

Agenda

Planning and Strategy Committee

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

Monday 4 February 2013

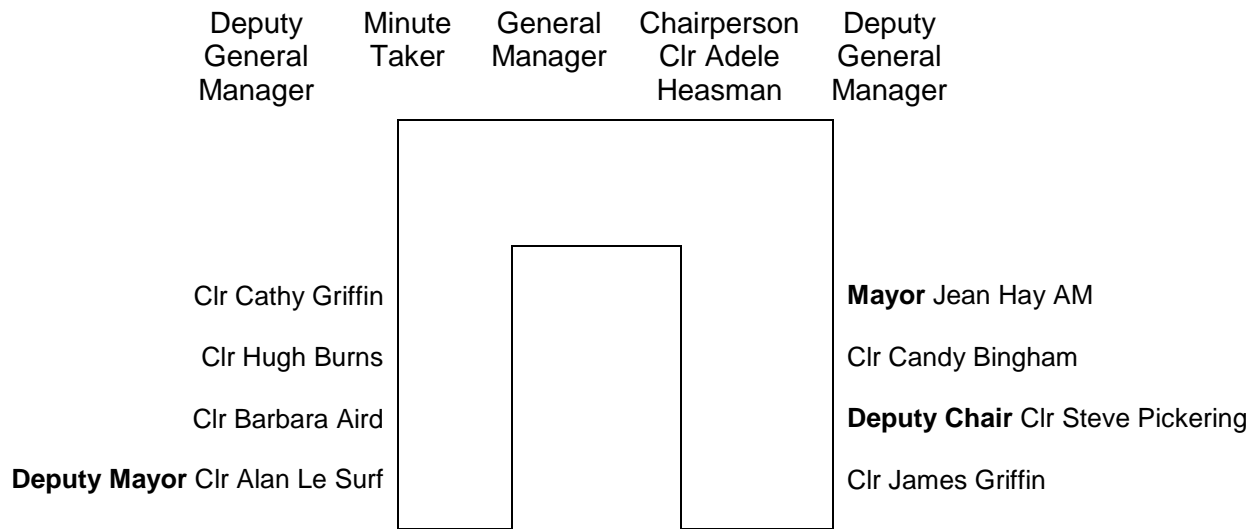
Commencing at 7.30pm for the purpose of considering items included on the Agenda.

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

Copies of business papers are available at the Customer Service Counters at Manly Council, Manly Library and Seaforth Library and are available on Council's website:

www.manly.nsw.gov.au

Seating Arrangements for Meetings



Press

Public
Addresses

Public Gallery

Chairperson: Cllr Adele Heasman
Deputy Chairperson: Cllr Steve Pickering

TABLE OF CONTENTS

Item	Page No.
APOLOGIES AND LEAVE OF ABSENCE	
DECLARATIONS OF INTEREST	
REPORTS OF COMMITTEES	
Report Of Committees Report No. 1 Minutes for adoption by Council - Special Purpose Advisory Committee - without recommendations of a substantial nature.....	2
ENVIRONMENTAL SERVICES DIVISION	
Environmental Services Division Report No. 1 Development Applications currently being processed during December 2012 and January 2013.....	3
Environmental Services Division Report No. 2 Summary of Current Appeals Relating to DAs During December 2012 and January 2013.....	8
CORPORATE SERVICES DIVISION	
Corporate Services Division Report No. 1 The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013.....	9
CLOSED COMMITTEE ITEMS	

***** END OF AGENDA *****

TO: Planning and Strategy Committee - 4 February 2013
REPORT: Report Of Committees Report No. 1
SUBJECT: Minutes for adoption by Council - Special Purpose Advisory Committee -
without recommendations of a substantial nature
FILE NO: MC/13/2076

The minutes of the following Special Purpose Advisory Committee meetings are tabled at this meeting:

- i) Traffic Committee – 19 November 2012;
- ii) Heritage and Local History Committee – 5 December 2012;
- iii) Traffic Committee – 10 December 2012;
- iv) Community Environment Committee – 12 December 2012;
- v) Community Safety Committee – 13 December 2012; and
- vii) Surf Club Liaison Working Group – 18 December 2012.

RECOMMENDATION

That the minutes of the following Special Purpose Advisory Committee meeting be adopted.

- ii) Traffic Committee – 19 November 2012;
- ii) Heritage and Local History Committee – 5 December 2012;
- iii) Traffic Committee – 10 December 2012;
- iv) Community Environment Committee – 12 December 2012;
- v) Community Safety Committee – 13 December 2012; and
- vii) Surf Club Liaison Working Group – 18 December 2012.

ATTACHMENTS

There are no attachments for this report.

PS040213RC_2.DOC

***** End of Report Of Committees Report No. 1 *****

TO: Planning and Strategy Committee - 4 February 2013

REPORT: Environmental Services Division Report No. 1

SUBJECT: Development Applications currently being processed during December 2012 and January 2013

FILE NO: MC/13/2085

SUMMARY

Development Applications currently being processed during February 2013.

REPORT

The following applications are currently with the Town Planners for assessment.

DA#	Year	Site	Proposal
1278	1998	1-15 Central Avenue	Section 96 Modification - Part 4
569	1999	19 Addison Road	Section 96 Modification - Part 4
482	2004	106 Darley Road	Section 96 Modification - Part 7
372	2005	11 Fairlight Crescent	Section 96 Modification - Part 5
456	2006	41B Castle Circuit	Section 96 Modification - Part 3
277	2007	67 Castle Circuit	Section 96 Modification - Part 2
328	2007	43-45 East Esplanade	Section 96 Modification - Part 2
409	2007	11 Oyama Avenue	Section 96 Modification - Part 3
445	2007	24 Collingwood Street	Section 96 Modification - Part 3
52	2009	197-215 Condamine Street	Section 96 Modification - Part 3
384	2009	31 Victoria Parade	Section 96 Modification - Part 3
14	2010	1 Barrabooka Street	Section 96 Modification - Part 3
94	2010	18 Fisher Street	Section 96 Modification - Part 5
111	2010	74 Lauderdale Avenue	Section 96 Modification - Part 4
162	2010	27 Daintrey Street	Section 96 Modification - Part 2
368	2010	65 Peronne Avenue	Section 96 Modification - Part 3
8	2011	27 Eurobin Avenue	Section 96 Modification - Part 2
159	2011	28A Alexander Street	Section 96 Modification - Part 2
216	2011	8 Brisbane Street	Section 96 Modification - Part 2
227	2011	51 Lauderdale Avenue	Section 96 Modification - Part 2
277	2011	374-378 Sydney Road	Section 82A Review - Part 3
309	2011	79 Cutler Road	Section 96 Modification - Part 2
344	2011	204 Sydney Road	Section 96 Modification - Part 3
347	2011	63-67 The Corso	Section 96 Modification - Part 2
350	2011	75 The Corso	Section 96 Modification - Part 2
21	2012	46 White Street	Section 96 Modification - Part 2
46	2012	6 The Corso & 50 East Esplanade	Section 96 Modification - Part 1
50	2012	1 Orchard Street	Section 96 Modification - Part 1
59	2012	22-22A High Street	Section 96 Modification - Part 2
104	2012	45 Wood Street	Section 96 Modification - Part 2
123	2012	6 Eurobin Avenue	Section 96 Modification - Part 2
130	2012	133-139 Pittwater Road	Extension of hours - BP Service Station
137	2012	22 Central Avenue	Alterations and additions

Environmental Services Division Report No. 1 (Cont'd)

144	2012	51 Gordon Street	Demolition and new 2 storey dwelling
145	2012	112 Sydney Road	Demolition and new 4 storey dwelling
146	2012	8 Jackson Street	Alterations and additions
170	2012	10 Bligh Crescent	Construction of a new two (2) storey dwelling
189	2012	67 Curban Street	Alterations and additions
190	2012	53-57 Pittwater Road	Change of use to a Cafe/ Bar including courtyard seating and interior signage
194	2012	56-68 West Esplanade	Change of use to a Café (Refreshment Room) with associated fit out and signage
195	2012	52 Darley Road	Alterations and additions to an existing Boarding House
196	2012	2-8 Darley Road	Construction of an internal dividing wall within an existing retail shop to create an additional retail shop
205	2012	25 Arthur Street	Alterations and additions
209	2012	43 The Crescent, Manly	Alterations and additions to an existing Residential Flat Building
210	2012	73 Whistler Street	Demolition of an existing dwelling and new 2 storey dwelling
212	2012	25 Pittwater Road	Demolition of the rear addition and construction of a five (5) storey Residential Flat Building
213	2012	2 Rolfe Street	Construction of a single carport and a front fence
216	2012	Wharves and Jetties	Alterations and additions to the existing Manly Wharf Hotel
217	2012	67 Griffiths Street	Alterations and additions
219	2012	11-27 Wentworth Street	Establishment of an additional use as Skin Penetration
220	2012	23 Lodge Street	Alterations and additions
227	2012	46 Malvern Avenue	Change of use to a six (6) room Boarding House under Affordable Rental Housing State Environmental Planning Policy, alterations and additions to including a fourth floor additional to create a caretakers unit
230	2012	15A Amiens Road	Construction of a new driveway, hardstand parking area and turning area
231	2012	28 Belgrave Street	Change of use to a Take Away Food and Ice Cream Shop and shop fit out
234	2012	92 The Corso	Demolition of rear of the existing building, ground floor and first floor rear addition including a new loading dock and a second floor addition with office space and balcony
235	2012	106 North Steyne	Demolition of existing structures, construction of a five (5) storey Residential Flat Building containing eight (8) units with fourteen (14) car spaces in the basement
236	2012	5 Margaret Street	Alterations and additions
237	2012	44 Malvern Avenue	Alterations & additions
239	2012	47 Kangaroo Street	Alterations & additions
245	2012	21 Castel Circuit	Construction of a swimming pool, extension to an existing deck and landscaping
248	2012	85 Ellery Parade	Alterations and additions
249	2012	17 Birkley Road	Alterations and additions
251	2012	34 Ponsonby Parade	Alterations and additions

