 The CEO may at any time prohibit a member of staff from engaging, for remuneration, in private employment, contract work, other business or volunteering outside the service of Council that relates to the business of Council, or that might conflict with the staff member's Council duties.

- 5.26 A member of staff must not engage, for remuneration, in private employment, contract work, other business or volunteering outside the service of Council if prohibited from doing so.
- 5.27 Members of staff must ensure that any outside employment, work, business or volunteering they engage in will not:
- a) conflict with their official duties
  - b) involve using confidential information or council resources obtained through their work with Council including where private use is permitted
  - c) require them to work while on council duty
  - d) discredit or disadvantage Council
  - e) pose, due to fatigue, a risk to their health or safety, or to the health and safety of their co-workers.

Personal dealings with Council

- 5.28 You may have reason to deal with Council in your personal capacity (for example, as a ratepayer, recipient of a council service or applicant for a development consent granted by Council). You must not expect or request preferential treatment in relation to any matter in which you have a private interest because of your position. You must avoid any action that could lead members of the public to believe that you are seeking preferential treatment.
- 5.29 You must undertake any personal dealings you have with Council in a manner that is consistent with the way other members of the community deal with Council. You must also ensure that you disclose and appropriately manage any conflict of interest you may have in any matter in accordance with the requirements of this Code.

**PART 6 PERSONAL BENEFIT**

- 6.1 For the purposes of this Part, a gift or a benefit is something offered to or received by a council official or someone personally associated with them for their personal use and enjoyment.
- 6.2 A reference to a gift or benefit in this Part does not include:
- a) a political donation for the purposes of the *Electoral Funding Act 2018*
  - b) a gift provided to Council as part of a cultural exchange or sister-city relationship that is not converted for the personal use or enjoyment of any individual council official or someone personally associated with them
  - c) a benefit or facility provided by Council to an employee or councillor
  - d) attendance by a council official at a work-related event or function for the purposes of performing their official duties, or
  - e) free or subsidised meals, beverages or refreshments provided to council officials in conjunction with the performance of their official duties such as, but not limited to:
    - i) the discussion of official business
    - ii) work-related events such as Council-sponsored or community events, training, education sessions or workshops
    - iii) conferences
    - iv) council functions or events
    - v) social functions organised by groups, such as council committees and community organisations.

Gifts and benefits

- 6.3 You must avoid situations that would give rise to the appearance that a person or body is attempting to secure favourable treatment from you or from Council, through the provision of gifts, benefits or hospitality of any kind to you or someone personally associated with you.
- 6.4 A gift or benefit is deemed to have been accepted by you for the purposes of this Part, where it is received by you or someone personally associated with you.

Zero gift and benefit position

- 6.5 In the course of their duties, council officials may encounter situations in which they are offered gifts or benefits for a variety of reasons. The intent behind a gift can either be considered as a gift of influence, or a gift of gratitude. Regardless of the intent, public perception is a key consideration in determining Council's position regarding gifts and benefits offered to council officials and delegates.
- 6.6 A zero gift and benefit position establishes an unambiguous position and consistency of approach as it applies to council officials, which can be communicated clearly to ratepayers, residents, customers and suppliers.

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

- 6.7 You must not:
- a) seek or accept a bribe or other improper inducement
  - b) seek gifts or benefits of any kind

- c) accept any offer of gifts or benefits, regardless of value, and you must immediately report the offer to your manager (for staff) or the CEO (for councillors) using the NBC Disclosures Application. If you experience difficulties using the Application, you may use the Gifts and Benefits Disclosure Form.
- d) accept an offer of cash or a cash-like gift as defined by clause 6.13, regardless of the amount
- e) participate in competitions for prizes where eligibility is based on Council being in or entering into a customer–supplier relationship with the competition organiser
- f) personally benefit from reward points programs when purchasing on behalf of Council.

Where you are unable to easily refuse or return a gift or benefit, the gift must be surrendered to Council. Examples of this are:

- a) Anonymous gifts (received through the mail or left without a return address)
- b) A gift received in a public forum where attempts to refuse or return it would cause embarrassment or offence to the donor. In instances such as this, the manager (for staff) or the CEO (for councillors) will determine how to deal with the gift which may include donation to an appropriate charity
- c) Where the value of a gift cannot be established.

#### Exceptions

- 6.8 Exceptions to the provisions relating to gifts and benefits are entirely at the CEO's discretion and will be determined in writing with reasons given for any specific exceptions.

In determining an exception, the CEO will also determine whether the gift in question may be retained by a council official or an alternative for how the gift may be retained.

Examples of the circumstances where exceptions may be approved by the CEO include:

- a) Staff of Council's child-care centres or pre-school locations – for gifts of token value and only when the gifts are offered by children attending the centre or preschool as a Christmas gift or gift of thanks associated with their role.
- b) Program staff of Council's two aquatic centres (Frenchs Forest and Manly) for gifts of token value and only when the gifts are offered by attendees of swim or other program classes at the aquatic centres as a Christmas gift or gift of thanks associated with their role.

- 6.10 "Token value" in relation to gifts considered under the CEO exception process is set at \$20. Any gifts with an estimated value of more than \$20 are not considered "token" and should be refused and returned.

- 6.11 All offers of gifts or benefits, including those where exceptions are approved, must be disclosed promptly to your manager or the CEO by using the NBC

Disclosures Application. If you experience difficulties using the Application, you may use the Gifts and Benefits Disclosure Form. The recipient, manager, or CEO must ensure that, at a minimum, the following details are recorded in Council's Gift and Benefit Register:

- a) the nature of the gift or benefit
- b) the estimated monetary value of the gift or benefit
- c) the name of the person who offered the gift or benefit, and
- d) the date on which the gift or benefit was offered
- e) whether there is an exemption in place allowing the recipient to keep the gift.

Gifts and benefits of token value

6.12 You must not accept any gifts or benefits regardless of their stated or assumed value other than where the gift or benefit meets the criteria as an exception under clause 6.9.

"Cash-like" gifts

6.13 You must not accept any cash-like gifts. For the purposes of clause 6.7(d), "cash-like" gifts include, but are not limited to, gift vouchers, credit cards, debit cards with credit on them, prepayments such as phone or internet credit, lottery tickets, memberships or entitlements to discounts that are not available to the general public or a broad class of persons.

Improper and undue influence

6.14 You must not use your position to influence other council officials in the performance of their official functions to obtain a private benefit for yourself or for somebody else. A councillor will not be in breach of this clause where they seek to influence other council officials through the proper exercise of their role as prescribed under the LGA.

6.15 You must not take advantage (or seek to take advantage) of your status or position with Council, or of functions you perform for Council, in order to obtain a private benefit for yourself or for any other person or body.

## PART 7 RELATIONSHIPS BETWEEN COUNCIL OFFICIALS

### Obligations of councillors

- 7.1 Council is a body politic. Councillors or administrators are the governing body of Council. Under section 223 of the LGA, the role of the governing body of Council includes the development and endorsement of the strategic plans, programs, strategies and policies of Council, including those relating to workforce policy, and to keep the performance of Council under review.
- 7.2 Councillors or administrators must not:
- a) direct council staff other than by giving appropriate direction to the CEO by way of Council or committee resolution, or by the Mayor or administrator exercising their functions under section 226 of the LGA
  - b) in any public or private forum, direct or influence, or attempt to direct or influence, any other member of the staff of Council or a delegate of Council in the exercise of the functions of the staff member or delegate
  - c) contact a member of the staff of 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 Council and the CEO
  - d) contact or issue instructions to any of Council 's contractors, including Council's legal advisers, unless by the Mayor or administrator exercising their functions under section 226 of the LGA.
- 7.3 Despite clause 7.2, councillors may contact Council 's external auditor or the chair of Council 's Audit Risk and Improvement Committee to provide information reasonably necessary for the external auditor or the Audit, Risk and Improvement Committee to effectively perform their functions.

### Obligations of staff and others subject to this Code of Conduct

- 7.4 Under section 335 of the LGA, the role of the CEO includes conducting the day-to-day management of Council in accordance with the strategic plans, programs, strategies and policies of Council, implementing without undue delay lawful decisions of Council and ensuring that the Mayor and other councillors are given timely information and advice and the administrative and professional support necessary to effectively discharge their official functions.
- 7.5 Members of staff of Council must:
- a) give their attention to the business of Council while on duty
  - b) ensure that their work is carried out ethically, efficiently, economically and effectively
  - c) carry out reasonable and lawful directions given by any person having authority to give such directions
  - d) give effect to the lawful decisions, policies and procedures of 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 Council does not interfere with the performance of their official duties.



Inappropriate interactions

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

- a) councillors and administrators approaching staff and staff organisations to discuss individual or operational staff matters (other than matters relating to broader workforce policy), grievances, workplace investigations and disciplinary matters
- b) council staff approaching councillors and administrators to discuss individual or operational staff matters (other than matters relating to broader workforce policy), grievances, workplace investigations and disciplinary matters
- c) subject to clause 8.6, council staff refusing to give information that is available to other councillors to a particular councillor
- d) councillors and administrators who have lodged an application with Council, discussing the matter with council staff in staff-only areas of Council
- e) councillors and administrators approaching members of local planning panels or discussing any application that is either before the panel or that will come before the panel at some future time, except during a panel meeting where the application forms part of the agenda and the councillor or administrator has a right to be heard by the panel at the meeting
- f) councillors and administrators being overbearing or threatening to council staff
- g) council staff being overbearing or threatening to councillors or administrators
- h) councillors and administrators making personal attacks on council staff or engaging in conduct towards staff that would be contrary to the general conduct provisions in Part 3 of this Code in public forums including social media
- i) councillors and administrators directing or pressuring council staff in the performance of their work, or recommendations they should make
- j) council staff providing ad hoc advice to councillors and administrators without recording or documenting the interaction as they would if the advice was provided to a member of the community
- k) council staff meeting with applicants or objectors alone AND outside office hours to discuss planning applications or proposals
- l) councillors attending on-site inspection meetings with lawyers and/or consultants engaged by Council associated with current or proposed legal proceedings unless permitted to do so by Council's CEO or, in the case of the Mayor or administrator, unless they are exercising their functions under section 226 of the LGA.



**PART 8 ACCESS TO INFORMATION AND COUNCIL RESOURCES**Councillor and administrator access to information

- 8.1 The CEO is responsible for ensuring that councillors and administrators can access information necessary for the performance of their official functions. The CEO and public officer are also responsible for ensuring that members of the public can access publicly available council information under the *Government Information (Public Access) Act 2009* (the GIPA Act).
- 8.2 The CEO must provide councillors and administrators with the information necessary to effectively discharge their official functions.
- 8.3 Members of staff of Council must provide full and timely information to councillors and administrators sufficient to enable them to exercise their official functions and in accordance with council procedures.
- 8.4 Members of staff of Council who provide any information to a particular councillor in the performance of their official functions must also make it available to any other councillor who requests it and in accordance with council procedures.
- 8.5 Councillors and administrators who have a private interest only in council information have the same rights of access as any member of the public.
- 8.6 Despite clause 8.4, councillors and administrators, who are precluded from participating in the consideration of a matter under this Code because they have a conflict of interest in the matter, are not entitled to request access to council information in relation to the matter unless the information is otherwise available to members of the public, or Council has determined to make the information available under the GIPA Act.

Councillors and administrators to properly examine and consider information

- 8.7 Councillors and administrators must ensure that they comply with their duty under section 439 of the LGA to act honestly and exercise a reasonable degree of care and diligence by properly examining and considering all the information provided to them relating to matters that they are required to make a decision on.

Refusal of access to information

- 8.8 Where the CEO or public officer determine to refuse access to information requested by a councillor or administrator, they must act reasonably. In reaching this decision, they must take into account whether or not the information requested is necessary for the councillor or administrator to perform their official functions (see clause 8.2) and whether they have disclosed a conflict of interest in the matter the information relates to that would preclude their participation in consideration of the matter (see clause 8.6). The CEO or public officer must state the reasons for the decision if access is refused.

Use of certain council information

8.9 In regard to information obtained in your capacity as a council official, you must:

- a) subject to clause 8.14, only access council information needed for council business
- b) not use that council information for private purposes
- c) not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for yourself, or any other person or body, from any information to which you have access by virtue of your office or position with Council
- d) only release council information in accordance with established council policies and procedures and in compliance with relevant legislation.

Use and security of confidential information

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

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

- a) only access confidential information that you have been authorised to access and only do so for the purposes of exercising your official functions
- b) protect confidential information
- c) only release confidential information if you have authority to do so
- d) only use confidential information for the purpose for which it is intended to be used
- e) not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person
- f) not use confidential information with the intention to cause harm or detriment to Council or any other person or body
- g) not disclose any confidential information discussed during a confidential session of a council or committee meeting or any other confidential forum (such as, but not limited to, workshops or briefing sessions).

Personal information

8.12 When dealing with personal information you must comply with:

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

Use of council resources

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

- 8.14 Union delegates and consultative committee members may have reasonable access to council resources and information for the purposes of carrying out their industrial responsibilities, including but not limited to:
- a) the representation of members with respect to disciplinary matters
  - b) the representation of employees with respect to grievances and disputes
  - c) functions associated with the role of the local consultative committee.
- 8.15 You must be scrupulous in your use of council property, including intellectual property, official services, facilities, technology and electronic devices and must not permit their misuse by any other person or body.
- 8.16 You must avoid any action or situation that could create the appearance that council property, official services or public facilities are being improperly used for your benefit or the benefit of any other person or body.
- 8.17 You must not use council resources (including council staff), property or facilities for the purpose of assisting your election campaign or the election campaigns of others unless the resources, property or facilities are otherwise available for use or hire by the public and any publicly advertised fee is paid for use of the resources, property or facility.
- 8.18 You must not use council letterhead, council crests, council email or social media or other information that could give the appearance it is official council material:
- a) for the purpose of assisting your election campaign or the election campaign of others, or
  - b) for other non-official purposes.
- 8.19 You must not convert any property of Council to your own use unless properly authorised.

#### Internet access

- 8.20 You must not use Council's computer resources or mobile or other devices to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature, or that could otherwise lead to criminal penalty or civil liability and/or damage Council's reputation.

#### Council record keeping

- 8.21 You must comply with the requirements of the *State Records Act 1998* and Council's records management policies and practices .
- 8.22 All information created, sent and received in your official capacity is a council record and must be managed in accordance with the requirements of the *State Records Act 1998* and Council's approved records management policies and practices.
- 8.23 All information stored in either soft or hard copy on council supplied resources (including technology devices and email accounts) is deemed to be related to the business of Council and will be treated as council records, regardless of

whether the original intention was to create the information for personal purposes.

- 8.24 You must not destroy, alter, or dispose of council information or records, unless authorised to do so. If you need to alter or dispose of council information or records, you must do so in consultation with Council's records manager and comply with the requirements of the *State Records Act 1998*.

Councillor access to council buildings

- 8.25 Councillors and administrators are entitled to have access to the Council Chamber, committee room, Mayor's office (subject to availability), councillors' rooms and public areas of Council's buildings during normal business hours and for meetings. Councillors and administrators needing access to these facilities at other times must obtain authority from the CEO.
- 8.26 Councillors and administrators must not enter staff-only areas of council buildings without the approval of the CEO (or their delegate) or as provided for in the procedures governing the interaction of councillors and council staff.
- 8.27 Councillors and administrators must ensure that when they are within a staff only area they refrain from conduct that could be perceived to improperly influence council staff decisions.

**PART 9 MAINTAINING THE INTEGRITY OF THIS CODE**Complaints made for an improper purpose

- 9.1 You must not make or threaten to make a complaint or cause a complaint to be made alleging a breach of this Code for an improper purpose.
- 9.2 For the purposes of clause 9.1, a complaint is made for an improper purpose where it is trivial, frivolous, vexatious or not made in good faith, or where it otherwise lacks merit and has been made substantially for one or more of the following purposes:
- a) to bully, intimidate or harass another council official
  - b) to damage another council official's reputation
  - c) to obtain a political advantage
  - d) to influence a council official in the exercise of their official functions or to prevent or disrupt the exercise of those functions
  - e) to influence Council in the exercise of its functions or to prevent or disrupt the exercise of those functions
  - f) to avoid disciplinary action under the Procedures
  - g) to take reprisal action against a person for making a complaint alleging a breach of this Code
  - h) to take reprisal action against a person for exercising a function prescribed under the Procedures
  - i) to prevent or disrupt the effective administration of this Code under the Procedures.

Detrimental action

- 9.3 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for a complaint they have made alleging a breach of this Code.
- 9.4 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for any function they have exercised under the Procedures.
- 9.5 For the purposes of clauses 9.3 and 9.4, a detrimental action is an action causing, comprising or involving any of the following:
- a) injury, damage or loss
  - b) intimidation or harassment
  - c) discrimination, disadvantage or adverse treatment in relation to employment
  - d) dismissal from, or prejudice in, employment
  - e) disciplinary proceedings.

Compliance with requirements under the Procedures

- 9.6 You must not engage in conduct that is calculated to impede or disrupt the consideration of a matter under the Procedures.
- 9.7 You must comply with a reasonable and lawful request made by a person exercising a function under the Procedures. A failure to make a written or oral

submission invited under the Procedures will not constitute a breach of this clause.

- 9.8 You must comply with a practice ruling made by the Office under the Procedures.

Disclosure of information about the consideration of a matter under the Procedures

- 9.9 All allegations of breaches of this Code must be dealt with under and in accordance with the Procedures.

- 9.10 You must not allege breaches of this Code other than by way of a complaint made or initiated under the Procedures.

- 9.11 You must not make allegations about, or disclose information about, suspected breaches of this Code at council, committee or other meetings, whether open to the public or not, or in any other forum, whether public or not.

- 9.12 You must not disclose information about a complaint you have made alleging a breach of this Code or any other matter being considered under the Procedures except for the purposes of seeking legal advice unless the disclosure is otherwise permitted under the Procedures.

- 9.13 Nothing under this Part prevents a person from making a public interest disclosure to an appropriate public authority or investigative authority under the *Public Interest Disclosures Act 1994* or Public Interest Disclosure (PID) Policy.

Complaints alleging a breach of this Part

- 9.14 Complaints alleging a breach of this Part by a councillor or the CEO or an administrator are to be managed by the Office. This clause does not prevent the Office from referring an alleged breach of this Part back to Council for consideration in accordance with the Procedures.

- 9.15 Complaints alleging a breach of this Part by other council officials are to be managed by the CEO in accordance with the Procedures.

**SCHEDULE 1: DISCLOSURES OF INTERESTS AND OTHER MATTERS IN  
WRITTEN RETURNS SUBMITTED UNDER CLAUSE 4.21**Part 1: PreliminaryDefinitions

1. For the purposes of the schedules to this Code, the following definitions apply:

*address* means:

- a) in relation to a person other than a corporation, the last residential or business address of the person known to the councillor or designated person disclosing the address, or
- b) in relation to a corporation, the address of the registered office of the corporation in New South Wales or, if there is no such office, the address of the principal office of the corporation in the place where it is registered, or
- c) in relation to any real property, the street address of the property.

*de facto partner* has the same meaning as defined in section 21C of the *Interpretation Act 1987*.

*disposition of property* means a conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, including the following:

- a) the allotment of shares in a company
- b) the creation of a trust in respect of property
- c) the grant or creation of a lease, mortgage, charge, easement, licence, power, partnership or interest in respect of property
- d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of a debt, contract or chose in action, or of an interest in respect of property
- e) the exercise by a person of a general power of appointment over property in favour of another person
- f) a transaction entered into by a person who intends by the transaction to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of another person.

*gift* means a disposition of property made otherwise than by will (whether or not by instrument in writing) without consideration, or with inadequate consideration, in money or money's worth passing from the person to whom the disposition was made to the person who made the disposition but does not include a financial or other contribution to travel.

*interest* means:

- a) in relation to property, an estate, interest, right or power, at law or in equity, in or over the property, or
- b) in relation to a corporation, a relevant interest (within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth) in securities issued or made available by the corporation.

*listed company* means a company that is listed within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth.

*occupation* includes trade, profession and vocation.

*professional or business association* means an incorporated or unincorporated body or organisation having as one of its objects or activities the promotion of the economic interests of its members in any occupation.

*property* includes money.

*return date* means:

- a) in the case of a return made under clause 4.21(a), the date on which a person became a councillor or designated person
- b) in the case of a return made under clause 4.21(b), 30 June of the year in which the return is made
- c) in the case of a return made under clause 4.21(c), the date on which the councillor or designated person became aware of the interest to be disclosed.

*relative* includes any of the following:

- a) a person's spouse or de facto partner
- b) a person's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant, adopted or foster child
- c) a person's spouse's or de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant, adopted or foster child
- d) the spouse or de facto partner of a person referred to in paragraphs (b) and (c).

*travel* includes accommodation incidental to a journey.

Matters relating to the interests that must be included in returns

2. *Interests etc. outside New South Wales:* A reference in this schedule or in Schedule 2 to a disclosure concerning a corporation or other thing includes any reference to a disclosure concerning a corporation registered, or other thing arising or received, outside New South Wales.
3. *References to interests in real property:* A reference in this schedule or in Schedule 2 to real property in which a councillor or designated person has an interest includes a reference to any real property situated in Australia in which the councillor or designated person has an interest.
4. *Gifts, loans etc. from related corporations:* For the purposes of this schedule and Schedule 2, gifts or contributions to travel given, loans made, or goods or services supplied, to a councillor or designated person by two or more corporations that are related to each other for the purposes of section 50 of the *Corporations Act 2001* of the Commonwealth are all given, made or supplied by a single corporation.



Part 2: Pecuniary interests to be disclosed in returnsReal property

5. A person making a return under clause 4.21 of this Code must disclose:
- a) the street address of each parcel of real property in which they had an interest on the return date, and
  - b) the street address of each parcel of real property in which they had an interest in the period since 30 June of the previous financial year, and
  - c) the nature of the interest.
6. An interest in a parcel of real property need not be disclosed in a return if the person making the return had the interest only:
- a) as executor of the will, or administrator of the estate, of a deceased person and not as a beneficiary under the will or intestacy, or
  - b) as a trustee, if the interest was acquired in the ordinary course of an occupation not related to their duties as the holder of a position required to make a return.
7. An interest in a parcel of real property need not be disclosed in a return if the person ceased to hold the interest prior to becoming a councillor or designated person.
8. For the purposes of clause 5 of this schedule, “interest” includes an option to purchase.

Gifts

9. A person making a return under clause 4.21 of this Code must disclose:
- a) a description of each gift received in the period since 30 June of the previous financial year, and
  - b) the name and address of the donor of each of the gifts.
10. A gift need not be included in a return if:
- a) it did not exceed \$500, unless it was among gifts totalling more than \$500 made by the same person during a period of 12 months or less, or
  - b) it was a political donation disclosed, or required to be disclosed, under Part 3 of the *Electoral Funding Act 2018*, or
  - c) the donor was a relative of the donee, or
  - d) subject to paragraph (a), it was received prior to the person becoming a councillor or designated person.
11. For the purposes of clause 10 of this schedule, the amount of a gift other than money is an amount equal to the value of the property given.

Contributions to travel

12. A person making a return under clause 4.21 of this Code must disclose:
- a) the name and address of each person who made any financial or other contribution to the expenses of any travel undertaken by the person in the period since 30 June of the previous financial year, and

- b) the dates on which the travel was undertaken, and
- c) the names of the states and territories, and of the overseas countries, in which the travel was undertaken.

13. A financial or other contribution to any travel need not be disclosed under this clause if it:

- a) was made from public funds (including a contribution arising from travel on free passes issued under an Act or from travel in government or council vehicles), or
- b) was made by a relative of the traveller, or
- c) was made in the ordinary course of an occupation of the traveller that is not related to their functions as the holder of a position requiring the making of a return, or
- d) did not exceed \$250, unless it was among gifts totalling more than \$250 made by the same person during a 12-month period or less, or
- e) was a political donation disclosed, or required to be disclosed, under Part 3 of the *Electoral Funding Act 2018*, or
- f) was made by a political party of which the traveller was a member and the travel was undertaken for the purpose of political activity of the party in New South Wales, or to enable the traveller to represent the party within Australia, or
- g) subject to paragraph (d) it was received prior to the person becoming a councillor or designated person.

14. For the purposes of clause 13 of this schedule, the amount of a contribution (other than a financial contribution) is an amount equal to the value of the contribution.

#### Interests and positions in corporations

15. A person making a return under clause 4.21 of this Code must disclose:

- a) the name and address of each corporation in which they had an interest or held a position (whether remunerated or not) on the return date, and
- b) the name and address of each corporation in which they had an interest or held a position in the period since 30 June of the previous financial year, and
- c) the nature of the interest, or the position held, in each of the corporations, and
- d) a description of the principal objects (if any) of each of the corporations, except in the case of a listed company.

16. An interest in, or a position held in, a corporation need not be disclosed if the corporation is:

- a) formed for the purpose of providing recreation or amusement, or for promoting commerce, industry, art, science, religion or charity, or for any other community purpose, and
- b) required to apply its profits or other income in promoting its objects, and
- c) prohibited from paying any dividend to its members.

17. An interest in a corporation need not be disclosed if the interest is a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company.
18. An interest or a position in a corporation need not be disclosed if the person ceased to hold the interest or position prior to becoming a councillor or designated person.

Interests as a property developer or a close associate of a property developer

19. A person making a return under clause 4.21 of this Code must disclose whether they were a property developer, or a close associate of a corporation that, or an individual who, is a property developer, on the return date.
20. For the purposes of clause 19 of this schedule:
- *close associate*, in relation to a corporation or an individual, has the same meaning as it has in section 53 of the *Electoral Funding Act 2018*.
  - *property developer* has the same meaning as it has in Division 7 of Part 3 of the *Electoral Funding Act 2018*.

Positions in trade unions and professional or business associations

21. A person making a return under clause 4.21 of the Code must disclose:
- a) the name of each trade union, and of each professional or business association, in which they held any position (whether remunerated or not) on the return date, and
  - b) the name of each trade union, and of each professional or business association, in which they have held any position (whether remunerated or not) in the period since 30 June of the previous financial year, and
  - c) a description of the position held in each of the unions and associations.
22. A position held in a trade union or a professional or business association need not be disclosed if the person ceased to hold the position prior to becoming a councillor or designated person.

Dispositions of real property

23. A person making a return under clause 4.21 of this Code must disclose particulars of each disposition of real property by the person (including the street address of the affected property) in the period since 30 June of the previous financial year, under which they wholly or partly retained the use and benefit of the property or the right to re-acquire the property.
24. A person making a return under clause 4.21 of this Code must disclose particulars of each disposition of real property to another person (including the street address of the affected property) in the period since 30 June of the previous financial year, that is made under arrangements with, but is not made by, the person making the return, being a disposition under which the person making the return obtained wholly or partly the use of the property.

25. A disposition of real property need not be disclosed if it was made prior to a person becoming a councillor or designated person.

#### Sources of income

26. A person making a return under clause 4.21 of this Code must disclose:

- a) each source of income that the person reasonably expects to receive in the period commencing on the first day after the return date and ending on the following 30 June, and
- b) each source of income received by the person in the period since 30 June of the previous financial year.

27. A reference in clause 26 of this schedule to each source of income received, or reasonably expected to be received, by a person is a reference to:

- a) in relation to income from an occupation of the person:
  - (i) a description of the occupation, and
  - (ii) if the person is employed or the holder of an office, the name and address of their employer, or a description of the office, and
  - (iii) if the person has entered into a partnership with other persons, the name (if any) under which the partnership is conducted, or
- b) in relation to income from a trust, the name and address of the settlor and the trustee, or
- c) in relation to any other income, a description sufficient to identify the person from whom, or the circumstances in which, the income was, or is reasonably expected to be, received.

28. The source of any income need not be disclosed by a person in a return if the amount of the income received, or reasonably expected to be received, by the person from that source did not exceed \$500, or is not reasonably expected to exceed \$500, as the case may be.

29. The source of any income received by the person that they ceased to receive prior to becoming a councillor or designated person need not be disclosed.

30. A fee paid to a councillor or to the Mayor or Deputy Mayor under sections 248 or 249 of the LGA need not be disclosed.

#### Debts

31. A person making a return under clause 4.21 of this Code must disclose the name and address of each person to whom the person was liable to pay any debt:

- a) on the return date, and
- b) at any time in the period since 30 June of the previous financial year.

32. A liability to pay a debt must be disclosed by a person in a return made under clause 4.21 whether or not the amount, or any part of the amount, to be paid was due and payable on the return date or at any time in the period since 30 June of the previous financial year, as the case may be.

33. A liability to pay a debt need not be disclosed by a person in a return if:

- a) the amount to be paid did not exceed \$500 on the return date or in the period since 30 June of the previous financial year, as the case may be, unless:
  - (i) the debt was one of two or more debts that the person was liable to pay to one person on the return date, or at any time in the period since 30 June of the previous financial year, as the case may be, and
  - (ii) the amounts to be paid exceeded, in the aggregate, \$500, or
- b) the person was liable to pay the debt to a relative, or
- c) in the case of a debt arising from a loan of money the person was liable to pay the debt to an authorised deposit-taking institution or other person whose ordinary business includes the lending of money, and the loan was made in the ordinary course of business of the lender, or
- d) in the case of a debt arising from the supply of goods or services:
  - (i) the goods or services were supplied in the period of 12 months immediately preceding the return date, or were supplied in the period since 30 June of the previous financial year, as the case may be, or
  - (ii) the goods or services were supplied in the ordinary course of any occupation of the person that is not related to their duties as the holder of a position required to make a return, or
- e) subject to paragraph (a), the debt was discharged prior to the person becoming a councillor or designated person.

Discretionary disclosures

34. A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision of this Schedule.

**SCHEDULE 2: FORM OF WRITTEN RETURN OF INTERESTS SUBMITTED  
UNDER CLAUSE 4.21**'Disclosures by councillors and designated persons' return

1. The pecuniary interests and other matters to be disclosed in this return are prescribed by Schedule 1 of the Northern Beaches Council Code of Conduct.
2. If this is the first return you have been required to lodge with the CEO after becoming a councillor or designated person, do not complete Parts C, D and I of the return. All other parts of the return should be completed with appropriate information based on your circumstances at the return date, that is, the date on which you became a councillor or designated person.
3. If you have previously lodged a return with the CEO and you are completing this return for the purposes of disclosing a new interest that was not disclosed in the last return you lodged with the CEO, you must complete all parts of the return with appropriate information for the period from 30 June of the previous financial year or the date on which you became a councillor or designated person, (whichever is the later date), to the return date which is the date you became aware of the new interest to be disclosed in your updated return.
4. If you have previously lodged a return with the CEO and are submitting a new return for the new financial year, you must complete all parts of the return with appropriate information for the 12-month period commencing on 30 June of the previous year to 30 June this year.
5. Returns of interests submitted under clause 4.21 should be lodged using the NBC Disclosures Application (App). In the event that there is a difficulty in using this App, the paper form set out in schedule 2 below may be used:
  - a. This form must be completed using block letters or typed.
  - b. If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.
  - c. If there are no pecuniary interests or other matters of the kind required to be disclosed under a heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.

Important information

This information is being collected for the purpose of complying with clause 4.21 of the Model Code of Conduct.

You must not lodge a return that you know or ought reasonably to know is false or misleading in a material particular (see clause 4.23). Complaints about breaches of these requirements are to be referred to the Office of Local Government and may result in disciplinary action by Council, the Chief Executive of the Office of Local Government or the NSW Civil and Administrative Tribunal.

The information collected on this form will be kept by the CEO in a register of returns. The CEO is required to table all returns at a council meeting.

Information contained in returns made and lodged under clause 4.21 is to be made publicly available in accordance with the requirements of the *Government Information (Public Access) Act 2009*, the *Government Information (Public Access) Regulation 2009* and any guidelines issued by the Information Commissioner.

You have an obligation to keep the information contained in this return up to date. If you become aware of a new interest that must be disclosed in this return, or an interest that you have previously failed to disclose, you must submit an updated return within three months of becoming aware of the previously undisclosed interest.

Disclosure of pecuniary interests and other matters by [full name of councillor or designated person]

as at [return date]

in respect of the period from [date] to [date]

[councillor's or designated person's signature]  
[date]

#### A. Real Property

Street address of each parcel of real property in which I had an interest at the return date/at any time since 30 June	Nature of interest

#### B. Sources of income

1 Sources of income I reasonably expect to receive from an occupation in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from an occupation at any time since 30 June

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)

2 Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from a trust since 30 June

Name and address of settlor	Name and address of trustee

3 Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June

Sources of other income I received at any time since 30 June

*[Include description sufficient to identify the person from whom, or the circumstances in which, that income was received]*

#### C. Gifts

Description of each gift I received at any time since 30 June	Name and address of donor
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#### D. Contributions to travel

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time since 30 June	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel was undertaken
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#### E. Interests and positions in corporations

Name and address of each corporation in which I had an interest (if interest or held a position at any time since 30 June)	Nature of interest (if any)	Description of position (if any)	Description of principal objects (if any) of corporation (except in case of listed company)
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F. Were you a property developer or a close associate of a property developer on the return date? (Y/N)

#### G. Positions in trade unions and professional or business associations

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at the return date/at any time since 30 June	Description of position
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#### H. Debts

Name and address of each person to whom I was liable to pay any debt at the return date/at any time since 30 June
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**I. Dispositions of property**

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1 Particulars of each disposition of real property by me (including the street address of the affected property) at any time since 30 June as a result of which I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time

---

2 Particulars of each disposition of property to a person by any other person under arrangements made by me (including the street address of the affected property), being dispositions made at any time since 30 June, as a result of which I obtained, either wholly or in part, the use and benefit of the property

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**J. Discretionary disclosures**

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**SCHEDULE 3: FORM OF SPECIAL DISCLOSURE OF PECUNIARY INTEREST SUBMITTED UNDER CLAUSE 4.36**

1. This form must be completed using block letters or typed.
2. If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.

**Important information**

This information is being collected for the purpose of making a special disclosure of pecuniary interests under clause 4.35(c) of the Northern Beaches Council Code of Conduct.

The special disclosure must relate only to a pecuniary interest that a councillor has in the councillor's principal place of residence, or an interest another person (whose interests are relevant under clause 4.3 of the Model Code of Conduct) has in that person's principal place of residence.

Clause 4.3 of the Model Code of Conduct states that you will have a pecuniary interest in a matter because of the pecuniary interest of your spouse or your de facto partner or your relative or because your business partner or employer has a pecuniary interest. You will also have a pecuniary interest in a matter because you, your nominee, your business partner or your employer is a member of a company or other body that has a pecuniary interest in the matter.

"Relative" is defined by clause 4.4 of the Model Code of Conduct as meaning your, your spouse's or your de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant, adopted or foster child and the spouse or de facto partner of any of those persons.

You must not make a special disclosure that you know or ought reasonably to know is false or misleading in a material particular. Complaints about breaches of these requirements are to be referred to the Office of Local Government and may result in disciplinary action by the Chief Executive of the Office of Local Government or the NSW Civil and Administrative Tribunal.

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

Special disclosure of pecuniary interests by *[full name of councillor]*

in the matter of *[insert name of environmental planning instrument]*

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

to be held on the      day of      20      .

Pecuniary interest	
Address of the affected principal place of residence of the councillor or an associated person, company or body (the identified land)	
Relationship of identified land to Council lor <i>[Tick or cross one box.]</i>	<input type="checkbox"/> The councillor has an interest in the land (e.g. is the owner or has another interest arising out of a mortgage, lease, trust, option or contract, or otherwise). <input type="checkbox"/> An associated person of the councillor has an interest in the land. <input type="checkbox"/> An associated company or body of the councillor has an interest in the land.
Matter giving rise to pecuniary interest <sup>1</sup>	
Nature of the land that is subject to a change in zone/planning control by the proposed LEP (the subject land) <sup>2</sup> <i>[Tick or cross one box]</i>	<input type="checkbox"/> The identified land. <input type="checkbox"/> Land that adjoins or is adjacent to or is in proximity to the identified land.
Current zone/planning control <i>[Insert name of current planning instrument and identify relevant zone/planning control applying to the subject land]</i>	

<sup>1</sup> Clause 4.1 of the Model Code of Conduct provides that a pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter, or if the interest is of a kind specified in clause 4.6 of the Model Code of Conduct.

<sup>2</sup> A pecuniary interest may arise by way of a change of permissible use of land adjoining, adjacent to or in proximity to land in which a councillor or a person, company or body referred to in clause 4.3 of the Model Code of Conduct has a proprietary interest.

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Proposed change of zone/planning control <i>[Insert name of proposed LEP and identify proposed change of zone/planning control applying to the subject land]</i>	
Effect of proposed change of zone/planning control on councillor or associated person <i>[Insert one of the following: "Appreciable financial gain" or "Appreciable financial loss"]</i>	

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

Councillor's signature

Date

[This form is to be retained by Council's CEO and included in full in the minutes of the meeting]

# **Procedures for the Administration of the Northern Beaches Council Code of Conduct**

**2022**

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## PART 1 INTRODUCTION

These Procedures are prescribed for the administration of the Northern Beaches Code of Conduct and are consistent with the *Model Code of Conduct for Local Councils in NSW* ("the Model Code of Conduct").

The Model Code of Conduct is made under section 440 of the *Local Government Act 1993* ("the LGA") and the *Local Government (General) Regulation 2021* ("the Regulation"). Section 440 of the LGA requires every council (including county councils) and joint organisation to adopt a Code of Conduct that incorporates the provisions of the Model Code of Conduct.

The Model Code Procedures are made under section 440AA of the LGA and the Regulation. Section 440AA of the LGA requires every council (including county councils) and joint organisation to adopt procedures for the administration of their Code of Conduct that incorporate the provisions of the Model Code Procedures.

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

**Note:** Parts 6, 7, 8 and 11 of these Procedures apply only to the management of Code of Conduct complaints about councillors (including the Mayor) or the Chief Executive Officer.