Environmental Services Division Report No. 1 (Cont'd)

255	2012	15 Dalwood Avenue	Demolition of existing dwelling, new three (3) storey dwelling with double garage
256	2012	67 Collingwood Street	Small shop (General Store) located in the detached garage at rear of property
259	2012	81 Addison Road	Installation of one (1) flush wall sign - Shop 2
260	2012	19A Adelaide Street	Alterations and additions
261	2012	111 Pittwater Road	Alterations and additions
262	2012	8 Ponsonby Parade	Demolish existing garage, new double garage and extensions to dwelling
263	2012	14 Ellery Parade	Partial demolition, alterations and additions
264	2012	19 Moore Street	Above ground swimming pool, deck and landscaping
265	2012	16 Rosedale Avenue	Alterations and additions
266	2012	3 Munoorra Street	Alterations and additions
267	2012	19 Cutler Road	Alterations and additions
268	2012	73 Birkley Road	Alterations and additions
269	2012	17 Marine Parade	Alterations and additions to RFB
271	2012	5 Alto Avenue	Alterations and additions
272	2012	5 Russel Street	Alterations and additions
273	2012	16' Skiff Club	Demolish and replacement of an existing vergola with a retractable vergola over deck with bifold doors & windows
274	2012	Manly Golf Course - Kenneth Road	Construction of an outbuilding including toilet facilities
275	2012	404 Sydney Road	Installation of an external three (3) storey lift
276	2012	21 Bligh Crescent	Alterations and additions
277	2012	374-378 Sydney Road	Section 96 Modification - Part 3
278	2012	27 Castle Circuit	Two (2) storey dwelling with double garage
279	2012	208 Sydney Road	Alterations and additions
280	2012	62 Pittwater Road	Demolition of existing structure, Construction of a three (3) storey dwelling including 21 short term accommodation units
281	2012	13 Smith Street	Alterations and additions to an existing semi-detached dwelling
282	2012	Manly Golf Course - Kenneth Road	Construction of a single store Tea Pavilion with storage room
283	2012	45 Rickard Street	Alterations and additions
284	2012	6 The Corso	Advertising Structure
285	2012	37 Boyle Street	Construction of driveway, layback and parking space
286	2012	9 Jellicoe Street	Alterations and additions
287	2012	30A Hill Street	Demolish and replace existing front pergola structures
288	2012	75 Pittwater Road	Alterations and additions to existing RFB
289	2012	24 Fairlight Street	Conversion of existing carport to garage in existing RFB
290	2012	71 Cutler Road	Alterations and additions
291	2012	25 Curban Street	Demolition of existing and construction of 2X2 storey dwellings
292	2012	38 Wakehurst Parkway	Two (2) storey dwelling with basement parking

Environmental Services Division Report No. 1 (Cont'd)

293	2012	18-19 East Esplanade	Change of use to two (2) semi-detached dwellings including rear addition to include 2 double garages, removal of tree, enclosed veranda, side fence, pergola and landscaping.
294	2012	31 Fairlight Crescent	Demolition of existing and construction of a 4 storey RFB containing 3 units and car stacker
295	2012	54 Bungaloe Avenue	Alterations and additions
296	2012	114 North Steyne	Alterations and additions to existing RFB

The following applications are with Lodgment & Quality Assurance for advertising, notification and referral to relevant parties.

183/2012 Sandy Bay Road, CLONTARF 2093

Removal of swing moorings, demolition of existing twenty-one (21) vessel birth marina, construction of a new marina containing eighty-seven (87) vessel births, entry way, platform, above ground fuel tanks, relocation of existing public swing moorings and alterations and additions to the existing boatshed – Clontarf Marina

297/2012 102 Bower Street, MANLY 2095

Demolition of the existing buildings, construction of a five (5) storey Residential Flat Building containing six (6) units with a two (2) level car park, decks and landscaping

298/2012 6 The Corso, MANLY 2095

Alteration to existing shopfront to install operable glazed door

255/2011 7 Kanangra Crescent, CLONTARF 2093

Section 96 to modify approved Demolition of existing double carport, construction of a new double carport and alterations and additions to an existing garage – involving the conversion of the carport to a garage and deletion of condition no ANS01 being the enclosure of carport is not permitted – Part 2

299/2012 67 Clontarf Street, SEAFORTH 2092

Demolition of existing, construction of a two (2) storey dwelling with double garage

300/2012 18 Boyle Street, BALGOWLAH 2093

Alterations and additions to an existing All Saints Anglican Church including extensions to the ground floor and first floor

301/2012 35 Balgowlah Road, MANLY 2095

Demolition of existing, construction of a two (2) storey dwelling with carport, decks and landscaping

217/2006 38 Denison Street, MANLY 2095

Section 96 to modify approved Alterations and additions to the Existing dwelling – involving new rear balcony and extension to rear of first floor – Part 2

304/2011 6 Fairlight Crescent, FAIRLIGHT 2094

Section 96 to modify approved Alterations and additions to an existing Residential Flat Building including rear addition to all levels, attic level within the existing roof, internal alterations, lift, new entry foyer, car stackers, landscaping – involving the amendment of the plans for side ground floor deck, rear and front balconies to levels 1 and 2 – Part 2

302/2012 North Steyne, MANLY 2095

Alterations and additions to the existing Queenscliff Surf Life Saving Club building including mezzanine floor, new roof and internal modifications

Environmental Services Division Report No. 1 (Cont'd)

- 303/2012 35 Pacific Parade, MANLY 2095
Alterations and additions to rear of the existing dwelling including part first floor addition and alterations to existing garage
- 304/2012 44 Smith Street, MANLY 2095
Alterations and additions to an existing dwelling including driveway widening, ground floor side addition, first floor front, side and rear addition
- 305/2012 48B Smith Street, MANLY 2095
Alterations and additions to an existing dwelling including a first floor addition
- 306/2012 29 West Street, BALGOWLAH 2093
Partial demolition of dwelling, including garage, construction of a front ground floor addition, first floor addition, undercroft area, loft, detached storage room, detached study, swimming pool, landscaping, front and rear terraces and decks
- 307/2012 19-23 The Corso, MANLY 2095
Alterations and additions to an existing building, painting of the facade, replace windows, new sun shades to the new windows and upgrades to the facade
- 1/2013 28A Alexander Street, MANLY 2095
Construction of two (2) double garages at the rear to replace the approved double carports (DA0159/2011)
- 2/2013 11 Monash Crescent, CLONTARF 2093
Reclad the existing retaining wall, new fence, demolition and construction of new stairs to the foreshore
- 3/2013 45 Golf Parade, MANLY 2095
Alterations and additions to an existing rear garage including a new pitched roof to provide a mezzanine floor for the use of storage
- 158/2012 12 Pine Street, MANLY 2095
Section 82A Review of the Determination of the approved Construction of a front fence
- 4/2013 29 Amiens Road, CLONTARF 2093
Construction of a swimming pool with paving surround located within the front setback
- 40/2012 11 Bruce Avenue, MANLY 2095
Section 96 to modify approved Demolition of existing, construction of a new three (3) storey dwelling with double garage, swimming pool, spa, deck and landscaping – involving lower ground floor addition, balcony extension to rear, modification to floor level, relocation of pool and spa - Part 2
- 3/2012 18 Cove Avenue, MANLY 2095
Section 96 to modify approved Alterations and additions to the existing dwelling including addition to the ground floor and first floor, new entry, partial demolition of garage, construction of a carport for two (2) cars, security gate, storage area under carport, new stairs and landscaping – involving the reduction in the size of the existing swimming pool – Part 2

RECOMMENDATION

THAT the information be noted.

ATTACHMENTS

There are no attachments for this report.

PS040213ESD_4.DOC

***** End of Environmental Services Division Report No. 1 *****

TO: Planning and Strategy Committee - 4 February 2013
REPORT: Environmental Services Division Report No. 2
SUBJECT: Summary of Current Appeals Relating to DAs During December 2012 and January 2013
FILE NO: MC/13/2080

SUMMARY

List of current Appeals relating to Development Application during December 2012 and January 2013.