## **PART 2      DEFINITIONS**

In these Procedures the following terms have the following meanings:

administrator	an administrator of Council appointed under the LGA other than an administrator appointed under section 66
CEO	The Chief Executive Officer (the person who carries out the role of the general manager of a council in accordance with the Local Government Act 1993).
Code of Conduct	the Northern Beaches Council Code of Conduct adopted under section 440 of the LGA
Code of Conduct complaint	a complaint that is a Code of Conduct complaint for the purposes of clauses 4.1 and 4.2 of these Procedures
complainant	a person who makes a Code of Conduct complaint
complainant councillor	a councillor who makes a Code of Conduct complaint
Complaints Coordinator	a person appointed by the CEO under these Procedures as a Complaints Coordinator
conduct reviewer	a person appointed under these Procedures to review allegations of breaches of the Code of Conduct by councillors or the CEO
Council	Northern Beaches Council
Council committee	a committee established by Council comprising of councillors, staff or other persons that Council has delegated functions to and the Council's audit, risk and improvement committee
Council committee member	a person other than a councillor or member of staff of Council who is a member of a Council committee other than a wholly advisory committee, and a person other than a councillor who is a member of Council's Audit, Risk and Improvement Committee



councillor	any person elected or appointed to civic office, including the Mayor
Council official	any councillor, member of staff of Council, administrator, Council committee member, delegate of Council and, for the purposes of clause 4.16 of the Code of Conduct, Council adviser
delegate of Council	a person (other than a councillor or member of staff of a council) or body, and the individual members of that body, to whom a function of Council is delegated
external agency	a state government agency such as, but not limited to, the Office, the ICAC, the NSW Ombudsman or the police
ICAC	the Independent Commission Against Corruption
Joint organisation	a joint organisation established under section 400O of the LGA
LGA	the <i>Local Government Act 1993</i>
Mayor	includes the chairperson of a county council or a joint organisation
members of staff of a council	includes members of staff of county councils and joint organisations
the Office	the Office of Local Government
investigator	a conduct reviewer
the Regulation	the <i>Local Government (General) Regulation 2021</i>
respondent	a person whose conduct is the subject of investigation by a conduct reviewer under these Procedures
wholly advisory committee	a Council committee that Council has not delegated any functions to

### PART 3 ADMINISTRATIVE FRAMEWORK

#### The establishment of a panel of conduct reviewers

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

be undertaking the functions of a conduct reviewer on behalf of the entity meet the selection and eligibility criteria prescribed under this Part.

- 3.9 A panel of conduct reviewers established under this Part is to have a term of up to four years.
- 3.10 Council may terminate the panel of conduct reviewers at any time. Where a panel of conduct reviewers has been terminated, conduct reviewers who were members of the panel may continue to deal with any matter referred to them under these Procedures prior to the termination of the panel until they have finalised their consideration of the matter.
- 3.11 When the term of the panel of conduct reviewers concludes or is terminated, Council must establish a new panel of conduct reviewers in accordance with the requirements of this Part.
- 3.12 A person who was a member of a previous panel of conduct reviewers established by Council may be a member of subsequent panels of conduct reviewers established by Council if they continue to meet the selection and eligibility criteria for membership of the panel.

#### The appointment of an internal ombudsman to a panel of conduct reviewers

- 3.13 Despite clause 3.6(d), an employee of Council who is the nominated internal ombudsman of one or more councils may be appointed to Council's panel of conduct reviewers with the Office's consent.
- 3.14 To be appointed to Council's panel of conduct reviewers, an internal ombudsman must meet the qualification requirements for conduct reviewers prescribed under clause 3.5 as modified by the operation of clause 3.13.
- 3.15 An internal ombudsman appointed to Council's panel of conduct reviewers may also exercise the functions of Council's Complaints Coordinator. For the purposes of clause 6.1, an internal ombudsman who is Council's Complaints Coordinator and has been appointed to Council's panel of conduct reviewers, may either undertake a preliminary assessment and investigation of a matter referred to them under clauses 5.26 or 5.33 or refer the matter to another conduct reviewer in accordance with clause 6.2.
- 3.16 Clause 6.4(c) does not apply to an internal ombudsman appointed to Council's panel of conduct reviewers.

#### The appointment of Complaints Coordinators

- 3.17 The CEO must appoint a member of staff of Council or another person (such as, but not limited to, a member of staff of another council or a member of staff of a joint organisation or other regional body associated with the council), to act as a Complaints Coordinator. Where the

Complaints Coordinator is a member of staff of Council, the Complaints Coordinator should be a senior and suitably qualified member of staff.

- 3.18 The CEO may appoint other members of staff of Council or other persons (such as, but not limited to, members of staff of another council or members of staff of a joint organisation or other regional body associated with the council), to act as alternates to the Complaints Coordinator.
- 3.19 The CEO must not undertake the role of Complaints Coordinator.
- 3.20 The person appointed as Complaints Coordinator or alternate Complaints Coordinator must also be a nominated disclosures coordinator appointed for the purpose of receiving and managing reports of wrongdoing under the *Public Interest Disclosures Act 1994*.
- 3.21 The role of the Complaints Coordinator is to:
- a) coordinate the management of complaints made under Council's Code of Conduct
  - b) liaise with and provide administrative support to a conduct reviewer
  - c) liaise with the Office, and
  - d) arrange the annual reporting of Code of Conduct complaints statistics.

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

##### What is a Code of Conduct complaint?

- 4.1 For the purpose of these Procedures, a Code of Conduct complaint is a complaint that shows or tends to show conduct on the part of a Council official in connection with their role as a Council official or the exercise of their functions as a Council official that would constitute a breach of the standards of conduct prescribed under Council's Code of Conduct if proven.
- 4.2 The following are not "Code of Conduct complaints" for the purposes of these Procedures:
- a) complaints about the standard or level of service provided by Council or a Council official
  - b) complaints that relate solely to the merits of a decision made by Council or a Council official or the exercise of a discretion by Council or a Council official
  - c) complaints about the policies or procedures of Council
  - d) complaints about the conduct of a Council official arising from the exercise of their functions in good faith, whether or not involving error, that would not otherwise constitute a breach of the standards of conduct prescribed under Council's Code of Conduct.

- 4.3 Only Code of Conduct complaints are to be dealt with under these Procedures. Complaints that do not satisfy the definition of a Code of Conduct complaint are to be dealt with under Council's routine complaints management processes.

When must a Code of Conduct complaint be made?

- 4.4 A Code of Conduct complaint must be made within 3 months of the alleged conduct occurring or within three months of the complainant becoming aware of the alleged conduct.
- 4.5 A complaint made after 3 months may only be accepted if the CEO or their delegate, or, in the case of a complaint about the CEO, the Mayor or their delegate, is satisfied that the allegations are serious and compelling grounds exist for the matter to be dealt with under the Code of Conduct.

How may a Code of Conduct complaint about a Council official other than the CEO be made?

- 4.6 All Code of Conduct complaints other than those relating to the CEO are to be made to the CEO in writing. This clause does not operate to prevent a person from making a complaint to an external agency.
- 4.7 Where a Code of Conduct complaint about a Council official other than the CEO cannot be made in writing, the complaint must be confirmed with the complainant in writing as soon as possible after the receipt of the complaint.
- 4.8 In making a Code of Conduct complaint about a Council official other than the CEO, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.
- 4.9 The CEO or their delegate, or, where the complaint is referred to a conduct reviewer, the conduct reviewer, must consider the complainant's preferences in deciding how to deal with the complaint.
- 4.10 Notwithstanding clauses 4.6 and 4.7, where the CEO becomes aware of a possible breach of Council's Code of Conduct, they may initiate the process for the consideration of the matter under these Procedures without a written complaint.

How may a Code of Conduct complaint about the CEO be made?

- 4.11 Code of Conduct complaints about the CEO are to be made to the Mayor in writing. This clause does not operate to prevent a person from making a complaint about the CEO to an external agency.
- 4.12 Where a Code of Conduct complaint about the CEO cannot be made in writing, the complaint must be confirmed with the complainant in writing as soon as possible after the receipt of the complaint.

- 4.13 In making a Code of Conduct complaint about the CEO, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.
- 4.14 The Mayor or their delegate, or, where the complaint is referred to a conduct reviewer, the conduct reviewer, must consider the complainant's preferences in deciding how to deal with the complaint.
- 4.15 Notwithstanding clauses 4.11 and 4.12, where the Mayor becomes aware of a possible breach of Council's Code of Conduct by the CEO, they may initiate the process for the consideration of the matter under these Procedures without a written complaint.

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

### Delegation by CEOs and Mayors of their functions under this Part

- 5.1 A CEO or Mayor may delegate their functions under this Part to a member of staff of Council or to a person or persons external to Council other than an external agency. References in this Part to the CEO or Mayor are also to be taken to be references to their delegates.

### Consideration of complaints by CEOs and Mayors

- 5.2 In exercising their functions under this Part, the CEO and Mayor may consider the complaint assessment criteria prescribed under clause 6.31.

### What complaints may be declined at the outset?

- 5.3 Without limiting any other provision in these Procedures, the CEO or, in the case of a complaint about the CEO, the Mayor, may decline to deal with a complaint under these Procedures where they are satisfied that the complaint:
- a) is not a Code of Conduct complaint, or
  - b) subject to clause 4.5, is not made within 3 months of the alleged conduct occurring or the complainant becoming aware of the alleged conduct, or
  - c) is trivial, frivolous, vexatious or not made in good faith, or
  - d) relates to a matter the substance of which has previously been considered and addressed by Council and does not warrant further action, or
  - e) is not made in a way that would allow the alleged conduct and any alleged breaches of Council's Code of Conduct to be readily identified.

How are Code of Conduct complaints about staff (other than the CEO) to be dealt with?

- 5.4 The CEO is responsible for the management of Code of Conduct complaints about members of staff of Council (other than complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the Code of Conduct) and for determining the outcome of such complaints.
- 5.5 The CEO must refer Code of Conduct complaints about members of staff of Council alleging a breach of the pecuniary interest provisions contained in Part 4 of the Code of Conduct to the Office.
- 5.6 The CEO may decide to take no action in relation to a Code of Conduct complaint about a member of staff of Council other than one requiring referral to the Office under clause 5.5 where they consider that no action is warranted in relation to the complaint.
- 5.7 Where the CEO decides to take no action in relation to a Code of Conduct complaint about a member of staff of Council, the CEO must give the complainant reasons in writing for their decision and this shall finalise the consideration of the matter under these Procedures.
- 5.8 Code of Conduct complaints about members of staff of Council must be managed in accordance with the relevant industrial instrument or employment contract and make provision for procedural fairness including the right of an employee to be represented by their union.
- 5.9 Sanctions for breaches of the Code of Conduct by staff depend on the severity, scale and importance of the breach and must be determined in accordance with any relevant industrial instruments or contracts.

How are Code of Conduct complaints about delegates of Council, Council advisers and Council committee members to be dealt with?

- 5.10 The CEO is responsible for the management of Code of Conduct complaints about delegates of Council and Council committee members (other than complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the Code of Conduct) and for determining the outcome of such complaints.
- 5.11 The CEO must refer Code of Conduct complaints about Council advisers, delegates of Council and Council committee members alleging a breach of the pecuniary interest provisions contained in Part 4 of the Code of Conduct to the Office.
- 5.12 The CEO may decide to take no action in relation to a Code of Conduct complaint about a delegate of Council or a Council committee member

other than one requiring referral to the Office under clause 5.11 where they consider that no action is warranted in relation to the complaint.

- 5.13 Where the CEO decides to take no action in relation to a Code of Conduct complaint about a delegate of Council or a Council committee member, the CEO must give the complainant reasons in writing for their decision and this shall finalise the consideration of the matter under these Procedures.
- 5.14 Where the CEO considers it to be practicable and appropriate to do so, the CEO may seek to resolve Code of Conduct complaints about delegates of Council or Council committee members, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour. The resolution of a Code of Conduct complaint under this clause is not to be taken as a determination that there has been a breach of the council's Code of Conduct.
- 5.15 Where the CEO resolves a Code of Conduct complaint under clause 5.14 to the CEO's satisfaction, the CEO must notify the complainant in writing of the steps taken to resolve the complaint and this shall finalise the consideration of the matter under these Procedures.
- 5.16 Sanctions for breaches of the Code of Conduct by delegates of Council and/or Council committee members depend on the severity, scale and importance of the breach and may include one or more of the following:
- a) censure
  - b) requiring the person to apologise to any person or organisation adversely affected by the breach in such a time and form specified by the CEO
  - c) prosecution for any breach of the law
  - d) removing or restricting the person's delegation
  - e) removing the person from membership of the relevant Council committee.
- 5.17 Prior to imposing a sanction against a delegate of Council or a Council committee member under clause 5.16, the CEO or any person making enquiries on behalf of the CEO must comply with the requirements of procedural fairness. In particular:
- a) the substance of the allegation (including the relevant provision/s of Council's Code of Conduct that the alleged conduct is in breach of) must be put to the person who is the subject of the allegation, and
  - b) the person must be given an opportunity to respond to the allegation, and
  - c) the CEO must consider the person's response in deciding whether to impose a sanction under clause 5.16.



How are Code of Conduct complaints about administrators to be dealt with?

- 5.18 The CEO must refer all Code of Conduct complaints about administrators to the Office for its consideration.
- 5.19 The CEO must notify the complainant of the referral of their complaint in writing.

How are Code of Conduct complaints about councillors to be dealt with?

- 5.20 The CEO must refer the following Code of Conduct complaints about councillors to the Office:
- a) complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the Code of Conduct
  - b) complaints alleging a failure to comply with a requirement under the Code of Conduct to disclose and appropriately manage conflicts of interest arising from political donations (see section 328B of the LGA)
  - c) complaints alleging a breach of the provisions relating to the maintenance of the integrity of the Code of Conduct contained in Part 9 of the Code of Conduct
  - d) complaints that are the subject of a special complaints management arrangement with the Office under clause 5.49.
- 5.21 Where the CEO refers a complaint to the Office under clause 5.20, the CEO must notify the complainant of the referral in writing.
- 5.22 The CEO may decide to take no action in relation to a Code of Conduct complaint about a councillor, other than one requiring referral to the Office under clause 5.20, where they consider that no action is warranted in relation to the complaint.
- 5.23 Where the CEO decides to take no action in relation to a Code of Conduct complaint about a councillor, the CEO must give the complainant reasons in writing for their decision within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these Procedures.
- 5.24 Where the CEO considers it to be practicable and appropriate to do so, the CEO may seek to resolve Code of Conduct complaints about councillors, other than those requiring referral to the Office under clause 5.20, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour. The resolution of a Code of Conduct complaint under this clause is not to be taken as a determination that there has been a breach of the council's Code of Conduct.
- 5.25 Where the CEO resolves a Code of Conduct complaint under clause 5.24 to the CEO's satisfaction, the CEO must notify the complainant in writing of the steps taken to resolve the complaint within 21 days of receipt of the

complaint and this shall finalise the consideration of the matter under these Procedures.

- 5.26 The CEO must refer all Code of Conduct complaints about councillors, other than those referred to the Office under clause 5.20 or finalised under clause 5.23 or resolved under clause 5.24, to the Complaints Coordinator.

How are Code of Conduct complaints about the CEO to be dealt with?

- 5.27 The Mayor must refer the following Code of Conduct complaints about the CEO to the Office:

- a) complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the Code of Conduct
- b) complaints alleging a breach of the provisions relating to the maintenance of the integrity of the Code of Conduct contained in Part 9 of the Code of Conduct
- c) complaints that are the subject of a special complaints management arrangement with the Office under clause 5.49.

- 5.28 Where the Mayor refers a complaint to the Office under clause 5.27, the Mayor must notify the complainant of the referral in writing.

- 5.29 The Mayor may decide to take no action in relation to a Code of Conduct complaint about the CEO, other than one requiring referral to the Office under clause 5.27, where they consider that no action is warranted in relation to the complaint.

- 5.30 Where the Mayor decides to take no action in relation to a Code of Conduct complaint about the CEO, the Mayor must give the complainant reasons in writing for their decision within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these Procedures.

- 5.31 Where the Mayor considers it to be practicable and appropriate to do so, the Mayor may seek to resolve Code of Conduct complaints about the CEO, other than those requiring referral to the Office under clause 5.27, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour. The resolution of a Code of Conduct complaint under this clause is not to be taken as a determination that there has been a breach of the council's Code of Conduct.

- 5.32 Where the Mayor resolves a Code of Conduct complaint under clause 5.31 to the Mayor's satisfaction, the Mayor must notify the complainant in writing of the steps taken to resolve the complaint within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these Procedures.

- 5.33 The Mayor must refer all Code of Conduct complaints about the CEO, other than those referred to the Office under clause 5.27 or finalised under clause 5.30 or resolved under clause 5.31, to the Complaints Coordinator.

How are complaints about both the CEO and the Mayor to be dealt with?

- 5.34 Where the CEO or Mayor receives a Code of Conduct complaint that alleges a breach of the Code of Conduct by both the CEO and the Mayor, the CEO or Mayor must either:
- a) delegate their functions under this part with respect to the complaint to a member of staff of Council other than the CEO where the allegation is not serious, or to a person external to the council, or
  - b) refer the matter to the Complaints Coordinator under clause 5.26 and clause 5.33.

Referral of Code of Conduct complaints to external agencies

- 5.35 The CEO, Mayor or a conduct reviewer may, at any time, refer a Code of Conduct complaint to an external agency for its consideration, where they consider such a referral is warranted.
- 5.36 The CEO, Mayor or a conduct reviewer must report to the ICAC any matter that they suspect on reasonable grounds concerns or may concern corrupt conduct.
- 5.37 Where the CEO, Mayor or conduct reviewer refers a complaint to an external agency under clause 5.35, they must notify the complainant of the referral in writing unless they form the view, on the advice of the relevant agency, that it would not be appropriate for them to do so.
- 5.38 Referral of a matter to an external agency shall finalise consideration of the matter under these Procedures unless Council is subsequently advised otherwise by the referral agency.

Disclosure of the identity of complainants

- 5.39 In dealing with matters under these Procedures, information that identifies or tends to identify complainants is not to be disclosed unless:
- a) the complainant consents in writing to the disclosure, or
  - b) it is generally known that the complainant has made the complaint as a result of the complainant having voluntarily identified themselves as the person who made the complaint, or
  - c) it is essential, having regard to procedural fairness requirements, that the identifying information be disclosed, or
  - d) a conduct reviewer is of the opinion that disclosure of the information is necessary to investigate the matter effectively, or
  - e) it is otherwise in the public interest to do so.

- 5.40 Clause 5.39 does not apply to Code of Conduct complaints made by councillors about other councillors or the CEO.
- 5.41 Where a councillor makes a Code of Conduct complaint about another councillor or the CEO, and the complainant councillor considers that compelling grounds exist that would warrant information that identifies or tends to identify them as the complainant not to be disclosed, they may request in writing that such information not be disclosed.
- 5.42 A request made by a complainant councillor under clause 5.41 must be made at the time they make a Code of Conduct complaint and must state the grounds upon which the request is made.
- 5.43 The CEO or Mayor and, where the matter is referred to a conduct reviewer, the conduct reviewer must consider a request made under clause 5.41 before disclosing information that identifies or tends to identify the complainant councillor, but they are not obliged to comply with the request.
- 5.44 Where a complainant councillor makes a request under clause 5.41, the CEO or Mayor or, where the matter is referred to a conduct reviewer, the conduct reviewer, shall notify the councillor in writing of their intention to disclose information that identifies or tends to identify them prior to disclosing the information.

Code of Conduct complaints made as public interest disclosures

- 5.45 These Procedures do not override the provisions of the *Public Interest Disclosures Act 1994*. Code of Conduct complaints that are made as public interest disclosures under that Act are to be managed in accordance with the requirements of that Act, Council's Public Interest Disclosures Policy and any guidelines issued by the NSW Ombudsman that relate to the management of public interest disclosures.
- 5.46 Where a councillor makes a Code of Conduct complaint about another councillor or the CEO as a public interest disclosure, before the matter may be dealt with under these Procedures, the complainant councillor must consent in writing to the disclosure of their identity as the complainant.
- 5.47 Where a complainant councillor declines to consent to the disclosure of their identity as the complainant under clause 5.46, the CEO or the Mayor must refer the complaint to the Office for consideration. Such a referral must be made under section 26 of the *Public Interest Disclosures Act 1994*.

Special complaints management arrangements

- 5.48 The CEO may request in writing that the Office enter into a special complaints management arrangement with Council in relation to Code of Conduct complaints made by or about a person or persons.
- 5.49 Where the Office receives a request under clause 5.48, it may agree to enter into a special complaints management arrangement if it is satisfied that the number or nature of Code of Conduct complaints made by or about a person or persons has:
- a) imposed an undue and disproportionate cost burden on the council's administration of its Code of Conduct, or
  - b) impeded or disrupted the effective administration by Council of its Code of Conduct, or
  - c) impeded or disrupted the effective functioning of the council.
- 5.50 A special complaints management arrangement must be in writing and must specify the following:
- a) the Code of Conduct complaints the arrangement relates to, and
  - b) the period that the arrangement will be in force.
- 5.51 The Office may, by notice in writing, amend or terminate a special complaints management arrangement at any time.
- 5.52 While a special complaints management arrangement is in force, an officer of the Office (the assessing OLG officer) must undertake the preliminary assessment of the Code of Conduct complaints specified in the arrangement in accordance with the requirements of Part 6 of these Procedures.
- 5.53 Where, following a preliminary assessment, the assessing OLG officer determines that a Code of Conduct complaint warrants investigation by a conduct reviewer, the assessing OLG officer shall notify the Complaints Coordinator in writing of their determination and the reasons for their determination. The Complaints Coordinator must comply with the recommendation of the assessing OLG officer.
- 5.54 Prior to the expiry of a special complaints management arrangement, the Office may, at the request of the CEO, review the arrangement to determine whether it should be renewed or amended.
- 5.55 A special complaints management arrangement shall expire on the date specified in the arrangement unless renewed under clause 5.54.

**PART 6 PRELIMINARY ASSESSMENT OF CODE OF CONDUCT  
COMPLAINTS ABOUT COUNCILLORS OR THE CEO BY CONDUCT  
REVIEWERS**Referral of Code of Conduct complaints about councillors or the CEO to  
conduct reviewers

- 6.1 The Complaints Coordinator must refer all Code of Conduct complaints about councillors or the CEO that have not been referred to an external agency or declined or resolved by the CEO, Mayor or their delegate and that have been referred to them under clauses 5.26 or 5.33, to a conduct reviewer within 21 days of receipt of the complaint by the CEO or the Mayor.
- 6.2 For the purposes of clause 6.1, the Complaints Coordinator will refer a complaint to a conduct reviewer selected from:
- a) a panel of conduct reviewers established by Council, or
  - b) a panel of conduct reviewers established by an organisation approved by the Office.
- 6.3 In selecting a suitable conduct reviewer, the Complaints Coordinator may have regard to the qualifications and experience of members of the panel of conduct reviewers. Where the conduct reviewer is an incorporated or other entity, the Complaints Coordinator must also ensure that the person assigned to receive the referral on behalf of the entity meets the selection and eligibility criteria for conduct reviewers prescribed under Part 3 of these Procedures.
- 6.4 A conduct reviewer must not accept the referral of a Code of Conduct complaint where:
- a) they have a conflict of interest in relation to the matter referred to them, or
  - b) a reasonable apprehension of bias arises in relation to their consideration of the matter, or
  - c) they or their employer has entered into one or more contracts with Council (other than contracts relating to the exercise of their functions as a conduct reviewer) in the 2 years preceding the referral, and they or their employer have received or expect to receive payments under the contract or contracts of a value that, when aggregated, exceeds \$100,000, or
  - d) at the time of the referral, they or their employer are the council's legal service provider or are a member of a panel of legal service providers appointed by the council.
- 6.5 For the purposes of clause 6.4(a), a conduct reviewer will have a conflict of interest in a matter where a reasonable and informed person would perceive that they could be influenced by a private interest when carrying out their public duty (see clause 5.2).

- 6.6 For the purposes of clause 6.4(b), a reasonable apprehension of bias arises where a fair-minded observer might reasonably apprehend that the conduct reviewer might not bring an impartial and unprejudiced mind to the matter referred to the conduct reviewer.
- 6.7 Where the Complaints Coordinator refers a matter to a conduct reviewer, they will provide the conduct reviewer with a copy of the Code of Conduct complaint and any other information relevant to the matter held by Council, including any information about previous proven breaches and any information that would indicate that the alleged conduct forms part of an ongoing pattern of behaviour.
- 6.8 The Complaints Coordinator must notify the complainant in writing that the matter has been referred to a conduct reviewer and advise which conduct reviewer the matter has been referred to.
- 6.9 Conduct reviewers must comply with these Procedures in their consideration of matters that have been referred to them and exercise their functions in a diligent and timely manner.
- 6.10 The Complaints Coordinator may at any time terminate the referral of a matter to a conduct reviewer and refer the matter to another conduct reviewer where the Complaints Coordinator is satisfied that the conduct reviewer has failed to:
- a) comply with these Procedures in their consideration of the matter, or
  - b) comply with a lawful and reasonable request by the Complaints Coordinator, or
  - c) exercise their functions in a timely or satisfactory manner.
- 6.11 Where the Complaints Coordinator terminates a referral to a conduct reviewer under clause 6.10, they must notify the complainant and any other affected person in writing of their decision and the reasons for it and advise them which conduct reviewer the matter has been referred to instead.

Preliminary assessment of Code of Conduct complaints about councillors or the CEO by a conduct reviewer

- 6.12 The conduct reviewer is to undertake a preliminary assessment of a complaint referred to them by the Complaints Coordinator for the purposes of determining how the complaint is to be managed.
- 6.13 The conduct reviewer may determine to do one or more of the following in relation to a complaint referred to them by the Complaints Coordinator:
- a) to take no action
  - b) to resolve the complaint by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour



- c) to refer the matter back to the CEO or, in the case of a complaint about the CEO, the Mayor, for resolution by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour
  - d) to refer the matter to an external agency
  - e) to investigate the matter.
- 6.14 In determining how to deal with a matter under clause 6.13, the conduct reviewer must have regard to the complaint assessment criteria prescribed under clause 6.31.
- 6.15 The conduct reviewer may make such enquiries the conduct reviewer considers to be reasonably necessary to determine what options to exercise under clause 6.13.
- 6.16 The conduct reviewer may request the Complaints Coordinator to provide such additional information the conduct reviewer considers to be reasonably necessary to determine what options to exercise in relation to the matter under clause 6.13. The Complaints Coordinator will, as far as is reasonably practicable, supply any information requested by the conduct reviewer.
- 6.17 The conduct reviewer must refer to the Office any complaints referred to them that should have been referred to the Office under clauses 5.20 and 5.27.
- 6.18 The conduct reviewer must determine to take no action on a complaint that is not a Code of Conduct complaint for the purposes of these Procedures.
- 6.19 The resolution of a Code of Conduct complaint under clause 6.13, paragraphs (b) or (c) is not to be taken as a determination that there has been a breach of Council's Code of Conduct.
- 6.20 Where the conduct reviewer completes their preliminary assessment of a complaint by determining to exercise an option under clause 6.13, paragraphs (a), (b) or (c), they must provide the complainant with written notice of their determination and provide reasons for it, and this will finalise consideration of the matter under these Procedures.
- 6.21 Where the conduct reviewer refers a complaint to an external agency, they must notify the complainant of the referral in writing unless they form the view, on the advice of the relevant agency, that it would not be appropriate for them to do so.
- 6.22 The conduct reviewer may only determine to investigate a matter where they are satisfied as to the following:



- a) that the complaint is a Code of Conduct complaint for the purposes of these Procedures, and
- b) that the alleged conduct is sufficiently serious to warrant the formal censure of a councillor under section 440G of the LGA or disciplinary action against the CEO under their contract of employment if it were to be proven, and
- c) that the matter is one that could not or should not be resolved by alternative means.

6.23 In determining whether a matter is sufficiently serious to warrant formal censure of a councillor under section 440G of the LGA or disciplinary action against the CEO under their contract of employment, the conduct reviewer is to consider the following:

- a) the harm or cost that the alleged conduct has caused to any affected individuals and/or the council
- b) the likely impact of the alleged conduct on the reputation of Council and public confidence in it
- c) whether the alleged conduct was deliberate or undertaken with reckless intent or negligence
- d) any previous proven breaches by the person whose alleged conduct is the subject of the complaint and/or whether the alleged conduct forms part of an ongoing pattern of behaviour.

6.24 The conduct reviewer must complete their preliminary assessment of the complaint within 28 days of referral of the matter to them by the Complaints Coordinator and notify the Complaints Coordinator in writing of the outcome of their assessment.

6.25 The conduct reviewer is not obliged to give prior notice to or to consult with any person before making a determination in relation to their preliminary assessment of a complaint, except as may be specifically required under these Procedures.

#### Referral back to the CEO or Mayor for resolution

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

6.27 The conduct reviewer must consult with the CEO or Mayor prior to referring a matter back to them under clause 6.13(c).

6.28 The CEO or Mayor may decline to accept the conduct reviewer's recommendation. In such cases, the conduct reviewer may determine to deal with the complaint by other means under clause 6.13.

6.29 Where the conduct reviewer refers a matter back to the CEO or Mayor under clause 6.13(c), the CEO or, in the case of a complaint about the

CEO, the Mayor, is responsible for implementing or overseeing the implementation of the conduct reviewer's recommendation.

- 6.30 Where the conduct reviewer refers a matter back to the CEO or Mayor under clause 6.13(c), the CEO, or, in the case of a complaint about the CEO, the Mayor, must advise the complainant in writing of the steps taken to implement the conduct reviewer's recommendation once these steps have been completed.

#### Complaints assessment criteria

- 6.31 In undertaking the preliminary assessment of a complaint, the conduct reviewer must have regard to the following considerations:
- a) whether the complaint is a Code of Conduct complaint for the purpose of these Procedures
  - b) whether the complaint has been made in a timely manner in accordance with clause 4.4, and if not, whether the allegations are sufficiently serious for compelling grounds to exist for the matter to be dealt with under the council's Code of Conduct
  - c) whether the complaint is trivial, frivolous, vexatious or not made in good faith
  - d) whether the complaint discloses prima facie evidence of conduct that, if proven, would constitute a breach of the Code of Conduct
  - e) whether the complaint raises issues that would be more appropriately dealt with by an external agency
  - f) whether there is or was an alternative and satisfactory means of redress available in relation to the conduct complained of
  - g) whether the complaint is one that can be resolved by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour
  - h) whether the issue/s giving rise to the complaint have previously been addressed or resolved
  - i) any previous proven breaches of Council's Code of Conduct
  - j) whether the conduct complained of forms part of an ongoing pattern of behaviour
  - k) whether there were mitigating circumstances giving rise to the conduct complained of
  - l) the seriousness of the alleged conduct (having regard to the criteria specified in clause 6.23)
  - m) the significance of the conduct or the impact of the conduct for Council
  - n) how much time has passed since the alleged conduct occurred
  - o) such other considerations that the conduct reviewer considers may be relevant to the assessment of the complaint.

**PART 7 INVESTIGATIONS OF CODE OF CONDUCT COMPLAINTS  
ABOUT COUNCILLORS OR THE CEO**What matters may a conduct reviewer investigate?

- 7.1 A conduct reviewer (hereafter referred to as an “investigator”) may investigate a Code of Conduct complaint that has been referred to them by the Complaints Coordinator and any matters related to or arising from that complaint.
- 7.2 Where an investigator identifies further separate possible breaches of the Code of Conduct that are not related to or do not arise from the Code of Conduct complaint that has been referred to them, they are to report the matters separately in writing to the CEO, or, in the case of alleged conduct on the part of the CEO, to the Mayor.
- 7.3 The CEO or the Mayor or their delegate is to deal with a matter reported to them by an investigator under clause 7.2 as if it were a new Code of Conduct complaint in accordance with these Procedures.

How are investigations to be commenced?

- 7.4 The investigator must at the outset of their investigation provide a written notice of investigation to the respondent. The notice of investigation must:
- a) disclose the substance of the allegations against the respondent, and
  - b) advise of the relevant provisions of the Code of Conduct that apply to the alleged conduct, and
  - c) advise of the process to be followed in investigating the matter, and
  - d) advise the respondent of the requirement to maintain confidentiality, and
  - e) invite the respondent to make a written submission in relation to the matter within a period of not less than 14 days specified by the investigator in the notice, and
  - f) provide the respondent the opportunity to address the investigator on the matter within such reasonable time specified in the notice.
- 7.5 The respondent may, within 7 days of receipt of the notice of investigation, request in writing that the investigator provide them with such further information they consider necessary to assist them to identify the substance of the allegation against them. An investigator will only be obliged to provide such information that the investigator considers reasonably necessary for the respondent to identify the substance of the allegation against them.
- 7.6 An investigator may at any time prior to issuing a draft report, issue an amended notice of investigation to the respondent in relation to the matter referred to them.

- 7.7 Where an investigator issues an amended notice of investigation, they must provide the respondent with a further opportunity to make a written submission in response to the amended notice of investigation within a period of not less than 14 days specified by the investigator in the amended notice.
- 7.8 The investigator must also, at the outset of their investigation, provide written notice of the investigation to the complainant, the Complaints Coordinator and the CEO, or in the case of a complaint about the CEO, to the complainant, the Complaints Coordinator and the Mayor. The notice must:
- a) advise them of the matter the investigator is investigating, and
  - b) in the case of the notice to the complainant, advise them of the requirement to maintain confidentiality, and
  - c) invite the complainant to make a written submission in relation to the matter within a period of not less than 14 days specified by the investigator in the notice.

#### Written and oral submissions

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

How are investigations to be conducted?

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

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

- 7.20 At any time after an investigator has issued a notice of investigation and before they have issued their final report, an investigator may determine to:
- a) resolve the matter by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour, or
  - b) refer the matter to the CEO, or, in the case of a complaint about the CEO, to the Mayor, for resolution by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour, or
  - c) refer the matter to an external agency.
- 7.21 Where an investigator determines to exercise any of the options under clause 7.20 after the commencement of an investigation, they must do so in accordance with the requirements of Part 6 of these Procedures relating to the exercise of these options at the preliminary assessment stage.
- 7.22 The resolution of a Code of Conduct complaint under clause 7.20, paragraphs (a) or (b) is not to be taken as a determination that there has been a breach of the council's Code of Conduct.
- 7.23 Where an investigator determines to exercise any of the options under clause 7.20 after the commencement of an investigation, they may by written notice to the respondent, the complainant, the Complaints Coordinator and the CEO, or in the case of a complaint about the CEO,

to the respondent, the complainant, the Complaints Coordinator and the Mayor, discontinue their investigation of the matter.

- 7.24 Where the investigator discontinues their investigation of a matter under clause 7.23, this shall finalise the consideration of the matter under these Procedures.
- 7.25 An investigator is not obliged to give prior notice to or to consult with any person before making a determination to exercise any of the options under clause 7.20 or to discontinue their investigation except as may be specifically required under these Procedures.

#### Draft investigation reports

- 7.26 When an investigator has completed their enquiries and considered any written or oral submissions made to them in relation to a matter, they must prepare a draft of their proposed report.
- 7.27 The investigator must provide their draft report to the respondent and invite them to make a written submission in relation to it within a period of not less than 14 days specified by the investigator.
- 7.28 Where the investigator proposes to make adverse comment about any other person (an affected person) in their report, they must also provide the affected person with relevant extracts of their draft report containing such comment and invite the affected person to make a written submission in relation to it within a period of not less than 14 days specified by the investigator.
- 7.29 The investigator must consider written submissions received in relation to the draft report prior to finalising their report in relation to the matter.
- 7.30 The investigator may, after consideration of all written submissions received in relation to their draft report, make further enquiries into the matter. If, as a result of making further enquiries, the investigator makes any material change to their proposed report that makes new adverse comment about the respondent or an affected person, they must provide the respondent or affected person as the case may be with a further opportunity to make a written submission in relation to the new adverse comment.
- 7.31 Where the respondent or an affected person fails to make a written submission in relation to the draft report within the period specified by the investigator, the investigator may proceed to prepare and issue their final report without receiving such submissions.
- 7.32 The investigator may accept written submissions in relation to the draft report received outside the period specified by the investigator at any time prior to issuing their final report.

Final investigation reports

- 7.33 Where an investigator issues a notice of investigation, they must prepare a final report in relation to the matter unless the investigation is discontinued under clause 7.23.
- 7.34 An investigator must not prepare a final report in relation to the matter at any time before they have finalised their consideration of the matter in accordance with the requirements of these Procedures.
- 7.35 The investigator's final report must:
- a) make findings of fact in relation to the matter investigated, and,
  - b) make a determination that the conduct investigated either,
    - i. constitutes a breach of the Code of Conduct, or
    - ii. does not constitute a breach of the Code of Conduct, and
  - c) provide reasons for the determination.
- 7.36 At a minimum, the investigator's final report must contain the following information:
- a) a description of the allegations against the respondent
  - b) the relevant provisions of the Code of Conduct that apply to the alleged conduct investigated
  - c) a statement of reasons as to why the matter warranted investigation (having regard to the criteria specified in clause 6.23)
  - d) a statement of reasons as to why the matter was one that could not or should not be resolved by alternative means
  - e) a description of any attempts made to resolve the matter by use of alternative means
  - f) the steps taken to investigate the matter
  - g) the facts of the matter
  - h) the investigator's findings in relation to the facts of the matter and the reasons for those findings
  - i) the investigator's determination and the reasons for that determination
  - j) any recommendations.
- 7.37 Where the investigator determines that the conduct investigated constitutes a breach of the Code of Conduct, the investigator may make one or more of the following recommendations:
- a) in the case of a breach by the CEO, that disciplinary action be taken under the CEO's contract of employment for the breach, or
  - b) in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the LGA, or
  - c) in the case of a breach by a councillor, that Council resolves as follows:
    - i. that the councillor be formally censured for the breach under section 440G of the LGA, and



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

- 7.38 Where the investigator proposes to make a recommendation under clause 7.37(c), the investigator must first consult with the Office on their proposed findings, determination and recommendation prior to finalising their report, and must take any comments by the Office into consideration when finalising their report.
- 7.39 Where the investigator has determined that there has been a breach of the Code of Conduct, the investigator may, in addition to making a recommendation under clause 7.37, recommend that Council revise any of its policies, practices or procedures.
- 7.40 Where the investigator determines that the conduct investigated does not constitute a breach of the Code of Conduct, the investigator may recommend:
- a) that Council revise any of its policies, practices or procedures
  - b) that a person or persons undertake any training or other education.
- 7.41 The investigator must provide a copy of their report to the Complaints Coordinator and the respondent.
- 7.42 At the time the investigator provides a copy of their report to the Complaints Coordinator and the respondent, the investigator must provide the complainant with a written statement containing the following information:
- a) the investigator's findings in relation to the facts of the matter and the reasons for those findings
  - b) the investigator's determination and the reasons for that determination
  - c) any recommendations, and
  - d) such other additional information that the investigator considers may be relevant.
- 7.43 Where the investigator has determined that there has not been a breach of the Code of Conduct, the Complaints Coordinator must provide a copy of the investigator's report to the CEO or, where the report relates to the CEO's conduct, to the Mayor, and this will finalise consideration of the matter under these Procedures.
- 7.44 Where the investigator has determined that there has been a breach of the Code of Conduct and makes a recommendation under clause 7.37, the Complaints Coordinator must, where practicable, arrange for the investigator's report to be reported to the next ordinary Council meeting for Council's consideration, unless the meeting is to be held within the 4 weeks prior to an ordinary local government election, in which case the report must be reported to the first ordinary council meeting following the election.