REPORT

DA#	L&E Appeal Reference	House #	Address	Date Appeal Lodged	Solicitor Company	Current Status
13/10	Class 1 10584/10 S56A Appeal	46-48	North Steyne	27/07/10 27/09/11 27/06/12	HWL Ebsworth	Appeal dismissed 23/10/12
294/11	Class 1 11221/11	31	The Crescent	21/12/11	Maddocks	Appeal upheld 19/12/12
126/11	Class 1 10676/12	4	West Street	03/07/12	Maddocks	Appeal upheld 11/12/12
142/11	Class 1 10864/11		Manly Wharf	23/08/12	Pikes & Verekers	Callover 20/02/13
2928/89	Class 1 11038/12	29-33	Pittwater Road	09/10/12	Maddocks	Appeal upheld 06/12/12
45/12	Class 1 11093/12	61	Gurney Crescent	26/10/12	Marsdens	Judgment reserved
21/12	Class 1 11223/12	46	White Street	10/12/12	Pikes & Verekers	S34 Conference 27/03/13
377/11	Class 1 11278/12	3	Eustace Street	21/12/12	Marsdens	Callover 25/01/13
159/11	Class 1 10025/13	28A	Alexander Street	16/01/13	Maddocks	Callover 29/01/13

RECOMMENDATION

THAT the information be noted.

ATTACHMENTS

There are no attachments for this report.

PS040213ESD_3.DOC

***** End of Environmental Services Division Report No. 2 *****

TO: Planning and Strategy Committee - 4 February 2013
REPORT: Corporate Services Division Report No. 1
SUBJECT: The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013
FILE NO: MC/13/9854

SUMMARY

The Division of Local Government recently advised all NSW councils of the release of a new Model Code of Conduct framework and associated implementation arrangements.

The purpose of this report is to advertise and place on public exhibition the draft *2013 Manly Code of Conduct* in response to the request from the Division of Local Government.

REPORT

On 19 December 2012 the Division of Local Government released Circular 12-45 entitled *The New Model Code of Conduct Framework* (Attachment 1). This circular was distributed to Councillors for information.

The key features of the new code and framework include greater flexibility to resolve non-serious complaints, improved complaints management with complaints about Councillors and the General Manager managed completely by independent conduct reviewers, clearer procedures and stronger penalties for ongoing disruptive behaviour and serious misconduct in order to deter such behaviours and allow Councils to get on with the business of serving their communities.

The Division of Local Government have requested that all NSW Councils adopt the new Model Code and Procedures by 1 March 2013. The draft *2013 Manly Code of Conduct* has been developed in response to this directive and is attached for Council's consideration to resolve to place same on public exhibition for a period of 28 days for adoption thereafter.

RECOMMENDATION

That Council:

1. Adopt the attached Draft Manly Code of Conduct and Draft Procedures for the Administration of the Manly Code of Conduct.
2. Place on public exhibition for a period of 28 days the Draft Manly Code of Conduct for adoption immediately after this period as requested by the Division of Local Government.

ATTACHMENTS

AT- 1	Division of Local Government, Circular to Councils 12-45	3 Pages
AT- 2	Draft Manly Council Code of Conduct	18 Pages
AT- 3	Draft Procedures for the Administration of the Manly Code of Conduct Procedures	30 Pages

PS040213CSD_1.DOC

***** End of Corporate Services Division Report No. 1 *****

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013
Circular to Councils 12-45



Premier & Cabinet
Division of Local Government

Circular to Councils

Circular No. 12-45
Date 19 December 2012
Doc ID. A296794

Contact Council Governance
02 4428 4100

THE NEW MODEL CODE OF CONDUCT FRAMEWORK

Purpose

To advise councils of the new Model Code of Conduct framework and implementation arrangements.

Issue

- The new Model Code of Conduct for Local Councils in NSW, Procedures for the Administration of the Model Code and Summary of the Model Code are now available on the Division of Local Government (the Division) website at www.dlg.nsw.gov.au.
- The code and procedures are supported by new provisions in the *Local Government Act 1993* to more effectively deal with serious or repeated breaches of the Code through expanded and strengthened penalties. Key changes to the code are summarised at Appendix A.
- The key features of the new code framework include:
 - Greater flexibility to resolve non-serious complaints, minimising costs to councils
 - Improved complaints management, with complaints about councillors and the general manager managed from start to finish by qualified and independent conduct reviewers
 - Greater fairness and rigour in the investigation process through clearer procedures
 - Stronger penalties for ongoing disruptive behaviour and serious misconduct to more effectively deter and address such behaviour, allowing councils to get on with the business of serving their communities.
- The proposed commencement date for the new model code framework is 1 March 2013.
- The following transitional arrangements will apply:
 - Complaints made or yet to be finalised before 1 March 2013 are to be dealt with under the current Model Code of Conduct and Procedures.
 - Complaints received after 1 March 2013 but where the alleged conduct occurred prior to this date are to be assessed against the standards

Division of Local Government
5 O'Keefe Avenue NOWRA NSW 2541
Locked Bag 3015 NOWRA NSW 2541
T 02 4428 4100 F 02 4428 4199 TTY 02 4428 4209
E dlg@dlg.nsw.gov.au W www.dlg.nsw.gov.au ABN 99 567 863 195

ATTACHMENT 1

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013

Circular to Councils 12-45

2

prescribed under the current Model Code but dealt with under the new Procedures.

- Complaints relating to alleged conduct that occurred after 1 March 2013 are to be assessed against the new Code and Procedures.
- The Division will provide further information in early 2013 to assist councils implement the new code and procedures.

Actions

Councils should make the following administrative arrangements in preparation for commencement of the Code:

- Adopt the new Model Code and Procedures by 1 March 2013
- Appoint members of staff other than the General Manager to act as a complaints coordinator and alternate complaints coordinator before 1 March 2013
- Ensure panels of conduct reviewers, appointed using the selection process prescribed under the new procedures, are in place by 30 September 2013. Councils without existing panels should establish a panel by 1 March 2013.



Ross Woodward
Chief Executive, Local Government
A Division of the Department of Premier and Cabinet

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013
Circular to Councils 12-45

3

APPENDIX A

NEW MODEL CODE OF CONDUCT AND PROCEDURES - KEY CHANGES

- In the interests of clarity and simplicity, standards of conduct and procedures for dealing with breaches will be separately prescribed.
- Minor changes have been made to the standards prescribed under the code in relation to binding caucus votes, the disclosure of political donations, loss of quorum, the management of significant non-pecuniary conflicts of interests in relation to principal planning instruments, gifts, relationships between councillors and staff and use of council resources for re-election purposes.
- New standards have been included to address misuse of the code and other conduct intended to undermine its implementation.
- New provisions have been included to improve all councils' access to suitably skilled conduct reviewers.
- Under the new procedures, complaints will be managed from start to finish by an independent conduct reviewer at arms length from the council if they are not informally resolved at outset.
- There will be an increased focus on informal resolution of less serious matters.
- Code of conduct matters will be dealt with confidentially. However, where a conduct reviewer determines that a councillor has breached the code and a sanction is imposed by the council, this will be made public via the minutes of the meeting.
- There will be limited rights of review to the Division where a person is subject to an adverse outcome.
- The Division will have more options for dealing with matters directly under the misconduct provisions. This will enable it to directly police the administration of the code and address issues such as misuse or failure to cooperate.
- Penalties for misconduct will be expanded and increased to improve deterrence.
- Both the Division and the Pecuniary Interest and Disciplinary Tribunal will be able impose stronger penalties for repeated misconduct. This will enable the more effective management of ongoing disruptive behaviour by individual councillors to enable councils to get on with the core business of serving their communities.

These changes have been made as a result of extensive consultation with councils and other key stakeholders, and based on feedback, have broad support.

Manly Council



DRAFT Code of Conduct

February 2013 V1.2

ATTACHMENT 2

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013

Draft Manly Council Code of Conduct

TABLE OF CONTENTS

PART 1	INTRODUCTION	
PART 2	PURPOSE OF THE CODE OF CONDUCT	
PART 3	GENERAL CONDUCT OBLIGATIONS	
PART 4	CONFLICT OF INTERESTS	
PART 5	PERSONAL BENEFIT	
PART 6	RELATIONSHIP BETWEEN COUNCIL OFFICIALS	
PART 7	ACCESS TO INFORMATION AND COUNCIL RESOURCES	
PART 8	MAINTAINING THE INTEGRITY OF THIS CODE	
PART 9	DEFINITIONS	

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013
Draft Manly Council Code of Conduct

PART 1: INTRODUCTION

The Manly Code of Conduct adopts the 2013 Model Code of Conduct for Local Councils in NSW ("the Model Code of Conduct") is made for the purposes of section 440 of the *Local Government Act 1993* ("the Act"). Section 440 of the Act requires every council to adopt a Code of Conduct that incorporates the provisions of the Model Code. For the purposes of section 440 of the Act, the Model Code of Conduct comprises all parts of this document.

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

Failure by a councillor to comply with the standards of conduct prescribed under this Code constitutes misconduct for the purposes of the Act. The Act provides for a range of penalties that may be imposed on councillors for misconduct, including suspension or disqualification from civic office.