- 7.45 Where it is apparent to the Complaints Coordinator that Council will not be able to form a quorum to consider the investigator's report, the Complaints Coordinator must refer the investigator's report to the Office for its consideration instead of reporting it to Council under clause 7.44.

Consideration of the final investigation report by council

- 7.46 The role of Council in relation to a final investigation report is to impose a sanction if the investigator has determined that there has been a breach of the Code of Conduct and has made a recommendation in their final report under clause 7.37.
- 7.47 Council is to close its meeting to the public to consider the final investigation report in cases where it is permitted to do so under section 10A of the LGA.
- 7.48 Where the complainant is a councillor, they must absent themselves from the meeting and take no part in any discussion or voting on the matter. The complainant councillor may absent themselves without making any disclosure of interest in relation to the matter unless otherwise required to do so under the Code of Conduct.
- 7.49 Prior to imposing a sanction, Council must provide the respondent with an opportunity to make a submission to Council. A submission may be made orally or in writing. The respondent is to confine their submission to addressing the investigator's recommendation.
- 7.50 Once the respondent has made their submission they must absent themselves from the meeting and, where they are a councillor, take no part in any discussion or voting on the matter.
- 7.51 Council must not invite submissions from other persons for the purpose of seeking to rehear evidence previously considered by the investigator.
- 7.52 Prior to imposing a sanction, Council may by resolution:
- a) request that the investigator make additional enquiries and/or provide additional information to it in a supplementary report, or
  - b) seek an opinion from the Office in relation to the report.
- 7.53 Council may, by resolution, defer further consideration of the matter pending the receipt of a supplementary report from the investigator or an opinion from the Office.
- 7.54 The investigator may make additional enquiries for the purpose of preparing a supplementary report.
- 7.55 Where the investigator prepares a supplementary report, they must provide copies to the Complaints Coordinator who shall provide a copy each to Council and the respondent.

- 7.56 The investigator is not obliged to notify or consult with any person prior to submitting the supplementary report to the Complaints Coordinator.
- 7.57 Council is only required to provide the respondent a further opportunity to make an oral or written submission on a supplementary report if the supplementary report contains new information that is adverse to them.
- 7.58 Council may by resolution impose one of the following sanctions on a respondent:
- a) in the case of a breach by the CEO, that disciplinary action be taken under the CEO's contract of employment for the breach, or
  - b) in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the LGA, or
  - c) in the case of a breach by a councillor:
    - i. that the councillor be formally censured for the breach under section 440G of the LGA, and
    - ii. that the matter be referred to the Office for further action under the misconduct provisions of the LGA.
- 7.59 Where Council censures a councillor under section 440G of the LGA, Council must specify in the censure resolution the grounds on which it is satisfied that the councillor should be censured by disclosing in the resolution, the investigator's findings and determination and/or such other grounds that Council considers may be relevant or appropriate.
- 7.60 Council is not obliged to adopt the investigator's recommendation. Where Council proposes not to adopt one or more of the investigator's recommendations, Council must resolve not to adopt the recommendation and state in its resolution the reasons for its decision.
- 7.61 Where Council resolves not to adopt the investigator's recommendation, the Complaints Coordinator must notify the Office of Council's decision and the reasons for it.

## **PART 8      OVERSIGHT AND RIGHTS OF REVIEW**

### The Office's powers of review

- 8.1 The Office may, at any time, whether or not in response to a request, review the consideration of a matter under Council's Code of Conduct where it is concerned that a person has failed to comply with a requirement prescribed under these Procedures or has misinterpreted or misapplied the standards of conduct prescribed under the Code of Conduct in their consideration of a matter.
- 8.2 The Office may direct any person, including the Council, to defer taking further action in relation to a matter under consideration under the

council's Code of Conduct pending the completion of its review. Any person the subject of a direction must comply with the direction.

- 8.3 Where the Office undertakes a review of a matter under clause 8.1, it will notify the Complaints Coordinator and any other affected persons, of the outcome of the review.

#### Complaints about conduct reviewers

- 8.4 The CEO or their delegate must refer Code of Conduct complaints about conduct reviewers to the Office for its consideration.
- 8.5 The CEO must notify the complainant of the referral of their complaint about the conduct reviewer in writing.
- 8.6 The CEO must implement any recommendation made by the Office as a result of its consideration of a complaint about a conduct reviewer.

#### Practice rulings

- 8.7 Where a respondent and an investigator are in dispute over a requirement under these Procedures, either person may make a request in writing to the Office to make a ruling on a question of procedure (a practice ruling).
- 8.8 Where the Office receives a request in writing for a practice ruling, the Office may provide notice in writing of its ruling and the reasons for it to the person who requested it and to the investigator, where that person is different.
- 8.9 Where the Office makes a practice ruling, all parties must comply with it.
- 8.10 The Office may decline to make a practice ruling. Where the Office declines to make a practice ruling, it will provide notice in writing of its decision and the reasons for it to the person who requested it and to the investigator, where that person is different.

#### Review of decisions to impose sanctions

- 8.11 A person who is the subject of a sanction imposed under Part 7 of these Procedures other than one imposed under clause 7.58, paragraph (c), may, within 28 days of the sanction being imposed, seek a review of the investigator's determination and recommendation by the Office.
- 8.12 A review under clause 8.11 may be sought on the following grounds:
- a) that the investigator has failed to comply with a requirement under these Procedures, or
  - b) that the investigator has misinterpreted or misapplied the standards of conduct prescribed under the Code of Conduct, or
  - c) that in imposing its sanction, Council has failed to comply with a requirement under these Procedures.

- 8.13 A request for a review made under clause 8.11 must be made in writing and must specify the grounds upon which the person believes the investigator or Council has erred.
- 8.14 The Office may decline to conduct a review, in cases where the grounds upon which the review is sought are not sufficiently specified.
- 8.15 The Office may undertake a review of a matter without receiving a request under clause 8.11.
- 8.16 The Office will undertake a review of the matter on the papers. However, the Office may request that the Complaints Coordinator provide such further information that the Office considers reasonably necessary for it to review the matter. The Complaints Coordinator must, as far as is reasonably practicable, provide the information requested by the Office.
- 8.17 Where a person requests a review under clause 8.11, the Office may direct Council to defer any action to implement a sanction. Council must comply with a direction to defer action by the Office.
- 8.18 The Office must notify the person who requested the review and the Complaints Coordinator of the outcome of the Office's review in writing and the reasons for its decision. In doing so, the Office may comment on any other matters the Office considers to be relevant.
- 8.19 Where the Office considers that the investigator or Council has erred, the Office may recommend that a decision to impose a sanction under these Procedures be reviewed. Where the Office recommends that the decision to impose a sanction be reviewed:
- a) the Complaints Coordinator must, where practicable, arrange for the Office's determination to be tabled at the next ordinary Council meeting unless the meeting is to be held within the 4 weeks prior to an ordinary local government election, in which case it must be tabled at the first ordinary Council meeting following the election, and
  - b) Council must:
    - i. review its decision to impose the sanction, and
    - ii. consider the Office's recommendation in doing so, and
    - iii. resolve to either rescind or reaffirm its previous resolution in relation to the matter.
- 8.20 Where, having reviewed its previous decision in relation to a matter under clause 8.19(b), Council resolves to reaffirm its previous decision, Council must state in its resolution its reasons for doing so.

**PART 9 PROCEDURAL IRREGULARITIES**

- 9.1 A failure to comply with these Procedures does not, on its own, constitute a breach of the Code of Conduct, except as may be otherwise specifically provided under the Code of Conduct.
- 9.2 A failure to comply with these Procedures will not render a decision made in relation to a matter invalid where:
- a) the non-compliance is isolated and/or minor in nature, or
  - b) reasonable steps are taken to correct the non-compliance, or
  - c) reasonable steps are taken to address the consequences of the non-compliance.

**PART 10 PRACTICE DIRECTIONS**

- 10.1 The Office may at any time issue a practice direction in relation to the application of these Procedures.
- 10.2 The Office will issue practice directions in writing, by circular to all councils.
- 10.3 All persons performing a function prescribed under these Procedures must consider the Office's practice directions when performing the function.

**PART 11 REPORTING STATISTICS ON CODE OF CONDUCT COMPLAINTS ABOUT COUNCILLORS AND THE CEO**

- 11.1 The Complaints Coordinator must arrange for the following statistics to be reported to Council within 3 months of the end of September of each year:
- a) the total number of Code of Conduct complaints made about councillors and the CEO under the Code of Conduct in the year to September (the reporting period)
  - b) the number of Code of Conduct complaints referred to a conduct reviewer during the reporting period
  - c) the number of Code of Conduct complaints finalised by a conduct reviewer at the preliminary assessment stage during the reporting period and the outcome of those complaints
  - d) the number of Code of Conduct complaints investigated by a conduct reviewer during the reporting period
  - e) without identifying particular matters, the outcome of investigations completed under these Procedures during the reporting period
  - f) the number of matters reviewed by the Office during the reporting period and, without identifying particular matters, the outcome of the reviews, and

- g) the total cost of dealing with Code of Conduct complaints made about councillors and the CEO during the reporting period, including staff costs.

11.2 Council is to provide the Office with a report containing the statistics referred to in clause 11.1 within 3 months of the end of September of each year.

## **PART 12 CONFIDENTIALITY**

- 12.1 Information about Code of Conduct complaints and the management and investigation of Code of Conduct complaints is to be treated as confidential and is not to be publicly disclosed except as may be otherwise specifically required or permitted under these Procedures.
- 12.2 Where a complainant publicly discloses information on one or more occasions about a Code of Conduct complaint they have made or purported to make, the CEO or their delegate may, with the consent of the Office, determine that the complainant is to receive no further information about their complaint and any future Code of Conduct complaint they make or purport to make.
- 12.3 Prior to seeking the Office's consent under clause 12.2, the CEO or their delegate must give the complainant written notice of their intention to seek the Office's consent, invite them to make a written submission within a period of not less than 14 days specified by the CEO or their delegate, and consider any submission made by them.
- 12.4 In giving its consent under clause 12.2, the Office must consider any submission made by the complainant to the CEO or their delegate.
- 12.5 The CEO or their delegate must give written notice of a determination made under clause 12.2 to:
  - a) the complainant
  - b) the Complaints Coordinator
  - c) the Office, and
  - d) any other person the CEO or their delegate considers should be notified of the determination.
- 12.6 Any requirement under these Procedures that a complainant is to be provided with information about a Code of Conduct complaint that they have made or purported to make, will not apply to a complainant the subject of a determination made by the CEO or their delegate under clause 12.2.
- 12.7 Clause 12.6 does not override any entitlement a person may have to access to Council information under the *Government Information (Public Access) Act 2009* or to receive information under the *Public Interest Disclosures Act 1994* in relation to a complaint they have made.





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## Community and Stakeholder Engagement Report

### Draft Northern Beaches Council Code of Conduct and Draft Procedures for Administration of the Northern Beaches Council Code of Conduct (Stage 1 of 1)

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## 1. Summary

This report outlines the outcomes of community and stakeholder engagement as part of the exhibition of the Draft Northern Beaches Council Code of Conduct (Code of Conduct) and Draft Procedures for the Administration of the Northern Beaches Council Code of Conduct (Procedures) between Friday 27 May and Sunday 26 June 2022.

The Northern Beaches Council Code of Conduct is aligned to the Office of Local Government's Model Code of Conduct for Local Councils in NSW (Model Code of Conduct) which is made under section 440 of the Local Government Act 1993 (LGA) and the Local Government (General) Regulation 2021 (Regulation).

We received two responses during consultation both of which were supportive of the amended Code. One also noted the importance of follow-up where the Code has not been complied with.

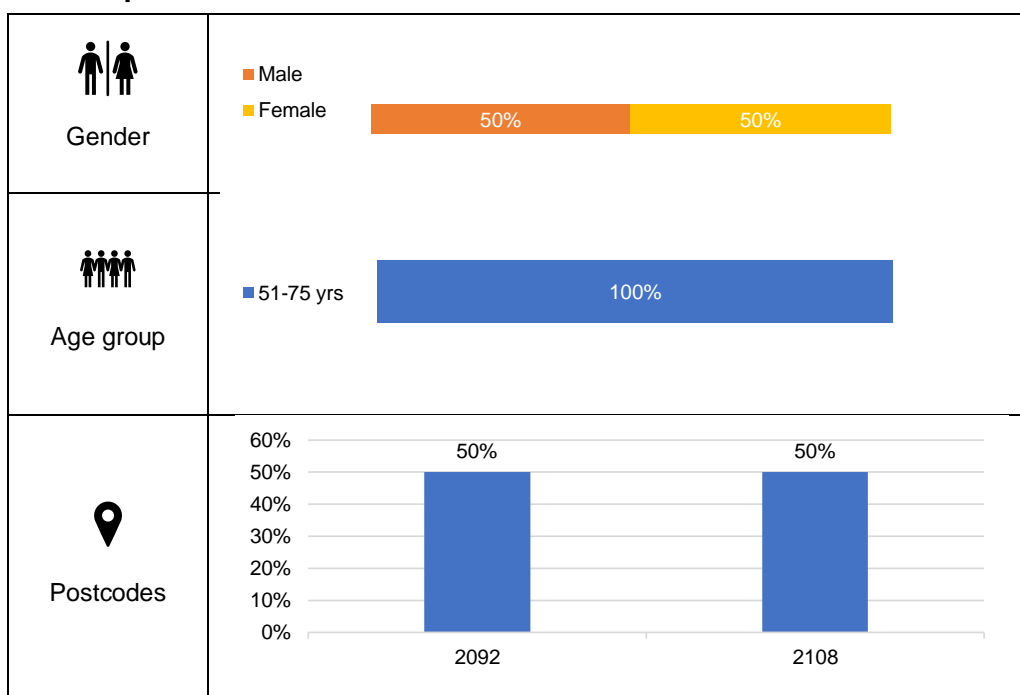
### 1.1. Key outcomes

 Total unique responses	2	
 How responses were received	Submission form	Completions: 2
 Feedback themes	Consistency with OLG Model Code of Conduct  Consequences for non-compliance	

## 1.2. How we engaged

 Have Your Say: visitation stats	Visitors: 138	Visits: 216	Average time onsite: 3mins 54secs
 Electronic direct mail (EDM)			Distribution: 22,000 subscribers  Distribution: 180,000 subscribers

## 1.3. Who responded<sup>1</sup>



<sup>1</sup> Demographic data was gathered by request only. The data represented only includes those respondents who provided this detail.

## 2. Background

The Code of Conduct is aligned to the OLG's Model Code of Conduct which is made under section 440 of the *Local Government Act 1993* (LGA) and the *Local Government (General) Regulation 2021* (Regulation).

The OLG amended the Procedures in response to the decision by the Supreme Court in the matter of *Cornish v Secretary, Department of Planning, Industry and Environment [2019] NSWSC 1134*. Amendments have also been made to the Model Code of Conduct. Accordingly, Council needed to make amendments to the Northern Beaches Council Code of Conduct and Procedures.

A report outlining the Amendments to the Model Procedures and Model Code of Conduct was presented at the Council meeting held on 24 May 2022 and was endorsed for public exhibition. The exhibition was held to seek feedback on the draft documents.

## 3. Engagement objectives

Community and stakeholder engagement aimed to:

- Build community and stakeholder awareness of participation activities (inform)
- Provide accessible information so community and stakeholders can participate in a meaningful way (inform)

## 4. Engagement approach

Community and stakeholder engagement for the revised draft Code of Conduct and Procedures was conducted between 27 May and 26 June 2022, and consisted of activities that provided opportunities for community and stakeholders to contribute.

The engagement was planned, implemented and reported in accordance with Council's [Community Engagement Matrix](#) (2017).

A project page was established on our *Have Your Say* platform with information provided in an accessible and easy to read format.

The project was primarily promoted through our regular email newsletter (EDM) channels.

Feedback was captured through an online submission form embedded onto the *Have Your Say* project page. Feedback was qualitative only and did not ask a specific sentiment question.

An open field submission box provided community members a space to provide their submission.

Email and written submissions were also invited.

## 5. Findings

The community response to the consultation, although minimal, found in favour of Council's amended Code of Conduct and Procedures.

Supportive comments also reflected the need for consistency with the Model Code of Conduct and the importance of having consequences aligned when the Code is not followed.

Verbatim comments and Council's response to those are outlined below.

## Appendix 1 Verbatim community and stakeholder submissions and Council response\*

Number	Submission	Council response
1	<p>I support the Draft Northern Beaches Code of Conduct and Draft Procedures of Administration if they are completely aligned to the Model Code of Conduct for Local Councils in NSW (including extending their application to persons that are not "council officials").</p> <p>I do not support any provisions that are less strict than those of the Model Code of Conduct</p>	It is consistent with and, in some respects, more restrictive than the Model Code for instance in the area of receipt of gifts.
2	<p>Will it state what happens if this is not followed. It sounds great but as I'm finding with the building section of the council that there is none of this being upheld. I have been trying hard for 2 months to make council recognise the processing of fraudulent documents as I have counter evidence. I have been told by the ombudsman that I have to go to the ICAC to have it dealt with. It is unacceptable that there is no follow up process when this code of conduct is not upheld</p>	<p>The Code of Conduct provides on page 3 that, "Failure by a member of staff to comply with a Council's Code of Conduct may give rise to disciplinary action."</p> <p>The matter referred to in this submission has been addressed with the complainant.</p>

Document administration	
Version	3.0
Date	23 June 2022
Approval	Content provided and approved by IA&CR Team. Responsible manager: Deirdre Cooper
Status	Final
Notes	Community and stakeholder views contained in this report do not necessarily reflect the views of the Northern Beaches Council or indicate a commitment to a particular course of action.

\*Personal details and inappropriate language have been redacted where possible. Spelling and grammatical errors have been amended only where misinterpretation or offence may be caused.



# MINUTES

## **AUDIT, RISK AND IMPROVEMENT COMMITTEE MEETING**

held via audio-visual link on

**TUESDAY 12 APRIL 2022**

**Minutes of the Audit, Risk and Improvement Committee Meeting**  
**held on Tuesday 12 April 2022 (deferred from 3 March)**  
**held via audio- visual link**  
**Commencing at 2:03pm**

**ATTENDANCE:**

**Voting Members of the Committee**

Mr Stephen Horne (Chair)  
Mr Mark McCoy  
Ms Sarah Richardson  
Ms Julie Walton  
Cr Bianca Crvelin  
Cr Sarah Grattan  
Cr Sue Heins

**Council Officers (non-voting)**

Mr Ray Brownlee PSM	Chief Executive Officer
Mr Mark Jones	Acting Director Workforce & Technology
Mr David Walsh	Chief Financial Officer
Ms Caroline Foley	Executive Manager Financial Planning & Systems
Ms Deirdre Cooper	Executive Manager Internal Audit & Complaints Resolution
Ms Sarah Dunstan	Executive Manager Governance & Risk
Ms Amy Noakes	Executive Manager Human Resources
Mr Rob Koopman	Manager Insurance & Risk
Ms Aline Fernandes	Internal Auditor
Ms Katie Kirwan	Senior Advisor Governance
Mr Michael McDermid	Manager, Corporate Strategy
Ms Tracey Gigg	Risk Officer
Ms Nicki Adams	Executive Officer
Mr Todd Dickinson	Director Environment & Climate Change

**Council Auditors (non-voting)**

Ms Sarah Cain	Internal Audit, Partner, KPMG
Ms Aisling Kilgannon	Internal Audit, Senior Manager, KPMG
Ms Karen Taylor	Director of Financial Audit Services, Audit Office of NSW

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MINUTES OF AUDIT, RISK AND IMPROVEMENT COMMITTEE  
MEETING

3 MARCH 2022

Note: The Chair gave an Acknowledgement of Country and welcomed new Committee members.

**1.0 APOLOGIES**

Jeff Smith, Director Corporate & Legal

Karen Twitchett, Director Workforce & Technology

**2.0 DISCLOSURES OF INTEREST**

Nil

**3.0 CONFIRMATION OF MINUTES****3.1 MINUTES OF AUDIT, RISK AND IMPROVEMENT COMMITTEE MEETING HELD 14  
DECEMBER 2021**

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**COMMITTEE RESOLUTION**

That the minutes of the Audit, Risk and Improvement Committee meeting held 14 December 2021, copies of which were previously circulated to all members, are hereby confirmed as a true and correct record of the proceedings of that meeting.

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**4.0 ITEMS RESOLVED BY EXCEPTION**

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Nil.

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**5.0 ACTION ITEMS FROM MINUTES****5.1 ACTION ITEMS UPDATE****PURPOSE**

To provide the Audit, Risk and Improvement Committee with a progress update on the actions arising from the minutes of previous meetings of the Committee.

**DISCUSSION**

The Chair addressed the meeting.

The Committee noted that the review of risks above tolerance to inform the internal audit program was complete and the action can be closed.

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### COMMITTEE RESOLUTION

That the Audit, Risk and Improvement Committee noted progress on actions arising from the minutes of previous meetings.

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## 6.0 STANDING ITEMS

### 6.1 VERBAL UPDATE BY THE CHIEF EXECUTIVE OFFICER

Note: Todd Dickinson joined the meeting at 2:30pm

#### PURPOSE

To provide the Committee with a brief update on current issues, particularly those relating to areas of potential risk for Council.

#### DISCUSSION

The Chief Executive Officer (CEO) raised the following matters for discussion:

- Seven new councillors were elected bringing the total female councillors to eight. Induction and onboarding are underway and due to be complete by May.
- The options regarding the process established by the Minister for Local Government through the Independent Pricing and Regulatory Tribunal for Council's to apply for a higher increase that is consistent with the Council's expected level of rating income (to a maximum of 2.5%). The ARIC noted the importance of taking up the option to reduce risk to Council.
- Management of workload pressures and employee fatigue as a result of staff impacted by Covid, flood and storm responses including proposed actions to reduce leave balances (and the impact on resourcing as a result of this) and support for staff wellbeing. The Chair suggested that this be updated in Council's risk register and kept as a discussion item with the Committee.
- Todd Dickinson joined the meeting to provide an overview of Council's incident management team and processes and how Council manages this in the context of the Auditor General's report on Local Government business and service continuity arrangements during natural disasters.

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### COMMITTEE RESOLUTION

The Audit, Risk and Improvement Committee noted the verbal update by the Chief Executive Officer.

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**6.2 FINANCE UPDATE**

*Note: Caroline Foley and David Walsh joined the meeting at 2:39pm*

**PURPOSE**

To provide an update on the financial performance of Council as at 31 December 2021.

**DISCUSSION**

Caroline Foley, Executive Manager Financial Planning addressed the meeting.

The Committee discussed the financial performance of Council and future forecasts.

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**COMMITTEE RESOLUTION**

The Audit, Risk and Improvement Committee noted the finance update as at 31 December 2021.

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**6.3 WORK HEALTH & SAFETY AND INJURY MANAGEMENT UPDATE JULY 2021 TO DEC 2021**

*Note: Amy Noakes joined the meeting at 2:49pm*

**PURPOSE**

To provide the Audit, Risk and Improvement Committee with an update on Work Health & Safety and Workers Compensation at Northern Beaches Council for the period July 2021 to December 2021.

**DISCUSSION**

Amy Noakes, Executive Manager Human Resources addressed the meeting.

The Committee discussed the report and management of workers compensation including the ongoing impact of the pandemic. Amy Noakes noted that there is a strong focus on managing staff wellbeing and the Committee discussed KPI metrics regarding Council's wellbeing initiatives. Amy Noakes also provided an update on staff vaccination arrangements.

**COMMITTEE RESOLUTION**

The Audit, Risk and Improvement Committee noted the update as at December 2021.

## 7.0 IMPROVEMENT

### 7.1 PERFORMANCE REPORTING UPDATE

*Note:* Michael McDermid joined the meeting at 2:55pm

#### PURPOSE

To report on performance as of December 2021 against measures in Council's Operational Plan 2021/22.

#### DISCUSSION

Michael McDermid, Manager Corporate Strategy addressed the meeting.

M McDermid noted that it is anticipated the performance results for the next quarter will show the impact from recent weather events.

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#### COMMITTEE RESOLUTION

The Audit, Risk and Improvement Committee noted the report including that performance of Council services continues to be impacted by COVID-19.

---

### 7.2 CONTINUOUS IMPROVEMENT REPORT

#### PURPOSE

To provide the Committee with an update on the Northern Beaches Council's continuous improvement program.

#### DISCUSSION

Mark Jones, Executive Manager Strategy and Performance addressed the meeting.

M Jones provided commentary around the difference between process improvements and projects that are subject to a project management methodology. The Committee discussed strategic options and the CEO noted these are for the new Council to determine with those service review conversations starting shortly. The Committee discussed the workload and cost impost of the improvements identified and opportunities to accelerate some initiatives or use agile methodology across the business. M Jones noted some opportunities identified within business areas were also capable of being rolled across the organisation.

#### ACTION ITEMS

M Jones to consider including a workload indicator at the beginning of each of the actions: high resource/low priority, what is in progress, what is completed.

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#### COMMITTEE RESOLUTION

The Audit, Risk and Improvement Committee noted the progress of Council's continuous improvement programs.

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### 7.3 BENCHMARKING PROGRAM 2021/22

#### PURPOSE

To provide an update on the Benchmarking Program 2021/22.

#### DISCUSSION

M Jones addressed the meeting.

The Committee discussed the potential benefits of such benchmarking and management of the data including from previous benchmarking programs to inform trend analysis. The CEO advised he is discussing with four other councils a possibility to develop a pilot of the program. He noted that a lot of the data is already available via the Office of Local Government.

#### COMMITTEE RESOLUTION

That:

- A. The Audit, Risk and Improvement Committee endorsed the new benchmarking program.
- B. A report on benchmarking of workforce, finance and operations be presented to the June 2022 Audit, Risk & Improvement meeting.
- C. An update on the pilot bespoke benchmarking program be provided at the Audit, Risk & Improvement Meeting of June 2022.

## 8.0 FRAUD AND RISK MANAGEMENT

### 8.1 GOVERNANCE AND RISK MANAGEMENT UPDATE

Note: Rob Koopman and Tracey Gigg joined the meeting at 3:46pm

#### PURPOSE

To provide the Audit Risk and Improvement Committee with an update on governance and risk management activities.

#### DISCUSSION

Sarah Dunstan, Executive Manager Governance and Risk, and Rob Koopman, Manager Insurance and Risk addressed the meeting with the Committee accepting the report as read.

#### COMMITTEE RESOLUTION

The Audit, Risk and Improvement Committee noted the governance and risk management update.

## 8.2 DRAFT NORTHERN BEACHES DISCRETIONARY FUND POLICY

Note: Nicki Adams joined the meeting at 3:49pm

### PURPOSE

To review proposed amendments to the Northern Beaches Discretionary Fund Policy.

### DISCUSSION

Nick Adams, Executive Officer addressed the meeting.

The Committee discussed generally the reputational risks associated with discretionary initiatives in the government sector. N Adams provided the Committee with an overview of how the policy currently operates, the application and selection process and examples for which this fund is used, noting that it is intended for small and varied amounts and for causes Council is unable to budget for. The Committee provided some suggestions for consideration regarding the policy and process.

### COMMITTEE RESOLUTION

The Audit, Risk and Improvement Committee considered the draft Northern Beaches Discretionary Fund Policy and provided comments which can be included in a report to Council.

## 10.0 EXTERNAL AUDIT

### 10.1 PLANNING FOR THE 2021/22 FINANCIAL STATEMENTS AUDIT

#### PURPOSE

To present the Audit Office of NSW's Annual Engagement Plan for the audit of Northern Beaches Council's financial statements for the period 1 July 2021 to 30 June 2022 to the Audit, Risk and Improvement Committee.

#### DISCUSSION

Karen Taylor, Director of NSW Financial Audit Services addressed the meeting.

K Taylor discussed the development contributions audit and noted that staff have started their field work. K Taylor provided the Committee with an overview of measures taken to reduce audit costs, noting the impact of auditing standards on costs and the performance of the Audit Office in regards to benchmarking.

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### COMMITTEE RESOLUTION

The Audit, Risk and Improvement Committee noted the Audit Office of NSW's Annual Engagement Plan for the audit of the financial statements for the period 1 July 2021 to 30 June 2022.

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## 11.0 INTERNAL AUDIT

### 11.1 INTERNAL AUDIT UPDATE REPORT

#### PURPOSE

To provide an update to the Audit, Risk and Improvement Committee on all aspects of Internal Audit work since the December meeting.

#### DISCUSSION

Deidre Cooper, Executive Manager Internal Audit and Complaints Resolution addressed the meeting.

D Cooper discussed current audits underway and noted the overall positive results for the reporting period, with some minor gaps in policy and practices to be formalised in writing.

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#### COMMITTEE RESOLUTION

The Audit, Risk and Improvement Committee noted the report.

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## 12.0 GENERAL BUSINESS

*Note 1: The Committee moved into in-camera at 4.50pm with the following staff remaining present Ray Brownlee, Deidre Cooper and Sarah Dunstan.*

*Note 2: The Committee re-appointed Mr Stephen Horne as Chair for the remainder of the term.*

*Note 3: The Committee moved into in-camera at 5pm with Deidre Cooper remaining present.*

### 12.1 AGENDA ITEMS FOR NEXT MEETING

#### PURPOSE

To discuss with the Committee proposed agenda items for the next meeting.

#### DISCUSSION

Noted.

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#### COMMITTEE RESOLUTION

The Committee discussed the forward agenda for the June 2022 meeting.

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The meeting closed at 5.15pm.

## 13.0 NEXT MEETING

**Tuesday 7 June 2022**

# Audit, Risk and Improvement Committee

## **Annual Report 2021**

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## About this report

**This annual report documents the operation and activities of the Audit, Risk and Improvement Committee for Northern Beaches Council from 1 January to 31 December 2021.**

The Northern Beaches Council Audit, Risk and Improvement Committee (the committee or ARIC) has been established to promote good corporate governance at Northern Beaches Council (Council). Good corporate governance supports Council's vision of delivering the highest quality service, valued and trusted by the community in an effective and efficient manner and with transparency and accountability.

The committee provides independent assurance and assessment to Council on risk management, internal controls, governance, internal audits, organisational performance and improvement and external accountability responsibilities.

There are 4 independent members on the committee and 3 Councillors who are nominated by Council.

All committee member profiles are featured on pages 6-9 of this report.

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## Northern Beaches Council

Our vision and values underpin and drive everything we do and every decision we make. Holding to an ideal of connectedness, inclusion and preservation, these underlying principles protect our futures and the future of this unique and beautiful place we call home.

### Our purpose

Partnering with the community to protect, improve and create our future.

### Our corporate values

**Trust** - because being open brings out our best

**Teamwork** - because working together delivers

**Respect** - because valuing everyone is how we make a difference

**Integrity** - because we are proud of doing what we say

**Service** - because we care as custodians for the community

**Leadership** - because everyone has a leading role

### Community Strategic Plan goals

Our organisation's structure is aligned to the community's goals and strategies in the Community Strategic Plan 'Shape 2028'

- 1 Protection of the Environment
- 2 Environment and Sustainability
- 3 Places for People
- 4 Community and Belonging
- 5 Vibrant Local Economy
- 6 Transport, Infrastructure and Connectivity
- 7 Good Governance
- 8 Partnerships and Participation

## The Committee

ARIC has an important role in the governance framework by providing Council with independent oversight, objective assurance and monitoring of Council's audit processes, internal controls including fraud and corruption control, external reporting, risk management activities, compliance of and with Council's policies and procedures, governance processes and continuous improvement activities.

Pursuant to Part 4A (428A) of the *Local Government Amendment (Governance and Planning) Act 2016*, the committee must keep under review the following aspects of the council's operations:

- (a) compliance
- (b) risk management
- (c) fraud control
- (d) financial management
- (e) governance
- (f) implementation of the strategic plan, delivery program and strategies
- (g) service reviews
- (h) collection of performance measurement data by Council
- (i) any other matters prescribed by the regulations.

As part of this objective, the committee will assess and advise whether there are adequate and effective systems of internal control in place throughout Council and will assist in the implementation of the internal and external audit plans. The committee is also to provide information to Council for the purpose of improving Council's performance of its functions.



**Stephen Horne**

Committee Chair

*PFIIA-Aus, CIA, CGAP, CRMA, FGIA, GAICD, BBus, GradCertMgtComm, GradCertFraudControl, CertPublicAdmin, MIPAA*

Stephen had a 38-year career in the NSW public sector. His executive roles included Assistant Auditor-General for NSW, looking after performance audits, and Chief Executive of IAB, a Government Trading Enterprise undertaking internal audits and misconduct investigations for NSW State Government and Local Government bodies.

In 2015 Stephen established himself as a professional non-executive director, trainer and probity adviser. In that role Stephen has developed extensive experience serving on many Local Government and State Government audit, risk and improvement committees (ARIC) and running ARIC training across NSW.

Stephen was Australian President of the Institute of Internal Auditors 2013-2015; Australia's delegate on the IIA Global Board 2015-2019, and Global Chair of the IIA's Public Sector Guidance Committee 2016-2019.



**Mark McCoy**

Independent Member

*BCom, MBA, FCA, FFin, FGIA, FCIS, FAICD*

Mark is a business, governance and investment advisor, an experienced non-executive director in the banking, hospital, aged-care and software sectors, an experienced chair of board committees, a casual academic and author. His career includes auditing (for over a decade with KPMG) and risk management experience (Chief Manager, Risk Management for a major bank for six years), and chief financial officer and chief operating officer roles in other organisations.

He has been a member of the equivalent committee for City of Parramatta Council for the last six years (so familiar with the local government context), and similar committees for a local health district and a church synod.



**Sarah Richardson**

Independent Member

BA, BCA, MBA (Hons), GAICD, FGIA, FAMI

Sarah brings strategic, financial and corporate governance skills from three decades of board and executive experience in not-for-profits, small and medium enterprises (SME) and multinationals in Australia, France and the US. She has served on 15 health / infrastructure / education / sport / agrifoods boards in the last decade and is director of her own SME consultancy.

Sarah holds a BA, BCA, MBA (Hons) and GAICD and has received multiple awards for her not-for-profit, consultancy and corporate work. She is a member of the Governance Institute of Australia (Fellow), Australian Marketing Institute (Fellow, CPM, Awards Head Judge), Women on Boards, Australian Fulbright Alumni Association, Victoria University of Wellington Alumni Association (Regional Ambassador – Sydney) and University of Chicago Alumni Association (Founder and former Chair, Perth Branch).

Sarah is enjoying combining her passion for the community sector with her communication skills to build awareness and advocacy for community services within Australia.



**Julie Walton**

Independent Member

Julie has qualifications in both law and urban planning. During her career she has held senior positions in the fields of probity, governance and corruption prevention. She has board level experience in the areas of public transport, property services, museum governance and consumer protection, and is a member of the Australian Institute of Company Directors NSW. She has a background in local government and is a former councillor of the City of Sydney.

She is the author of "The Ways of the World: implications of political donations for planning systems", published by the Henry Halloran Trust (University of Sydney) in November 2015.



**Cr Sarah Grattan**

Councillor Member

Cr Grattan is a Manly Ward councillor who chaired Council's Transport and Travel Strategic Reference Group during the year.

In 2018 Cr Grattan was appointed as the Chief Operating Officer of UNICEF Australia, responsible for finance, legal, risk, governance, strategy, IT and operations.

Previously Cr Grattan ran her own strategic and management consultancy across diverse projects and industries after a number of years working with LEK Consulting and Sydney Airport.

Sarah is a graduate of the Australian Institute of Company Directors. Cr Grattan graduated from UNSW with a Bachelor of Economics (Hons) with the University Medal and a Bachelor of Laws.



**Cr Sue Heins**

Councillor Member

Cr Heins is a councillor for Narrabeen Ward and former Deputy Mayor of Northern Beaches Council.

During the year, Cr Heins chaired the Partnership and Participation Strategic Reference Group, co-chaired the Partnership and Participation Strategic Reference Group, co-chaired the Economic and Smart Communities Strategic Reference Group and the Bushfire Management Committee. She is an active member of the Northern Beaches Safety Committee and Northern Beaches Flood Management Committee.

In 2015 Cr Heins received the Minister's Award for Women in Local Government in recognition of her outstanding contributions to Council and the community.

Councillor Heins has lived on the Northern Beaches for well over 20 years and is a past President of Warringah Chamber of Commerce & Industries, a past Director of Business Education Network and is currently chairperson of the Manly Warringah Women's Resource Centre.



**Cr David Walton**

Council Member (until June 2021)

Cr Walton is a long term Northern Beaches resident. During his career as a policeman he became Commander of the Northern Beaches Local Area Command. David also held executive roles with large government organisations in internal audit and risk management. Currently he is non-executive director and chairman on the board of a banking and financial planning company. Cr Walton has a Bachelor of Business, Master of Management and is a Fellow of the Australian Institute of Company Directors.

Within the community, Cr Walton has served as Deputy President of Queenscliff SLSC, Deputy Chairman of the Special Olympics Sydney Northern Beaches branch and was President of Manly Swimming Club. He's been awarded the National Medal, the NSW Police Medal, the National Police Medal, a Commissioner's Commendation and was twice awarded the Commissioner's Unit Citation.



**Cr Rory Amon**

Councillor Member (from September 2021)

Cr Amon is a Pittwater Ward councillor and a lifelong Northern Beaches resident. He has been an active volunteer firefighter since 2013 and served as President and Vice-President of the Davidson Rural Fire Brigade for over eight years.

As President, Cr Amon oversaw the brigade's fundraising efforts to raise over \$150,000 to have the fire station extended to accommodate the brigade's growing membership of over 100 volunteers. He is deployed to live fires across NSW and is operationally active in the brigade. In 2020, Cr Amon was awarded the NSW Premier's Bushfire Emergency Citation in recognition of his services during the 2019-20 NSW Bushfires.

Cr Amon is a family lawyer by trade, representing and helping his clients navigate their way through the difficulties of family breakdown. He acts in complex financial matters and difficult parenting disputes. Cr Amon is on the Roll of Solicitors of the Supreme Court of NSW and the High Court of Australia, having practised as a solicitor for a decade.

Cr Amon has served on Council since 2017. His priorities for Council include ensuring accountability and transparency, fighting to end Council waste, to improve services and lower rates, standing up against inappropriate development, and fighting for: small businesses, upgrades to surf life saving clubhouses, and fair access to public space for families with dogs.