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

A *Better Conduct Guide* has also been developed by the Division of Local Government to assist councils to review and enhance their Codes of Conduct. This guide supports this Code and provides further information on the provisions in this code.

PART 2: PURPOSE OF THE CODE OF CONDUCT

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

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

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

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013
Draft Manly Council Code of Conduct

PART 3: GENERAL CONDUCT OBLIGATIONS

General conduct

- 3.1 You must not conduct yourself in carrying out your functions in a manner that is likely to bring the Council or holders of civic office into disrepute. Specifically, you must not act in a way that:
- (a) contravenes the Act, associated regulations, Council's relevant administrative requirements and policies.
 - (b) is detrimental to the pursuit of the charter of a council.
 - (c) is improper or unethical.
 - (d) is an abuse of power or otherwise amounts to misconduct.
 - (e) causes, comprises or involves intimidation, harassment or verbal abuse.
 - (f) causes, comprises or involves discrimination, disadvantage or adverse treatment in relation to employment.
 - (g) causes, comprises or involves prejudice in the provision of a service to the community. (*Schedule 6A*)
 - (h) disparages or defames any Council official or other person.
- 3.2 You must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions under the Act or any other Act. (*section 439*)
- 3.3 You must treat others with respect at all times.

Fairness and equity

- 3.4 You must consider issues consistently, promptly and fairly. You must deal with matters in accordance with established procedures, in a non-discriminatory manner.
- 3.5 You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case. You must not take irrelevant matters or circumstances into consideration when making decisions.

Harassment and discrimination

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

Bullying

- 3.7 You must not engage in behaviour which constitutes workplace bullying.
- 3.8 Bullying is defined as repeated behaviour directed towards another person which is unreasonable and/or unfair. Bullying comprises behaviours that a reasonable person, having regard for the circumstances, would see as victimising, harassing, humiliating, offensive, intimidating, belittling, demeaning, undermining or threatening and which creates a risk to a person's health (physical or mental), safety or welfare.

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013
Draft Manly Council Code of Conduct

Development decisions

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

Binding caucus votes

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

Electronic and other communication

- 3.15 You must not use any means of communication, whether at work or otherwise, including but not limited to face-to-face, telephone, mobile phone, email, instant messaging, text messaging, and social media to engage in any conduct that contravenes this Code.

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013
Draft Manly Council Code of Conduct

PART 4: CONFLICT OF INTERESTS

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

What is a pecuniary interest?

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

What are non-pecuniary interests?

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

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013
Draft Manly Council Code of Conduct

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

Managing non-pecuniary conflict of interests

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

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

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

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

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

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

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

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

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

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

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013
Draft Manly Council Code of Conduct

councillors were to manage their conflict of interests by not voting on a matter in accordance with clause 4.16(b) above.

Reportable political donations

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

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

(a) made by a major political donor in the previous four years, and

(b) where the major political donor has a matter before council,

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

4.22 For the purposes of this Part:

(a) a "reportable political donation" is a "reportable political donation" for the purposes of section 86 of the *Election Funding, Expenditure and Disclosures Act 1981*.

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

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

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

Loss of quorum as a result of compliance with this Part

4.25 Where a majority of councillors are precluded under this Part from consideration of a matter the Council or committee must resolve to delegate consideration of the matter in question to another person.

4.26 Where a majority of councillors are precluded under this Part from consideration of a matter and the matter in question concerns the exercise of a function that may not be delegated under section 377 of the Act, the councillors may apply in writing to the Chief Executive to be exempted from complying with a requirement under this Part relating to the management of a non-pecuniary conflict of interests.

4.27 The Chief Executive will only exempt a councillor from complying with a requirement under this Part where:

(a) compliance by councillors with a requirement under the Part in relation to a matter will result in the loss of a quorum, and

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013
Draft Manly Council Code of Conduct

- (b) the matter relates to the exercise of a function of the council that may not be delegated under section 377 of the Act.

4.28 Where the Chief Executive exempts a councillor from complying with a requirement under this Part, the councillor must still disclose any interests they have in the matter the exemption applies to in accordance with the requirements of this Part.

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

- (a) the matter is a proposal relating to:
 - i. the making of a principal environmental planning instrument applying to the whole or a significant part of the Council's area, or
 - ii. the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant part of the Council's area, and
- (b) the councillor declares any interest they have in the matter that would otherwise have precluded their participation in consideration of the matter under this Part.

Other business or employment

4.30 If you are a member of staff of Council, on any employment basis, considering outside employment or contract work, whether remunerated or not, that relates to the business of the Council or that might conflict with your Council duties, you must first notify and obtain the approval of the General Manager in writing. (*section 353*)

4.31 If you are a full-time member of staff of Council considering outside paid employment of any sort, you must first notify and obtain the approval of the General Manager in writing.

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

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

Personal dealings with Council

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

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013
Draft Manly Council Code of Conduct

PART 5: PERSONAL BENEFIT

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

Gifts and benefits

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

Token gifts and benefits

- 5.3 Generally speaking, token gifts and benefits include:
- (a) free or subsidised meals, beverages or refreshments provided in conjunction with:
 - i. the discussion of official business.
 - ii. Council work related events such as training, education sessions, workshops.
 - iii. conferences.
 - iv. Council functions or events.
 - v. social functions organised by groups, such as Council committees and community organisations.
 - (b) invitations to and attendance at local social, cultural or sporting events.
 - (c) gifts of single bottles of reasonably priced alcohol to individual Council officials at end of year functions, public occasions or in recognition of work done (such as providing a lecture/training session/address).
 - (d) ties, scarves, coasters, tie pins, diaries, chocolates or flowers.
 - (e) prizes of token value.
- 5.4 To be considered as a token gift or benefit, the item must not exceed \$50 in value.

Gifts and benefits of value

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

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

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

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013
Draft Manly Council Code of Conduct

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

Improper and undue influence

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

Council resources

- 5.10 In addition to the requirements of Part 7 of this Code, you must not use Council resources to obtain any personal benefit of a commercial or financial nature, either for yourself or any other party.

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013
Draft Manly Council Code of Conduct

PART 6: RELATIONSHIP BETWEEN COUNCIL OFFICIALS

Obligations of councillors and administrators

- 6.1 Each council is a body politic. The councillors or administrator/s are the governing body of the Council. The governing body has the responsibility of directing and controlling the affairs of the Council in accordance with the Act and is responsible for policy determinations, for example, those relating to workforce policy.
- 6.2 Councillors or administrators must not:
- (a) direct Council staff other than by giving appropriate direction to the General Manager in the performance of Council's functions by way of Council or committee resolution, or by the Mayor or administrator exercising their power under section 226 of the Act (*section 352*).
 - (b) in any public or private forum, direct or influence or attempt to direct or influence, any other member of the staff of the Council or a delegate of the Council in the exercise of the functions of the member or delegate (*Schedule 6A of the Act*).
 - (c) contact a member of the staff of the Council on Council related business unless in accordance with the policy and procedures governing the interaction of councillors and Council staff that have been authorised by the Council and the General Manager.
 - (d) contact or issue instructions to any of Council's contractors or tenderers, including Council's legal advisers, unless by the Mayor or administrator exercising their power under section 226 of the Act. This does not apply to Council's external auditors or the Chair of Council's audit committee who may be provided with any information by individual councillors reasonably necessary for the external auditor or audit committee to effectively perform their functions.

Obligations of staff

- 6.3 The General Manager is responsible for the efficient and effective operation of the Council's organisation and for ensuring the implementation of the decisions of the Council without delay.
- 6.4 Members of staff of Council must:
- (a) give their attention to the business of Council while on duty.
 - (b) ensure that their work is carried out efficiently, economically and effectively.
 - (c) carry out lawful directions given by any person having authority to give such directions.
 - (d) give effect to the lawful decisions, policies, and procedures of the Council, whether or not the staff member agrees with or approves of them.
 - (e) ensure that any participation in political activities outside the service of the Council does not conflict with the performance of their official duties.

Obligations during meetings

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

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013
Draft Manly Council Code of Conduct

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

Inappropriate interactions

- 6.7 You must not engage in any of the following inappropriate interactions:
- a) Councillors and administrators approaching staff and staff organisations to discuss individual or operational staff matters other than broader workforce policy issues.
 - b) Council staff approaching councillors and administrators to discuss individual or operational staff matters other than broader workforce policy issues.
 - c) Council staff refusing to give information that is available to other councillors to a particular councillor.
 - d) Councillors and administrators who have lodged a development application with Council, discussing the matter with council staff in staff-only areas of the Council.
 - e) Councillors and administrators being overbearing or threatening to Council staff.
 - f) Councillors and administrators making personal attacks on Council staff in a public forum.
 - g) Councillors and administrators directing or pressuring Council staff in the performance of their work, or recommendations they should make.
 - h) Council staff providing ad hoc advice to councillors and administrators without recording or documenting the interaction as they would if the advice was provided to a member of the community.
 - i) Council staff meeting with applicants or objectors alone AND outside office hours to discuss applications or proposals.
 - j) Councillors attending on-site inspection meetings with lawyers and/or consultants engaged by Council associated with current or proposed legal proceedings unless permitted to do so by council's General Manager or, in the case of the Mayor or administrator, exercising their power under section 226 of the Act.