## Committee Report Card

Committee Charter	Fulfilment
<b>Committee meetings</b>	The committee met 5 times, including an additional meeting to review the draft 2020/21 financial statements and support them as suitable for consideration by Council for referral to external audit. A quorum was maintained at every meeting.
<b>Composition</b>	Four (4) independent members Three (3) councillor members
<b>Broad range of personal qualities, skills and experience</b>	Committee members have a diverse skill set, with extensive experience across local government, financial management, audit, risk management, legal, governance, business management and performance improvement.
<b>Functional separation</b>	The committee is established in accordance with Council's authority granted by section 355 of the <i>Local Government Act 1993</i> . The committee has no executive powers and recognises that at all times primary responsibility for management of Council rests with the council and the chief executive officer, in accordance with the Act.
<b>Responsibilities per the requirements of Part 4A (428A) of the Act</b>	Pursuant to the requirements of the Act, the committee kept under review the following aspects of Council's operations, as further detailed on pages 14-17: <ul style="list-style-type: none"> <li>• compliance</li> <li>• risk management</li> <li>• fraud control</li> <li>• financial management</li> <li>• governance</li> <li>• implementation of the strategic plan, delivery program and strategies</li> <li>• service reviews</li> <li>• collection of performance measurement data by Council</li> <li>• implementation of internal and external audit plans</li> <li>• performance improvement.</li> </ul>
<b>Code of Conduct</b>	Members comply with the Northern Beaches Council Code of Conduct and declare any conflicts of interest as/if they arise.



Committee Charter	Fulfilment
<b>In-camera meetings</b>	The committee met in December 2021, in-camera, with the head of internal audit, the internal audit service provider and external audit representatives from the Audit Office to receive feedback on audit activities and processes.
<b>Charter Review and Performance Assessment</b>	The committee assessed its performance as required by its charter (every two years) in March 2020. The committee reviewed and updated the charter, noting the Office of Local Government's risk management and internal audit framework (which incorporates a model charter) is yet to be released.
<b>Action items register</b>	The committee monitored management's progress with addressing and closing off action items raised by the committee in a timely manner.

## Audit Committee Performance

### Committee members' participation in 2021 meetings

As per the conditions of the charter, the ARIC is to meet at least 4 times per year (quarterly). If necessary, an additional meeting may be held to review and endorse the annual audited financial reports and external audit opinion.

Five meetings were held in 2021, with an additional meeting to review the financial statements.

Meeting attendance for the 2021 calendar year was as follows:

Name	Role	Eligible	Attended
Stephen Horne	Chair	5	5
Mark McCoy	Independent external member	5	5
Sarah Richardson	Independent external member	5	5
Julie Walton	Independent external member	5	4
Cr Sue Heins	Councillor	5	5
Cr Sarah Grattan	Councillor	5	5
Cr David Walton	Councillor	2	2
Cr Rory Amon	Councillor	3	3

#### Committee business, special and standing reports

Meeting date	Number of business reports	Number of special reports	Number of standing reports
9 March 2021	6	1	3
8 June 2021	9	2	3
14 September 2021	4	4	1
14 September 2021*	-	1	-
14 December 2021	8	2	2

\* The extraordinary meeting of 14 September 2021 was to review the financial statements only.

#### Business report

Information presented to the committee pertaining to the committee's address of its responsibilities as outlined in the Act.

#### Special report

Where the committee or management sought to provide the committee with additional information on a particular activity or process for assessment and advice by the committee.

#### Standing report

Information presented to the committee at each full meeting (eg. progress on action items, finance update, implementation of internal and external audit recommendations, and risk status update on major projects).

## Activities of the Committee

### Committee membership

During the year ARIC welcomed a new Council representative, Cr Rory Amon, and thanked the outgoing member, Cr Walton for his contribution to the committee. The Chair, Stephen Horne was re-elected as Chair for a third term from March 2021.

### Risk management

ARIC reviewed reports on the enterprise risk and opportunity management framework and guidelines, including reporting against measures in Council's risk appetite statement, delivery plan activities and outcomes of the annual risk maturity self-assessment survey.

The committee assessed and provided advice on management's strategic risk management plans for major projects, contracts and undertakings.

Reports were reviewed on insurance claims from 2020-21 and Council's insurance program for 2021-22. An independent review was undertaken of the adequacy and appropriateness of Council's insurance program. Council also completed a self-assessment audit to identify areas for improvement and reduce risk exposures. This was co-ordinated by Council's insurer, Statewide Mutual, and focussed on footpaths, building assets, event management and motor vehicles.

The committee assessed and provided advice on the adequacy and effectiveness of Council's process and controls for managing its activities and risks, with targeted reporting provided to the committee on work, health and safety management, Council's response to the COVID-19 pandemic and cybersecurity.

### Compliance

ARIC monitored and provided advice on management's progress with the implementation of the legislative compliance program and legislative compliance policy and received quarterly reports on Council's compliance with Office of Local Government obligations.

The committee reviewed and provided advice on compliance reviews undertaken as part of the scope of internal audit projects, which included, where applicable, a review of the organisation's compliance with applicable standards, laws and legislation.

### Fraud control

ARIC reviewed and commented on reports in relation to complaints received, including alleged breaches of the code of conduct, complaints made under the *Public Interest Disclosures Act 1994*, and referrals to or from the Independent Commission Against Corruption (ICAC) and the NSW Ombudsman.

The committee assessed and provided advice on Council's complaints management and resolution process and improvement opportunities identified and undertaken by management.

The committee received copies of minutes of the fraud and corruption control committee.

**Governance**

ARIC reviewed reports on governance initiatives including a new governance structure for project/program management, strategy development and budget oversight.

ARIC's charter was reviewed and updated, noting the Office of Local Government's risk management and internal audit framework is yet to be released. The committee undertook a gap analysis of its current operations in relation to the pending framework. This found existing arrangements are largely consistent with the framework.

The committee also reviewed and commented on management's progress on policy harmonisation to establish an integrated policy environment for Council.

**Financial management**

ARIC reviewed and provided advice on Council's financial and investment performance, including the annual financial statements.

The committee discussed and considered the impact of COVID-19 pandemic restrictions on operations and the support measures in place for the community on Council's financial results throughout the year.

An update on management's implementation of recommendations raised by the Audit Office of NSW was provided and the committee considered the appropriateness of actions undertaken.

The committee received an overview of the Local Government Superannuation Retirement Fund, a review of governance and internal controls over local infrastructure contributions, an update of the lease and licence register, a review of credit card use and reviewed Council's investment policy.

**External audit**

ARIC reviewed and commented on the Audit Office of NSW 2021-22 Annual Work Program which contained the financial and performance audit plan for the year ahead.

Management's progress with implementing external audit recommendations was reported at each ARIC meeting; the committee assessed these updates and provided advice.

The committee reviewed and commented on the NSW Audit Office's Annual Engagement Plan for the audit of the Northern Beaches Council financial statements for the year ending 30 June 2021. A report was also provided on the Audit Office's Closing Report and Management Letter for the 2020-21 Financial Year. The committee assessed and provided advice on the appropriateness of management's response to recommendations raised and timeframes for completion.

ARIC reviewed and commented on the draft 2020-21 financial statements, and following feedback provided by management, supported these as suitable for consideration by Council for referral to external audit.

The committee reviewed a report which provided an update on the Auditor-General's report on the local government sector in NSW, covering 2019/20 financial audits of councils and joint organisations.

**Internal audit**

ARIC monitored the status of internal audit activity undertaken in relation to the approved Three Year Strategic Internal Audit Plan and Annual Internal Audit Plan. It reviewed and commented on internal audit findings and recommendations presented in completed internal audit reports and assessed the appropriateness of agreed management actions and timeframes for completion.

Management's progress implementing internal audit recommendations (reported at each ARIC meeting) was assessed and advice provided.

ARIC reviewed and endorsed the Internal Audit Annual Report 2020-21 for presentation to Council.

### Continuous improvement

ARIC assessed and provided advice on Council's improvement direction and initiatives, performance measures, benchmarking data and implementation of the strategic plan and delivery program.

Reports regarding the Council's progress with respect to the business excellence strategy and associated IGNITE (Improvement) Program were discussed by the committee. The committee also reviewed ongoing progress of improvements identified in Council's review of its 57 Services under its 2020 Service Review Program. This program reviewed suitability and adaptability of Council's service delivery models to meet the current and future needs of the community including shocks such as that experienced during the COVID-19 pandemic.

The committee also assessed and provided advice on Council's involvement in the Australasian Performance Excellence Benchmarking Program (ALGPEP) 2019/20 which again confirmed that Council is performing either at par or better than its local government peers (those that are a part of the program).

### Integrated Planning Framework

ARIC assessed and provided advice on reports on the Northern Beaches Council Performance Measurement Framework for public reporting which is based on the Community Strategic Plan (CSP) and Delivery Program and reported to Council quarterly and annually.

The committee also reviewed reports on Council's Operational Plan 2020/21 via 65 annual performance measures and the implementation of the Operational Plan 2021/22 in which progress is monitored through 37 quarterly performance measures. The Office of Local Government's new requirements for integrated planning and reporting and the process being undertaken by Council to review its suite of related documents for the incoming Council were reported to the committee.

### Other items brought to the committee

ARIC assessed and provided advice on special report items, including:

- a policy on management of unsolicited proposals (approaches from proponents with a proposal to deal directly with Council over a commercial proposition where Council has not requested the proposal)
- a report and progress update on Council's cybersecurity roadmap and activities to achieve, monitor and maintain agreed risk tolerances
- a report on the policy and management of CCTV and other optical surveillance devices was also considered.

### Audit, Risk and Improvement Committee

Chair





## Investment Policy

**Council Policy****Investment****1 Purpose of Policy**

To ensure Council maintains an investment policy that complies with the Act, the Local Government (General) Regulation 2021 (LGGR) and the Ministerial Investment Order and ensures it or its representatives exercise care, diligence and skill that a prudent person would exercise in investing council funds.

**2 Policy Statement**

The objectives of this policy are to provide a framework for the investing of Council's funds at the most favourable return available to it at the time whilst having due consideration of risk and security for that investment type and ensuring that Council's liquidity requirements are being met.

Investments must only be made in compliance with the most current Ministerial Investment Order that has been issued by the NSW Minister for Local Government and in accordance with this Policy.

When exercising the power of investment, Council should consider, but not be limited by:

- The risk of capital or income loss or depreciation.
- The likely income return, and the timing of income return.
- The length of the term of the proposed investment.
- The liquidity and marketability of the proposed investment.
- The likelihood of inflation affecting the value of the proposed investment; and
- The costs (including commissions, fees, charges and duties payable) of making the proposed investment.
- The exposure of that investment to financial risks associated with climate change.

Preservation of capital is the principal objective of the investment portfolio. Investments are to be placed in a manner that seeks to ensure security and safeguarding the investment portfolio.

Investments are expected to achieve a market average rate of return in line with the Council's risk tolerance.

**3 Principles****3.1 Investment Strategy**

An Investment Strategy will run in conjunction with the Investment Policy. The Investment Strategy will be reviewed with an independent investment advisor once a year. The Strategy will outline:

- Council's cash flow expectations.
- Optimal target allocation of investment types, credit rating exposure and term to maturity exposure and
- Appropriateness of overall investment types for Council's portfolio.

**3.2 Investment Advisor**

Council's investment advisor must be approved by Council and licensed by the Australian

## Investment Policy

Securities and Investments Commission. The advisor must be an independent person who has no actual or potential conflict of interest in relation to investment products being recommended and is free to choose the most appropriate product within the terms and conditions of the investment policy.

The independent advisor is required to provide written confirmation that they do not have any actual or potential conflicts of interest in relation to the investments they are recommending or reviewing, including that they are not receiving any commissions or other benefits in relation to the investments being recommended or reviewed.

### 3.3 Approved Investments

Investments are limited to those allowed by the most current Ministerial Investment Order that has been issued by the NSW Minister for Local Government. Approved investments include:

- Commonwealth/State/Territory Government security e.g., bonds
- Interest bearing deposits with, or any debentures or bonds, issued by an authorised deposit taking institution (ADI) (as defined in the Banking Act 1959 (Cwth)), but excluding subordinated debt obligations; Bills of exchange, (<200 days duration), issued and/or accepted by an authorised deposit taking institution (ADI).
- Debentures issued by NSW Local Government.
- Deposits with NSW Treasury &/or Investments in T Corp's Hour-Glass Facility; and
- Investments grandfathered under the previous Ministerial Investment Order.

### 3.4 Prohibited Investments

This investment policy prohibits but is not limited to any investment carried out for speculative purposes, including:

- Derivative based instruments.
- Principal only investments or securities that provide potentially nil or negative cash flow and
- Standalone securities issued that have underlying futures, options, forwards contracts and swaps of any kind.

This policy also prohibits the use of leveraging (borrowing to invest) of an investment.

### 3.5 Prudent Person Standard

Council has a fiduciary responsibility when investing. The investment will be managed with the care, diligence and skill that a prudent person would exercise. As trustees of public monies, officers are to manage Council's investment portfolio to safeguard the portfolio in accordance with the spirit of this Investment Policy, and not for speculative purposes.

### 3.6 Conflicts of Interest

Officers shall refrain from personal activities that would conflict with the proper execution and management of Council's investment portfolio. This policy requires officers to disclose any conflict of interest to the Chief Executive Officer.

Independent advisors are also required to declare that they have no actual or perceived conflicts of interest.

### 3.7 Environmental and Social Considerations

Where financial institutions are offering equivalent investment returns with the same credit ratings and the investment conforms with the Investment Policy then preference will be given to institutions demonstrating environmental and social responsibility.

### 3.8 Audit, Risk and Improvement Committee

The policy must be reviewed annually by the Audit, Risk and Improvement Committee.

## Investment Policy

Such review to be carried out prior to an annual review of the policy that is required under Clause 5.1.

### 3.9 Linking Investments to Underlying Liabilities

Investments should seek to maximise return whilst having regard to the timing and nature of future liabilities and Council's cash flow profile. Liquidity requirements have due regard to the timing and nature of both future liabilities and Council's cash flow requirements.

## 4 Guidelines

### 4.1 Risk Management Guidelines

Investments are expected to achieve a market average rate of return in line with Council's risk tolerance.

- **Preservation of Capital** - the requirement for preventing losses in an investment portfolio's total value.
- **Diversification** - the requirement to place investments in a broad range of products so as not to be over exposed to a particular sector of the investment market.
- **Market Risk** - the risk that the fair value or future cash flows of an investment will fluctuate due to changes in market prices.
- **Liquidity Risk** - the risk an investor is unable to redeem the investment at a fair price within a timely period.
- **Maturity Risk** - the risk relating to the length of term to maturity of the investment. The larger the term, the greater the length of exposure and risk to market volatilities; and
- **Leveraging Risk** - the magnification of an investor's risk and return that occurs when the investor takes on financial leverage through an investment product.

### 4.2 Credit and Maturity Guidelines

Investments are to comply with three key criteria relating to:

- **Overall Portfolio Credit Framework** - limit overall market credit exposure of the portfolio
- **Institutional Credit Framework** - limit exposure to individual institutions based on their credit ratings; and
- **Term to Maturity Framework** - limits based upon maturity of securities.

#### 4.2.1 Overall Portfolio Credit Framework

To control the credit quality of the entire portfolio, the following credit framework limits the percentage of the portfolio exposed within the market to any particular credit rating category.

S&P Long Term Rating*	S&P Short Term Rating*	Maximum %
AAA (incl. government guaranteed deposits)	A-1+	100%
AA+		
AA		
AA-		
A+	A-1	100%
A		
A-		
BBB+	A-2	80%
BBB		
BBB-	A-3	30%
Unrated**	Unrated**	5%

## Investment Policy

- \* or Moody's / Fitch equivalents
- \*\* Unrated Category is restricted to eligible managed funds such as the NSW Treasury Corporation Hour-Glass Facilities and ADIs covered by the government guarantee scheme.

### 4.2.2 Institutional Credit Framework

Exposure to an individual institution will be restricted by their credit rating so that single entity exposure is limited, as detailed in the table below:

S&P Long Term Rating*	S&P Short Term Rating*	Maximum %
AAA (incl. government guaranteed deposits)	A-1+	50%
AA+		
AA		
AA-		
A+	A-1	40%
A		
A-		
BBB+	A-2	30%
BBB		
BBB-	A-3	10%
Unrated** TCorp Funds	Unrated**	5%
Unrated*** ADIs	Unrated***	\$250,000

- \* or Moody's / Fitch equivalents
- \*\* Unrated TCorp Funds Category is restricted to eligible managed funds such as the NSW Treasury Corporation Hour-Glass Facilities.
- \*\*\* Unrated ADIs Category is restricted to those ADIs that are under the Australian government guarantee scheme and limited to maximum \$250,000 per unrated ADI.

If any of Council's investments are downgraded such that they no longer fall within the investment policy, they will be divested as soon as practicable.

The short-term credit rating limit will apply in the case of discrepancies between short and long-term ratings.

### 4.2.3 Transitional Arrangements

Investments made before the date of 12 January 2011 have been deemed to have been made in compliance with this policy so long as the investments have not been subject to any restructuring or switching. These investments can continue to be held to maturity without breaching this policy or the Ministerial Investment Orders that are currently in place.

### 4.2.4 Term to Maturity Framework

The investment portfolio is to be invested within the following maturity constraints:

Overall Portfolio Term to Maturity Limits		
Portfolio % <1 year	Min 40%	Max 100%
Portfolio % >1 year ≤3 year	Min 0%	Max 60%
Portfolio % >3 year ≤5 year	Min 0%	Max 30%

## 5 Reporting Requirements

### 5.1 Reporting and Reviewing of Investments

## Investment Policy

Documentary evidence must be held for each investment and details thereof maintained in an Investment Register. The documentary evidence must provide Council legal title to the investment.

Certificates must be obtained from the financial institutions confirming the amounts of investments held on the Council's behalf as at 30 June each year and reconciled to the Investment Register.

All investments are to be appropriately recorded in Council's financial records and reconciled at least on a monthly basis.

A monthly report will be provided to Council. The report will detail the investment portfolio in terms of performance, percentage exposure of total portfolio, maturity date and changes in market value.

By resolution Council will adopt an Investment Policy that is consistent with the Ministerial Investment Order and any guidelines issued by the Chief Executive (Local Government), Department of Premier and Cabinet from time to time.

This Investment Policy will be reviewed at least once a year or as required in the event of legislative changes. The Investment Policy may also be changed as a result of other amendments that are to the advantage of Council and in the spirit of this policy. Any amendment to the Investment Policy must be by way of Council resolution.

### 5.2 Measurement

The investment return for the portfolio is to be regularly reviewed by an independent financial advisor by assessing the market value of the portfolio. The market value is to be assessed at least once a month to coincide with monthly reporting. Any changes to the market value that have not been accounted for will be brought to account on a mark-to-market basis.

### 5.3 Performance Benchmarks

The performance of the investment portfolio shall be measured against the industry standard Bloomberg AusBond Bank Bill Index and/or the Official Cash Rate. The performance of investments with terms greater than 2 years will also be measured against the Bloomberg AusBond Composite 2-5 year index.

## 6 Delegation of Authority

Authority for implementation of the Investment Policy is delegated by Council to the Chief Executive Officer in accordance with the Local Government Act 1993.

The Chief Executive Officer may in turn delegate the day-to-day management of Council's investments to the Responsible Accounting Officer or senior staff, subject to regular reviews.

Officers' delegated authority to manage Council's investments shall be recorded and required to acknowledge they have received a copy of this policy and understand their obligations in this role.

The Chief Executive Officer or any other staff member, with delegated authority by Council to invest funds on behalf of Council must do so in accordance with the adopted investment policy.