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013
Draft Manly Council Code of Conduct

PART 7: ACCESS TO INFORMATION AND COUNCIL RESOURCES

Councillor and administrator access to information

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

Councillors and administrators to properly examine and consider information

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

Refusal of access to documents

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

Use of certain Council information

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

Use and security of confidential information

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

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013
Draft Manly Council Code of Conduct

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

Personal information

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

Use of Council resources

- 7.12 You must use Council resources ethically, effectively, efficiently and carefully in the course of your official duties, and must not use them for private purposes (except when supplied as part of a contract of employment) unless this use is lawfully authorised or is considered reasonable personal use, and proper payment is made where appropriate.
- 7.13 Union delegates and consultative committee members may have reasonable access to Council resources for the purposes of carrying out their industrial responsibilities, including but not limited to:
- (a) the representation of members with respect to disciplinary matters.
 - (b) the representation of employees with respect to grievances and disputes.
 - (c) functions associated with the role of the local consultative committee.
- 7.14 You must be scrupulous in your use of Council property, including intellectual property, official services and facilities, and must not permit their misuse by any other person or body.
- 7.15 You must avoid any action or situation that could create the appearance that Council property, official services or public facilities are being improperly used for your benefit or the benefit of any other person or body.
- 7.16 You must not use Council resources, property or facilities for the purpose of assisting your election campaign or the election campaign of others unless the resources, property or facilities are otherwise available for use or hire by the public and any publicly advertised fee is paid for use of the resources, property or facility.
- 7.17 You must not use Council letterhead, Council crests and other information that could give the appearance it is official council material for:
- (a) the purpose of assisting your election campaign or the election campaign of others, or

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013
Draft Manly Council Code of Conduct

(b) for other non-official purposes.

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

7.19 You must not use Council's computer or electronic devices (including, but not limited to the Internet, the email system, mobile phones, text messaging services, and social media access) to search for, access, download, print, distribute or communicate any material of an offensive, obscene, discriminatory, pornographic, threatening, abusive or defamatory nature.

7.20 You must not use Council's electronic communications (including, but not limited to the Internet, the email system, mobile phones, text messaging services, and social media access) in any manner which could be construed as disparaging or defamatory of colleagues or Council, or which could bring Council into disrepute.

Councillor access to Council buildings

7.21 Councillors and administrators are entitled to have access to the Council chamber, committee room, councillors' rooms, and public areas of Council's buildings during normal business hours and for meetings. Councillors and administrators needing access to these facilities at other times must obtain authority from the General Manager.

7.22 Councillors and administrators must not enter staff-only areas of Council buildings without the approval of the General Manager.

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

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013
Draft Manly Council Code of Conduct

PART 8: MAINTAINING THE INTEGRITY OF THIS CODE

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

Complaints made for an improper purpose

- 8.2 You must not make a complaint or cause a complaint to be made under this Code for an improper purpose.
- 8.3 For the purposes of clause 8.2, a complaint is made for an improper purpose where it is trivial, frivolous, vexatious or not made in good faith, or where it otherwise lacks merit and has been made substantially for one or more of the following purposes:
- (a) to intimidate or harass another Council official.
 - (b) to damage another Council official's reputation.
 - (c) to obtain a political advantage.
 - (d) to influence a Council official in the exercise of their official functions or to prevent or disrupt the exercise of those functions.
 - (e) to influence the Council in the exercise of its functions or to prevent or disrupt the exercise of those functions.
 - (f) to avoid disciplinary action under this Code.
 - (g) to take reprisal action against a person for making a complaint under this code except as may be otherwise specifically permitted under this Code.
 - (h) to take reprisal action against a person for exercising a function prescribed under the procedures for the administration of this code except as may be otherwise specifically permitted under this Code.
 - (i) to prevent or disrupt the effective administration of this Code.

Detrimental action

- 8.4 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for a complaint they have made under this Code except as may be otherwise specifically permitted under this Code.
- 8.5 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for any function they have exercised under this Code except as may be otherwise specifically permitted under this Code.
- 8.6 For the purposes of clauses 8.4 and 8.5 detrimental action is an action causing, comprising or involving any of the following:
- a) injury, damage or loss.
 - b) intimidation or harassment.
 - c) discrimination, disadvantage or adverse treatment in relation to employment.
 - d) dismissal from, or prejudice in, employment.
 - e) disciplinary proceedings.

Compliance with requirements under this Code

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

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013
Draft Manly Council Code of Conduct

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

8.10 Where you are a councillor or the General Manager, you must comply with any Council resolution requiring you to take action as a result of a breach of this Code.

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

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

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

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

Complaints alleging a breach of this Part (Part 8)

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

8.15 Complaints alleging a breach of this Part by other council officials (including all staff except the General Manager) are to be made to the General Manager.

ATTACHMENT 2

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013 Draft Manly Council Code of Conduct

PART 9: DEFINITIONS

In the Manly Code of Conduct, the following definitions apply:

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

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

ATTACHMENT 2

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013

Draft Manly Council Code of Conduct

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

.....

Version Control

Version #	Date	Details	Council Meeting Date
DRAFT	Feb 2013	Model Code issued by the Division of LG	04/02/2013

Manly Council



Draft Procedures for the Administration of the Manly Code of Conduct

February 2013 V1.0

Procedures for the Administration of the Manly Code of Conduct FEB 2013 V 1.0

ATTACHMENT 3

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013

Draft Procedures for the Administration of the Manly Code of Conduct Procedures

2

TABLE OF CONTENTS

PART 1	INTRODUCTION	
PART 2	DEFINITIONS	
PART 3	ADMINISTRATIVE FRAMEWORK.	
PART 4	HOW MAY CODE OF CONDUCT COMPLAINTS BE MADE?	
PART 5	HOW ARE CODE OF CONDUCT COMPLAINTS TO BE MANAGED?	
PART 6	PRELIMINARY ASSESSMENT	
PART 7	OPERATIONS OF CONDUCT REVIEW COMMITTEES	
PART 8	INVESTIGATIONS	
PART 9	RIGHTS OF REVIEW	
PART 10	PROCEDURAL IRREGULARITIES	
PART 11	PRACTICE DIRECTIONS	
PART 12	REPORTING ON COMPLAINTS STATISTICS	
PART 13	CONFIDENTIALITY	

Procedures for the Administration of the Manly Code of Conduct FEB 2013 V 1.0

ATTACHMENT 3

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013 Draft Procedures for the Administration of the Manly Code of Conduct Procedures

3

PART 1 INTRODUCTION

These procedures ("the Manly Code of Conduct Procedures") are prescribed for the purposes of the administration of the Manly Code of Conduct

The Manly Code of Conduct and this Manly Code of Conduct Procedures are made under sections 440 and 440AA respectively of the *Local Government Act 1993* ("the Act") and the *Local Government (General) Regulation 2005* ("the Regulation").

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

This Manly Code of Conduct Procedures is consistent with the provisions in the "Model Code Procedures" issued by the Division of Local Government

PART 2 DEFINITIONS

"the Act"	the <i>Local Government Act 1993</i>
"administrator"	an administrator of a Council appointed under the Act other than an administrator appointed under section 66
"code of conduct"	a code of conduct adopted under section 440 of the Act
"code of conduct complaint"	a complaint that alleges conduct on the part of a Council official acting in their official capacity that on its face, if proven, would constitute a breach of the standards of conduct prescribed under the council's code of conduct
"complainant"	a person who makes a code of conduct complaint
"complainant councillor"	a councillor who makes a code of conduct complaint
"complaints coordinator"	a person appointed by the General Manager under these procedures as a complaints
"conduct reviewer"	a person appointed under these procedures to review allegations of breaches of the code of conduct by councillors or the General Manager
"Council committee"	a committee established by resolution of Council
"Council committee member"	a person other than a councillor or member of staff of a Council who is a member of a Council committee
"councillor"	a person elected or appointed to civic office and includes a Mayor

Procedures for the Administration of the Manly Code of Conduct FEB 2013 V 1.0

ATTACHMENT 3

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013 Draft Procedures for the Administration of the Manly Code of Conduct Procedures

4

"Council official"	includes councillors, members of staff of council, administrators, Council committee members, conduct reviewers and delegates of Council
"delegate of council"	a person (other than a councillor or member of staff of a council) or body and the individual members of that body to whom a function of Council is delegated
"the Division"	the Division of Local Government, Department of Premier and Cabinet
"investigator"	a conduct reviewer or conduct review committee
"the Regulation"	the <i>Local Government (General) Regulation 2005</i>
"subject person"	a person whose conduct is the subject of investigation by a conduct reviewer or conduct review committee under these procedures

PART 3 ADMINISTRATIVE FRAMEWORK

The establishment of a panel of conduct reviewers

- 3.1 Council must by resolution establish a panel of conduct reviewers.
- 3.2 Council may by resolution enter into an arrangement with one or more other councils to share a panel of conduct reviewers.
- 3.3 The panel of conduct reviewers is to be established following a public expression of interest process.
- 3.4 An expression of interest for members of the council's panel of conduct reviewers must, at a minimum, be advertised locally and in the Sydney metropolitan area.
- 3.5 To be eligible to be a member of a panel of conduct reviewers, a person must, at a minimum, meet the following requirements:
 - a) an understanding of local government, and
 - b) knowledge of investigative processes including but not limited to procedural fairness requirements and the requirements of the *Public Interest Disclosures Act 1994*, and
 - c) knowledge and experience of one or more of the following:
 - i. investigations, or
 - ii. law, or
 - iii. public administration, or
 - iv. public sector ethics, or
 - v. alternative dispute resolution, and
 - d) meet the eligibility requirements for membership of a panel of conduct reviewers under clause 3.6.
- 3.6 A person is not be eligible to be a member of the panel of conduct reviewers if they are
 - a) a councillor, or

Procedures for the Administration of the Manly Code of Conduct FEB 2013 V 1.0

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013
Draft Procedures for the Administration of the Manly Code of Conduct Procedures

5

- b) a nominee for election as a councillor, or
 - c) an administrator, or
 - d) an employee of a council, or
 - e) a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or
 - f) a nominee for election as a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or
 - g) a person who has a conviction for an indictable offence that is not an expired conviction.
- 3.7 A person is not precluded from being a member of the council's panel of conduct reviewers if they are a member of another council's panel of conduct reviewers.
- 3.8 A panel of conduct reviewers established under this Part is to have a term of up to four years.
- 3.9 Council may terminate the panel of conduct reviewers at any time by resolution.
- 3.10 When the term of the conduct reviewers concludes or is terminated, Council must establish a new panel of conduct reviewers in accordance with the requirements of this Part.
- 3.11 A person who was a member of a previous panel of conduct reviewers established by Council may be a member of subsequent panels of conduct reviewers established by the council.

The appointment of complaints coordinators

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

Procedures for the Administration of the Manly Code of Conduct FEB 2013 V 1.0

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013
Draft Procedures for the Administration of the Manly Code of Conduct Procedures

6

- c) liaise with the Division of Local Government, and
- d) arrange the annual reporting of code of conduct complaints statistics.

PART 4 HOW MAY CODE OF CONDUCT COMPLAINTS BE MADE?

What is a "code of conduct complaint"?

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

When must a code of conduct complaint be made?

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

How may a code of conduct complaint about a Council official other than the General Manager be made?

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

How may a code of conduct complaint about the General Manager be made?

Procedures for the Administration of the Manly Code of Conduct FEB 2013 V 1.0

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013
Draft Procedures for the Administration of the Manly Code of Conduct Procedures

7

- 4.10 Code of conduct complaints about the General Manager are to be made to the Mayor in writing.
- 4.11 Where a code of conduct complaint about the General Manager cannot be made in writing, the complaint must be confirmed with the complainant in writing as soon as possible after the receipt of the complaint.
- 4.12 In making a code of conduct complaint about the General Manager, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.
- 4.13 The Mayor or, where the complaint is referred to a conduct reviewer, the conduct reviewer, must consider the complainant's preferences in deciding how to deal with the complaint.
- 4.14 Notwithstanding clauses 4.10 and 4.11, where the Mayor becomes aware of a possible breach of the council's code of conduct by the General Manager, he or she may initiate the process for the consideration of the matter under these procedures without a written complaint.

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

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

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

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

- 5.6 The General Manager is responsible for making enquiries or causing enquiries to be made into code of conduct complaints about delegates of Council and Council committee members and for determining the outcome of such complaints.

Procedures for the Administration of the Manly Code of Conduct FEB 2013 V 1.0

ATTACHMENT 3

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013

Draft Procedures for the Administration of the Manly Code of Conduct Procedures

8

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

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

- 5.11 The General Manager must refer all code of conduct complaints about conduct reviewers to the Division for its consideration.
- 5.12 The General Manager must notify the complainant of the referral of their complaint in writing.
- 5.13 The General Manager must implement any recommendation made by the Division as a result of its consideration of a code of conduct complaint about a conduct reviewer.

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

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

Procedures for the Administration of the Manly Code of Conduct FEB 2013 V 1.0

ATTACHMENT 3

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013

Draft Procedures for the Administration of the Manly Code of Conduct Procedures

9

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

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

How are code of conduct complaints about the General Manager to be dealt with?

- 5.21 The Mayor must refer the following code of conduct complaints about the General Manager to the Division:
- a) complaints alleging a breach of the pecuniary interest provisions of the Act,
 - b) complaints alleging a breach of Part 8 of the code of conduct relating to the maintenance of the integrity of the code, and
 - c) complaints the subject of a special complaints management arrangement with the Division under clause 5.40.

ATTACHMENT 3

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013

Draft Procedures for the Administration of the Manly Code of Conduct Procedures

10

- 5.22 Where the Mayor refers a complaint to the Division under clause 5.21, the Mayor must notify the complainant of the referral in writing.
- 5.23 Where the Mayor considers it to be practicable and appropriate to do so, he or she may seek to resolve code of conduct complaints about the General Manager, other than those requiring referral to the Division under clause 5.21, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology instead of referring them to the complaints coordinator under clause 5.25.
- 5.24 Where the Mayor resolves a code of conduct complaint under clause 5.23 to the Mayor's satisfaction, the Mayor must notify the complainant in writing of the steps taken to resolve the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.25 The Mayor must refer all code of conduct complaints about the General Manager other than those referred to the Division under clause 5.21 or resolved under clause 5.23 to the complaints coordinator.

Referral of code of conduct complaints to external agencies

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

Disclosure of the identity of complainants

- 5.29 In dealing with matters under these procedures, information that identifies or tends to identify complainants is not to be disclosed unless:
- a) the complainant consents in writing to the disclosure, or
 - b) it is generally known that the complainant has made the complaint as a result of the complainant having voluntarily identified themselves as the person who made the complaint, or
 - c) it is essential, having regard to procedural fairness requirements, that the identifying information be disclosed, or

ATTACHMENT 3

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013

Draft Procedures for the Administration of the Manly Code of Conduct Procedures

11

- d) a conduct reviewer or conduct review committee is of the opinion that disclosure of the information is necessary to investigate the matter effectively, or
 - a. it is otherwise in the public interest to do so.
- 5.30 Clause 5.29 does not apply to code of conduct complaints made by councillors about other councillors or the General Manager.
- 5.31 Where a councillor makes a code of conduct complaint about another councillor or the General Manager and the complainant councillor considers that compelling grounds exist that would warrant information that identifies or tends to identify them as the complainant not to be disclosed, they may request in writing that such information not be disclosed.
- 5.32 A request made by a complainant councillor under clause 5.31 must be made at the time they make a code of conduct complaint and must state the grounds upon which the request is made.
- 5.33 The General Manager or Mayor or, where the matter is referred, a conduct reviewer or conduct review committee must consider a request made under clause 5.31 before disclosing information that identifies or tends to identify the complainant councillor but are not obliged to comply with the request.
- 5.34 Where a complainant councillor makes a request under clause 5.31, the General Manager or Mayor or, where the matter is referred, a conduct reviewer or conduct review committee shall notify the councillor in writing of their intention to disclose information that identifies or tends to identify them prior to disclosing the information.

Code of conduct complaints made as public interest disclosures

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

ATTACHMENT 3

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013

Draft Procedures for the Administration of the Manly Code of Conduct Procedures

12

- 5.38 Where a complainant councillor declines to consent to the disclosure of their identity as the complainant under clause 5.37, the General Manager or the Mayor must refer the complaint to the Division for consideration. Such a referral must be made under section 26 of the Public Interest Disclosures Act 1994.

Special complaints management arrangements

- 5.39 The General Manager may request in writing that the Division enter into a special complaints management arrangement with Council in relation to code of conduct complaints made by or about a person or persons.
- 5.40 Where the Division receives a request under clause 5.39, it may agree to enter into a special complaints management arrangement where it is satisfied that the number or nature of code of conduct complaints made by or about a person or persons has:
- a) imposed an undue and disproportionate cost burden on the council's administration of its code of conduct, or
 - b) impeded or disrupted the effective administration by Council of its code of conduct, or
 - c) impeded or disrupted the effective functioning of the council.
- 5.41 A special complaints management arrangement must be in writing and must specify the following:
- a) the code of conduct complaints the arrangement relates to, and
 - b) the period that the arrangement will be in force.
- 5.42 The Division may by notice in writing, amend or terminate a special complaints management arrangement at any time.
- 5.43 While a special complaints management arrangement is in force, an officer of the Division (the assessing Divisional officer) must undertake the preliminary assessment of the code of conduct complaints specified in the arrangement in accordance with the requirements of these procedures except as provided by clause 5.44 below.
- 5.44 Where, following a preliminary assessment, the assessing Divisional officer determines that a code of conduct complaint warrants investigation by a conduct reviewer or a conduct review committee, the assessing Divisional officer shall notify the complaints coordinator in writing of their determination and the reasons for their determination. The complaints coordinator must comply with the recommendation of the assessing Divisional officer.
- 5.45 Prior to the expiry of a special complaints management arrangement, the Division shall, in consultation with the General Manager, review the arrangement to determine whether it should be renewed or amended.
- 5.46 A special complaints management arrangement shall expire on the date specified in the arrangement unless renewed under clause 5.45.