## 7 Amendments

The Chief Executive Officer or their delegated representative be authorised to approve variations to investment options that may not be consistent with this policy, if the investment is to Council's advantage and/or due to revised legislation.

All such variations are to be reported to Council within 14 days.

## Investment Policy

### 8 Scope and application

This policy applies to all employees, agents, officers and councillors of Northern Beaches Council.

### 9 References and related documents

All investments are to comply with the following:

- Local Government Act 1993
- Local Government (General) Regulation 2021
- Ministerial Investment Order 2011
- Local Government Code of Accounting Practice and Financial Reporting
- Australian Accounting Standards and
- Office of Local Government Circulars

### 10 Definitions

“Act” Local Government Act 1993

“LGGR” Local Government (General) Regulation 2021

### 11 Responsible Officer

Chief Financial Officer

### 12 Review Date

The policy is due for review at least once per year or as required in the event of legislative changes.

### 13 Revision History

Revision	Date	Change	TRIM Ref
1	27 Sept 2016	Policy adopted by Council	2016/322788
1.1	17 April 2018	Minor amendment – formatting changes to updated policy template.	2016/322788
1.2	10 December 2019	The Audit, Risk and Improvement Committee noted the review of the Investment Policy and no changes to the Policy were recommended by the Committee necessitating a report to Council.	2016/322788
1.3	8 December 2020	The Audit, Risk and Improvement Committee noted the review of the Investment Policy and did not recommend any changes to the Policy.	2016/322788

## Investment Policy

# SCHEDULE 1: Extracts of Legislative Requirements

## LOCAL GOVERNMENT ACT 1993 - SECT 412 & 625

### Section 412 Accounting Records

- 1) A council must keep such accounting records as are necessary to correctly record and explain its financial transactions and its financial position.
- 2) In particular, a council must keep its accounting records in a manner and form that facilitate:
  - (a) the preparation of financial reports that present fairly its financial position and the results of its operations, and
  - (b) the convenient and proper auditing of those reports.

### Section 625 How May Councils Invest?

- 1) A council may invest money that is not, for the time being, required by the council for any other purpose.
- 2) Money may be invested only in a form of investment notified by order of the Minister published in the Gazette.
- 3) An order of the Minister notifying a form of investment for the purposes of this section must not be made without the approval of the Treasurer.
- 4) The acquisition, in accordance with section 358, of a controlling interest in a corporation is not an investment for the purposes of this section.

## LOCAL GOVERNMENT (GENERAL) REGULATION 2021 - REG 206 & 212

### 206 Accounting records and accounting practices to accord with the Code

- 1) A council's accounting records must be kept in a form that accords with the Code.
- 2) A council's accounting practices must accord with the Code.

### 212 Reports on council investments

- 1) The responsible accounting officer of a council:
  - (a) must provide the council with a written report (setting out details of all money that the council has invested under section 625 of the Act) to be presented:
    - (i) if only one ordinary meeting of the council is held in a month, at that meeting, or
    - (ii) if more than one such meeting is held in a month, at whichever of those meetings the council by resolution determines, and
  - (b) must include in the report a certificate as to whether or not the investment has been made in accordance with the Act, the regulations and the council's investment policies.
- 2) The report must be made up to the last day of the month immediately preceding the meeting.

## LOCAL GOVERNMENT CODE OF ACCOUNTING PRACTICE AND FINANCIAL REPORTING – APPENDIX A

Council must maintain an investment policy that complies with the Local Government Act 1993, the Local Government (General) Regulation 2021 and the Ministerial Investment Order and ensure it or its representatives exercise care, diligence and skill that a prudent person would exercise in investing council funds.

Councils must maintain a separate record of money it has invested under section 625 of the LGA. The record must specify:

- (a) the source and the amount of money invested; and
- (b) particulars of the security or form of investment in which the money is invested; and
- (c) if appropriate, the rate of interest to be paid, and the amount of money that the council has earned, in respect of the money invested.



## Investment Policy



Circular No. 11-01  
Date 17 February 2011  
Doc ID. A232163

Contact Finance Policy Section  
02 4428 4100  
dlg@dlg.nsw.gov.au

**REVISED MINISTERIAL INVESTMENT ORDER**

A revised Investment Order pursuant to section 625 of the *Local Government Act 1993* has been issued. The Minister for Local Government signed the revised Order on 12 January 2011 and it was published in the NSW Government Gazette on 11 February 2011. It replaces the Order dated 31 July 2008. The revised Order is attached to this circular.

Changes to the Investment Order include:

- the removal of the ability to invest in the mortgage of land (part (c) of the Investment Order dated 31 July 2008)
- the removal of the ability to make a deposit with the Local Government Financial Services Pty Ltd (part (f) of the order dated 31 July 2008)
- the addition of "Key Considerations" in the revised Investment Order, which includes a comment that a council's General Manager, or any other staff, with delegated authority by a council to invest in funds on behalf of the council must do so in accordance with the council's adopted investment policy.

Councils are reminded that on 25 May 2010 the Division of Local Government issued Investment Policy Guidelines (Circular to Councils 10-11 refers). It is expected that all councils will by now have adopted an Investment Policy in accordance with the Guidelines.



**Ross Woodward**  
Chief Executive, Local Government  
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## Investment Policy

**LOCAL GOVERNMENT ACT 1993 – INVESTMENT ORDER**  
(Relating to investments by councils)

I, the Hon. Barbara Perry MP, Minister for Local Government, in pursuance of section 625(2) of the *Local Government Act 1993* and with the approval of the Treasurer, do, by this my Order, notify for the purposes of section 625 of that Act that a council or county council may only invest money (on the basis that all investments must be denominated in Australian Dollars) in the following forms of investment:

- (a) any public funds or securities issued by or guaranteed by, the Commonwealth, any State of the Commonwealth or a Territory;
- (b) any debentures or securities issued by a council (within the meaning of the *Local Government Act 1993* (NSW));
- (c) interest bearing deposits with, or any debentures or bonds issued by, an authorised deposit-taking institution (as defined in the *Banking Act 1959* (Cwth)), but excluding subordinated debt obligations;
- (d) any bill of exchange which has a maturity date of not more than 200 days; and if purchased for value confers on the holder in due course a right of recourse against a bank which has been designated as an authorised deposit-taking institution by the Australian Prudential Regulation Authority;
- (e) a deposit with the New South Wales Treasury Corporation or investments in an Hour-Glass investment facility of the New South Wales Treasury Corporation;

All investment instruments (excluding short term discount instruments) referred to above include both principal and investment income.

**Transitional Arrangements**

- (i) Subject to paragraph (ii) nothing in this Order affects any investment made before the date of this Order which was made in compliance with the previous Ministerial Orders, and such investments are taken to be in compliance with this Order.
- (ii) Paragraph (i) only applies to those investments made before the date of this Order and does not apply to any restructuring or switching of investments or any re-investment of proceeds received on disposal or maturity of such investments, which for the avoidance of doubt must comply with this Order.

**Key Considerations**

An investment is not in a form of investment notified by this order unless it also complies with an investment policy of council adopted by a resolution of council.

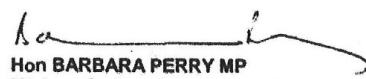
All councils should by resolution adopt an investment policy that is consistent with this Order and any guidelines issued by the Chief Executive (Local Government), Department of Premier and Cabinet, from time to time.

The General Manager, or any other staff member, with delegated authority by a council to invest funds on behalf of a council must do so in accordance with the council's adopted investment policy.

Councils have a fiduciary responsibility when investing. Councils should exercise the care, diligence and skill that a prudent person would exercise in managing the affairs of other persons.

When exercising the power of investment councils should consider, but not be limited by, the risk of capital or income loss or depreciation, the likely income return and the timing of income return, the length of the term of the proposed investment, the liquidity and marketability of the proposed investment, the likelihood of inflation affecting the value of the proposed investment and the costs (including commissions, fees, charges and duties payable) of making the proposed investment.

Dated this 12<sup>th</sup> day of January 2011

  
Hon BARBARA PERRY MP  
Minister for Local Government



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## Community and Stakeholder Engagement Report

### Revised Investment Policy (Stage 1 of 1)

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## 1. Summary

This report outlines the outcomes of community and stakeholder engagement as part of the exhibition of the Draft Revised Investment Policy (the Policy). The Policy is in place to ensure Council maintains an investment policy that complies with the *Local Government Act, 1993*, the *Local Government (General) Regulation 2021* and the *Ministerial Investment Order* and that Council or its representatives exercise care, diligence and skill that a prudent person would exercise in investing council funds. The Policy was exhibited between Friday 27 May and Sunday 26 June 2022.

There were four submissions during the period of consultation. One submission expressed support for the Policy, in particular the proposed limits on unrated investments. The other three submissions were advocating that environmental and social considerations should be considered by Council when making investment decisions.

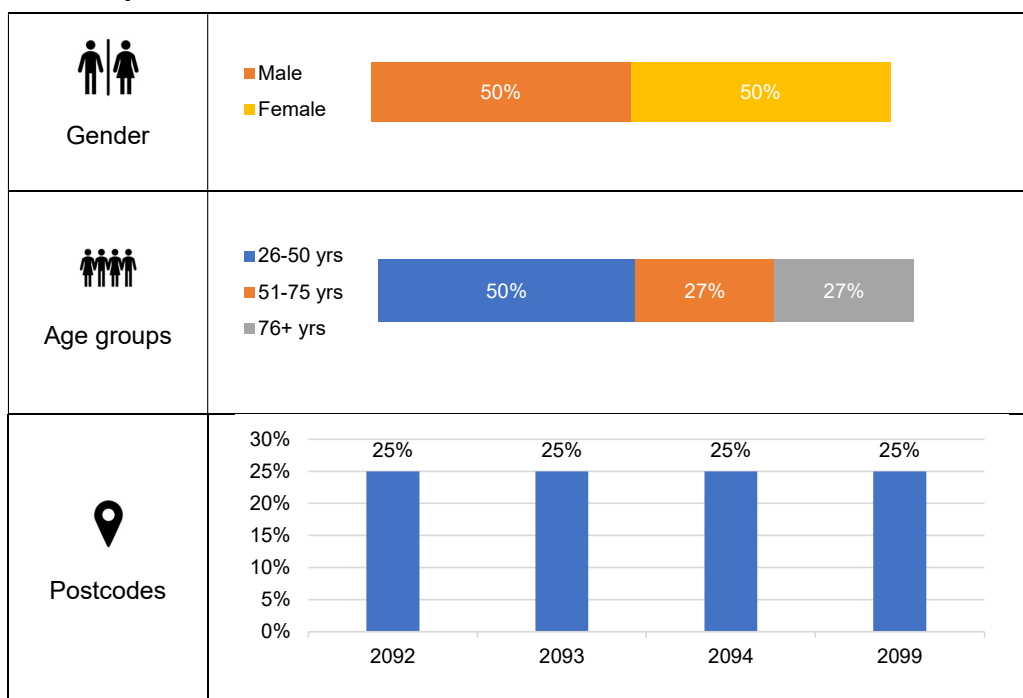
### 1.1. Key outcomes

 Total unique responses	4	
 How responses were received	Submission form	Completions: 4
 Feedback themes	Social and environmental impacts  Council's growing exposure to the impacts of climate change	Avoiding investments that fund the fossil fuel industry and avoid banking institutions who finance and invest in fossil fuel projects

### 1.2. How we engaged

 Have Your Say: visitation stats	Visitors: 117	Visits: 159	Average time onsite: 3min 49 secs
 Electronic direct mail (EDM)	Community Engagement (fortnightly) newsletter: 2 editions  Council (weekly) e-News: 1 edition		Distribution: 22,000 subscribers  Distribution: 180,000 subscribers

### 1.3. Who responded<sup>1</sup>



## 2. Background

In November 2021 our existing Investment Policy was reviewed by Council's investment advisors. At that time four amendments were proposed for inclusion in the Policy. These amendments were made to the policy and a Draft Revised Investment Policy was endorsed for exhibition at the Council meeting held on Tuesday 24 May 2022.

The exhibition was held to seek community comment on the Policy and asked a specific question regarding on any types of investments not in line with community values (as directed in the Council resolution).

## 3. Engagement objectives

Community and stakeholder engagement aimed to:

- Build community and stakeholder awareness of participation activities (inform)
- Provide accessible information so community and stakeholders can participate in a meaningful way (inform)

## 4. Engagement approach

Community and stakeholder engagement for the Policy was conducted between 27 May and 26 June 2022 and consisted of activities that provided opportunities for community and stakeholders to contribute.

The engagement was planned, implemented and reported in accordance with Council's [Community Engagement Matrix](#) (2017).

<sup>1</sup> Demographic data was gathered by request only. The data represented only includes those respondents who provided this detail.

A project page was established on our have your say platform with information provided in an accessible and easy to read format.

The project was primarily promoted through our regular email newsletter (EDM) channels.

Feedback was captured through an online submission form embedded onto the have your say project page. The form also asked a specific question seeking feedback concerning any types of investments not in line with community values e.g., due to their impact on the environment or community, and that Council should avoid investment in. Feedback was qualitative only and did not ask a specific sentiment question.

An open-field comments box provided community members a space to explain or elaborate on their support, not support or neutral sentiment as well as any other feedback they wished to contribute.

Email and written comments were also invited.

## 5. Findings

The exhibition was held to seek community comment on the draft policy and also asked a specific question regarding any types of investments that were considered not to be in line with community values.

There were four submissions during the period of consultation.

One submission expressed their support the Draft Revised Investment Policy, in particular the proposed limits on unrated investments. This submission did not provide any comment or feedback on the additional question regarding on any types of investments that were considered not to be in line with community values.

The other three submissions replied to the question requesting feedback in relation to any types of investments that were considered not to be in line with community values.

To summarise, all three respondents recommended that environmental considerations should be taken into account when making investment decisions. In addition, one of the respondents also recommended that social considerations should also be taken into account when making investment decisions. It is noted that Clause 3.6 of the Draft Revised Investment Policy already includes a requirement for Council to consider environmental and social factors when making investment decisions.

## Appendix 1 Verbatim community and stakeholder responses\*

No.	Please provide your submissions below	Please share your feedback on any types of investments Council should avoid, such as those that do not align with community values or impact on the environment.	Council response
1		<p>I ask council to avoid investments that fund the fossil fuel industry and avoid banking institutions who finance and invest in fossil fuel projects. Our beautiful coastline has already and continues to feel early climate changes. It would be to the absolute benefit of our local community and ongoing generations.</p> <p>As per the NSW Office of Local Government: 'In accordance with the Local Government Act 1993, councils are required to follow principles of sound financial management. Councils must ensure its spending is responsible and sustainable, undertake responsible and sustainable investments in infrastructure for the benefit of the local community, implement effective financial and asset management, and have regard to achieving intergenerational equity.' Office of Local Government</p> <p><a href="https://www.olg.nsw.gov.au/councils/council-finance/">https://www.olg.nsw.gov.au/councils/council-finance/</a></p>	<p>Clause 3.6 of the Draft Revised Investment Policy includes a requirement for Council to consider environmental and social factors when making investment decisions. Clause 3.6 provides that "Where financial institutions are offering equivalent investment returns with the same credit ratings and the investment conforms with the Investment Policy then preference will be given to institutions demonstrating environmental and social responsibility."</p> <p>The comments made in relation to Council's spending, infrastructure, financial and asset management and intergenerational equity are noted, however do not pertain to Council's Investment Policy.</p> <p>Details about Council's responsible and sustainable investment in infrastructure can be found in Council's <a href="#">Delivery Program</a> located on Council's website.</p>
2	I support the draft Investment Policy, in particular the proposed limits on un-rated investments		The comments are noted.
3	Thank you for the opportunity to provide feedback on Council's Investment Policy. While the controls placed on Council	Examples of where Council should avoid investing include investments (whether directly or indirectly) in:	The comments raised relating to the consideration of social and environmental impacts and climate change are adequately and appropriately covered in Clause 3.6

\*Personal details and inappropriate language have been redacted where possible. Spelling and grammatical errors have been amended only where misinterpretation or offence may be caused.

No.	Please provide your submissions below	Please share your feedback on any types of investments Council should avoid, such as those that do not align with community values or impact on the environment.	Council response
	<p>investing are both understandable and appreciated, there are some additional issues that do not appear to be included in the draft policy that seem worthy of consideration. In particular:</p> <ul style="list-style-type: none"> <li>* the extent to which social and environmental impacts of Council's investments influence Council's investing;</li> <li>* Council's growing exposure to the impacts of climate change of Council's investments</li> <li>* Opportunities for investment in 'Ethical Funds'. While I have not been able to find global ratings for the better of these funds, some (such as Australian Ethical Investments) are highly ranked award winners in terms of return on investment AND their ESG performance. These funds meet the considerations outlined in the Draft Policy (p.1). They offer 'equivalent [or in many cases, better] returns than standard non-ethical funds, and can contribute significantly to responsible diversification which avoids over-investment in a particular sector of the investment market.</li> </ul>	<ul style="list-style-type: none"> <li>* fossil fuels (thus avoiding further exacerbation of climate change)</li> <li>* the gambling industry (with its huge socially devastating impacts, including here in our own community)</li> <li>* cigarette and alcohol industries (both of which contribute significantly to harm to health)</li> <li>* companies involved in firearms production and sale</li> <li>* companies involved in native forest logging and other environmentally unsustainable practices.</li> </ul>	<p>of the Draft Revised Investment Policy. Clause 3.6 provides that "Where financial institutions are offering equivalent investment returns with the same credit ratings and the investment conforms with the Investment Policy then preference will be given to institutions demonstrating environmental and social responsibility."</p> <p>Comments made in relation to opportunities for investment in "Ethical Funds" are noted. However, as stated in Clause 3.3 of the Draft Revised Investment Policy, Council's investments are limited to those allowed by the most current Ministerial Investment Order. Council cannot invest in funds that fall outside of those allowed by the most current Ministerial Investment Order.</p> <p>Comments made about the types of investments that Council should avoid have been noted. The Draft Revised Investment Policy does not permit Council to directly invest in specific companies, organisations or industries as detailed in the comment. In accordance with Clause 3.3 of the Draft Revised Investment Policy, Council's investments are limited to those allowed by the most current Ministerial Investment Order. These investments are largely limited to interest-bearing deposits with, or any debentures or bonds, issued by an authorised deposit taking institution (ADI) (as defined in the Banking Act 1959 (Cwth)). In addition, Clause 3.6 of the Policy includes a requirement for Council to consider environmental and social factors when making investment decisions.</p>
4		As we saw last weekend it feels like there is strong support in the local area for net zero by 2050 and to limit the effects of global warming. In	The comments made relating to environmental considerations have been noted.

No.	Please provide your submissions below	Please share your feedback on any types of investments Council should avoid, such as those that do not align with community values or impact on the environment.	Council response
		order to achieve this the IPCC has stated that there should be no new coal, oil or gas projects. Yet energy companies continue to invest billions of dollars. As a minimum it feels like council money shouldn't go to supporting oil, coal and gas businesses, or index tracking funds which have exposure to them. Not only right thing in order to achieve climate goals but almost surely the best choice for medium to longer term financial returns.	Clause 3.6 of the Draft Revised Investment Policy includes a requirement for Council to consider environmental and social factors when making investment decisions. Clause 3.6 provides that "Where financial institutions are offering equivalent investment returns with the same credit ratings and the investment conforms with the Investment Policy then preference will be given to institutions demonstrating environmental and social responsibility."

Document administration	
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Notes	Community and stakeholder views contained in this report do not necessarily reflect the views of the Northern Beaches Council or indicate a commitment to a particular course of action.