Procedures for the Administration of the Manly Code of Conduct FEB 2013 V 1.0

ATTACHMENT 3

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013

Draft Procedures for the Administration of the Manly Code of Conduct Procedures

13

PART 6 PRELIMINARY ASSESSMENT

Referral of code of conduct complaints to conduct reviewers

- 6.1 The complaints coordinator must refer all code of conduct complaints about councillors or the General Manager submitted to the complaints coordinator within 21 days of receipt of a complaint by the General Manager or the Mayor.
- 6.2 For the purposes of clause 6.1, the complaints coordinator will refer a complaint to a conduct reviewer selected from:
 - a) a panel of conduct reviewers established by the council, or
 - b) a panel of conduct reviewers established by an organisation approved by the Chief Executive of the Division.
- 6.3 In selecting a suitable conduct reviewer, the complaints coordinator may have regard to the qualifications and experience of members of the panel of conduct reviewers.
- 6.4 A conduct reviewer must not accept the referral of a code of conduct complaint where:
 - a) they have a conflict of interests in relation to the matter referred to them, or
 - 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 in the 2 years preceding the referral and they or their employer have received or expect to receive payments under the contract or contracts of a cumulative value that exceeds \$100K, or
 - d) at the time of the referral, they or their employer are the council's legal service providers or are a member of a panel of legal service providers appointed by the council.
- 6.5 For the purposes of clause 6.4(a), a conduct reviewer will have a conflict of interests in a matter where a reasonable and informed person would perceive that they could be influenced by a private interest when carrying out their public duty (see clause 4.1 of the Manly Code of Conduct).
- 6.6 For the purposes of clause 6.4(b), a reasonable apprehension of bias arises where a fair-minded observer might reasonably apprehend that the conduct reviewer might not bring an impartial and unprejudiced mind to the matter referred to the conduct reviewer.
- 6.7 Where the complaints coordinator refers a matter to a conduct reviewer, they will provide the conduct reviewer with a copy of the code of conduct complaint and any other information relevant to the matter held by the council.
- 6.8 The complaints coordinator must notify the complainant in writing that the matter has been referred to a conduct reviewer and advise which conduct reviewer the matter has been referred to.

Procedures for the Administration of the Manly Code of Conduct FEB 2013 V 1.0

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013
Draft Procedures for the Administration of the Manly Code of Conduct Procedures

14

Preliminary assessment by a conduct reviewer

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

Procedures for the Administration of the Manly Code of Conduct FEB 2013 V 1.0

ATTACHMENT 3

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013

Draft Procedures for the Administration of the Manly Code of Conduct Procedures

15

- 6.18 The conduct reviewer may only determine to investigate a matter or to recommend that a conduct review committee be convened to investigate a matter where they are satisfied as to the following:
- a) that the complaint is a "code of conduct complaint" for the purposes of these procedures, and
 - b) that the alleged conduct, on its face, is sufficiently serious to warrant investigation, and
 - c) that the matter is one that could not or should not be resolved by alternative means.
- 6.19 The conduct reviewer may only determine to recommend that a conduct review committee be convened to investigate a matter after consulting with the complaints coordinator and where they are satisfied that it would not be practicable or appropriate for the matter to be investigated by a sole conduct reviewer.
- 6.20 The conduct reviewer must complete their preliminary assessment of the complaint within 28 days of referral of the matter to them by the complaints coordinator.
- 6.21 The conduct reviewer is not obliged to give prior notice to or to consult with any person before making a determination in relation to their preliminary assessment of a complaint except as may be specifically required under these procedures.

Referral back to the General Manager or Mayor for resolution

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

Procedures for the Administration of the Manly Code of Conduct FEB 2013 V 1.0

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013
Draft Procedures for the Administration of the Manly Code of Conduct Procedures

16

Complaints assessment criteria

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

PART 7 OPERATIONS OF CONDUCT REVIEW COMMITTEES

- 7.1 Where a conduct reviewer recommends that the complaints coordinator convene a conduct review committee to investigate a matter, the conduct reviewer must notify the complaints coordinator of their recommendation and the reasons for their recommendation in writing.
- 7.2 The complaints coordinator must convene a conduct review committee comprising three conduct reviewers selected from:
- a) a panel of conduct reviewers established by the council, or

Procedures for the Administration of the Manly Code of Conduct FEB 2013 V 1.0

ATTACHMENT 3

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013

Draft Procedures for the Administration of the Manly Code of Conduct Procedures

17

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

Procedures for the Administration of the Manly Code of Conduct FEB 2013 V 1.0

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013
Draft Procedures for the Administration of the Manly Code of Conduct Procedures

18

- 7.16 The conduct review committee may only conduct business in the absence of the public.
- 7.17 The conduct review committee must maintain proper records of its proceedings.
- 7.18 The complaints coordinator shall undertake the following functions in support of a conduct review committee:
 - a) provide procedural advice where required,
 - b) ensure adequate resources are provided including secretarial support,
 - c) attend meetings of the conduct review committee in an advisory capacity, and
 - d) provide advice about council's processes where requested.
- 7.19 The complaints coordinator must not be present at, or in sight of a meeting of, the conduct review committee where it makes its final determination in relation to the matter.
- 7.20 The conduct review committee may adopt procedures governing the conduct of its meetings that supplement these procedures. However any procedures adopted by the committee must not be inconsistent with these procedures.

PART 8 INVESTIGATIONS

What matters may a conduct reviewer or conduct review committee investigate?

- 8.1 A conduct reviewer or conduct review committee (hereafter referred to as an "investigator") may investigate a code of conduct complaint that has been referred to them by the complaints coordinator and any matters related to or arising from that complaint.
- 8.2 Where an investigator identifies further separate possible breaches of the code of conduct that are not related to or arise from the code of conduct complaint that has been referred to them, they are to report the matters separately in writing to the General Manager, or, in the case of alleged conduct on the part of the General Manager, to the Mayor.
- 8.3 The General Manager or the Mayor is to deal with a matter reported to them by an investigator under clause 8.2 as if it were a new code of conduct complaint in accordance with these procedures.

How are investigations to be commenced?

- 8.4 The investigator must at the outset of their investigation provide a written notice of investigation to the subject person. The notice of investigation must:
 - a) disclose the substance of the allegations against the subject person, and
 - b) advise of the relevant provisions of the code of conduct that apply to the alleged conduct, and
 - c) advise of the process to be followed in investigating the matter, and

Procedures for the Administration of the Manly Code of Conduct FEB 2013 V 1.0

ATTACHMENT 3

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013

Draft Procedures for the Administration of the Manly Code of Conduct Procedures

19

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

Written and oral submissions

- 8.9 Where the subject person or the complainant fails to make a written submission in relation to the matter within the period specified by the investigator in their notice of investigation or amended notice of investigation, the investigator may proceed to prepare their draft report without receiving such submissions.
- 8.10 The investigator may accept written submissions received outside the period specified in the notice of investigation or amended notice of investigation.
- 8.11 Prior to preparing a draft report, the investigator must give the subject person an opportunity to address the investigator on the matter being investigated. The subject person may do so in person or by telephone.
- 8.12 Where the subject person fails to accept the opportunity to address the investigator within the period specified by the investigator in the notice of investigation, the investigator may proceed to prepare a draft report without hearing from the subject person.
- 8.13 Where the subject person accepts the opportunity to address the investigator in person, they may have a support person or legal advisor in attendance. The support

Procedures for the Administration of the Manly Code of Conduct FEB 2013 V 1.0

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013
Draft Procedures for the Administration of the Manly Code of Conduct Procedures

20

person or legal advisor will act in an advisory or support role to the subject person only. They must not speak on behalf of the subject person or otherwise interfere with or disrupt proceedings.

- 8.14 The investigator must consider all written and oral submissions made to them in relation to the matter.

How are investigations to be conducted?

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

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

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

Procedures for the Administration of the Manly Code of Conduct FEB 2013 V 1.0

ATTACHMENT 3

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013

Draft Procedures for the Administration of the Manly Code of Conduct Procedures

21

- 8.24 An investigator is not obliged to give prior notice to or to consult with any person before making a determination to exercise any of the options under clause 8.20 or to discontinue their investigation except as may be specifically required under these procedures.

Draft investigation reports

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

Final investigation reports

- 8.32 Where an investigator issues a notice of investigation they must prepare a final report in relation to the matter unless the investigation is discontinued under clause 8.22.
- 8.33 An investigator must not prepare a final report in relation to the matter at any time before they have finalised their consideration of the matter in accordance with the requirements of these procedures.
- 8.34 The investigator's final report must:
- a) make findings of fact in relation to the matter investigated, and,
 - i) make a determination that the conduct investigated either,
 - ii) constitutes a breach of the code of conduct, or
 - b) does not constitute a breach of the code of conduct, and

Procedures for the Administration of the Manly Code of Conduct FEB 2013 V 1.0

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013
Draft Procedures for the Administration of the Manly Code of Conduct Procedures

22

c) provide reasons for the determination.

- 8.35 Where the investigator determines that the conduct investigated constitutes a breach of the code of conduct, the investigator may make one or more of the following recommendations:
- a) that Council revise any of its policies or procedures,
 - b) that the subject person undertake any training or other education relevant to the conduct giving rise to the breach,
 - c) that the subject person be counselled for their conduct,
 - d) that the subject person apologise to any person or organisation affected by the breach in such a time and form specified by the recommendation,
 - e) that findings of inappropriate conduct be made public,
 - f) in the case of a breach by the General Manager, that action be taken under the General Manager's contract for the breach,
 - g) in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the Act,
 - h) in the case of a breach by a councillor, that Council resolves as follows:
 - i. that the councillor be formally censured for the breach under section 440G of the Act, and
 - ii. that the matter be referred to the Division for further action under the misconduct provisions of the Act.
- 8.36 Where the investigator determines that the conduct investigated does not constitute a breach of the code of conduct, the investigator may make one or more of the following recommendations:
- a) that Council revise any of its policies or procedures,
 - b) that a person or persons undertake any training or other education.
- 8.37 In making a recommendation under clause 8.35, the investigator may have regard to the following:
- a) the seriousness of the breach,
 - b) whether the breach can be easily remedied or rectified,
 - c) whether the subject person has remedied or rectified their conduct,
 - d) whether the subject person has expressed contrition,
 - e) whether there were any mitigating circumstances,
 - f) the age, physical or mental health or special infirmity of the subject person,
 - g) whether the breach is technical or trivial only,
 - h) any previous breaches,
 - i) whether the breach forms part of a pattern of conduct,
 - j) the degree of reckless intention or negligence of the subject person,
 - k) the extent to which the breach has affected other parties or Council as a whole,

Procedures for the Administration of the Manly Code of Conduct FEB 2013 V 1.0

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013
Draft Procedures for the Administration of the Manly Code of Conduct Procedures

23

- l) the harm or potential harm to the reputation of Council or local government arising from the conduct,
 - m) whether the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny,
 - n) whether an educative approach would be more appropriate than a punitive one,
 - o) the relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action,
 - p) what action or remedy would be in the public interest.
- 8.38 At a minimum, the investigator's final report must contain the following information:
- a) a description of the allegations against the subject person,
 - b) the relevant provisions of the code of conduct that apply to the alleged conduct investigated,
 - c) a statement of reasons as to why the conduct reviewer considered that the matter warranted investigation,
 - d) a statement of reasons as to why the conduct reviewer considered that the matter was one that could not or should not be resolved by alternative means,
 - e) where the matter is investigated by a conduct review committee, a statement as to why the matter was one that warranted investigation by a conduct review committee instead of a sole conduct reviewer,
 - f) a description of any attempts made to resolve the matter by use of alternative means,
 - g) the steps taken to investigate the matter,
 - h) the facts of the matter,
 - i) the investigator's findings in relation to the facts of the matter and the reasons for those findings,
 - j) the investigator's determination and the reasons for that determination,
 - k) any recommendations.
- 8.39 The investigator must provide a copy of their report to the complaints coordinator, the subject person and the complainant.
- 8.40 Where the investigator has determined that there has not been a breach of the code of conduct, the complaints coordinator must provide a copy of the investigator's report to the General Manager or, where the report relates to the General Manager's conduct, to the Mayor and this will finalise consideration of the matter under these procedures.

Procedures for the Administration of the Manly Code of Conduct FEB 2013 V 1.0

ATTACHMENT 3

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013

Draft Procedures for the Administration of the Manly Code of Conduct Procedures

24

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

Consideration of the final investigation report by Council

- 8.44 The role of Council in relation to a final investigation report is to impose a sanction where an investigator determines that there has been a breach of the code of conduct and makes a recommendation in their final report under clause 8.35, paragraphs (d) to (h).
- 8.45 Council is to close its meeting to the public to consider the final investigation report where it is permitted to do so under section 10A of the Act.
- 8.46 Where the complainant is a councillor, they must absent themselves from the meeting and take no part in any discussion or voting on the matter. The complainant councillor may absent themselves without making any disclosure of interests in relation to the matter unless otherwise required to do so under the Act or the Manly Code of Conduct.
- 8.47 Prior to imposing a sanction, Council must provide the subject person with an opportunity to make an oral submission to the council. The subject person is to confine their submission to addressing the investigator's recommendation/s.
- 8.48 Once the subject person has completed their oral submission they must absent themselves from the meeting and, where they are a councillor, take no part in any discussion or voting on the matter.
- 8.49 Council must not invite oral submissions from other persons for the purpose of seeking to rehear evidence previously considered by the investigator.
- 8.50 Prior to imposing a sanction, Council may by resolution:
- a) request that the investigator make additional enquiries and/or provide additional information to it in a supplementary report, or

Procedures for the Administration of the Manly Code of Conduct FEB 2013 V 1.0

ATTACHMENT 3

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013

Draft Procedures for the Administration of the Manly Code of Conduct Procedures

25

- b) seek an opinion by the Division in relation to the report.
- 8.51 Council may, by resolution, defer further consideration of the matter pending the receipt of a supplementary report from the investigator or an opinion from the Division.
- 8.52 The investigator may make additional enquiries for the purpose of preparing a supplementary report.
- 8.53 Where the investigator prepares a supplementary report, they must provide copies to the complaints coordinator who shall provide a copy each to the council, the subject person and the complainant.
- 8.54 The investigator is not obliged to notify or consult with any person prior to submitting the supplementary report to the complaints coordinator.
- 8.55 Council is only required to provide the subject person a further opportunity to address it on a supplementary report where the supplementary report contains new information that is adverse to them.
- 8.56 A Council may by resolution impose one or more of the following sanctions on a subject person:
 - a) that the subject person apologise to any person or organisation affected by the breach in such a time and form specified by the resolution,
 - b) that findings of inappropriate conduct be made public,
 - c) in the case of a breach by the General Manager, that action be taken under the General Manager's contract for the breach,
 - d) in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the Act,
 - e) in the case of a breach by a councillor:
 - i. that the councillor be formally censured for the breach under section 440G of the Act, and
 - ii. that the matter be referred to the Division for further action under the misconduct provisions of the Act.
- 8.57 Council is not obliged to adopt the investigator's recommendation/s. Where Council does not adopt the investigator's recommendation/s, Council must resolve not to adopt the recommendation and state in its resolution the reasons for its decision.
- 8.58 Council may, by resolution, impose a sanction on the subject person under clause 8.56 different to the sanction recommended by the investigator in their final report.
- 8.59 Where Council resolves not to adopt the investigator's recommendation/s, the complaints coordinator must notify the Division of the council's decision and the reasons for it.

Procedures for the Administration of the Manly Code of Conduct FEB 2013 V 1.0

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013
Draft Procedures for the Administration of the Manly Code of Conduct Procedures

26

PART 9 RIGHTS OF REVIEW

Failure to comply with a requirement under these procedures

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

Practice rulings

- 9.2 Where a subject person and an investigator are in dispute over a requirement under these procedures, either person may make a request in writing to the Division to make a ruling on a question of procedure (a practice ruling).
- 9.3 Where the Division receives a request in writing for a practice ruling, the Division may provide notice in writing of its ruling and the reasons for it to the person who requested it and to the investigator, where that person is different.
- 9.4 Where the Division makes a practice ruling, all parties are to comply with it.
- 9.5 The Division may decline to make a practice ruling. Where the Division declines to make a practice ruling, it will provide notice in writing of its decision and the reasons for it to the person who requested it and to the investigator, where that person is different.

Requests for review

- 9.6 A person the subject of a sanction imposed under Part 8 of these procedures other than one imposed under clause 8.56, paragraph (e), may, within 28 days of the sanction being imposed, seek a review of the investigator's determination and recommendation by the Division.
- 9.7 A review under clause 9.6 may be sought on the following grounds:
- a) that the investigator has failed to comply with a requirement under these procedures, or
 - b) that the investigator has misinterpreted or misapplied the standards of conduct prescribed under the code of conduct, or
 - c) that Council has failed to comply with a requirement under these procedures in imposing a sanction.
- 9.8 A request for a review made under clause 9.6 must be made in writing and must specify the grounds upon which the person believes the investigator or Council has erred.
- 9.9 The Division may decline to conduct a review, where the grounds upon which the review is sought are not sufficiently specified.
- 9.10 The Division may undertake a review of a matter without receiving a request under clause 9.6.

Procedures for the Administration of the Manly Code of Conduct FEB 2013 V 1.0

ATTACHMENT 3

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013

Draft Procedures for the Administration of the Manly Code of Conduct Procedures

27

- 9.11 The Division will undertake a review of the matter on the papers. However, the Division may request that the complaints coordinator provide such further information that the Division considers reasonably necessary for it to review the matter. The complaints coordinator must, as far as is reasonably practicable, provide the information requested by the Division.
- 9.12 Where a person requests a review under clause 9.6, the Division may direct Council to defer any action to implement a sanction. Council must comply with a direction to defer action by the Division.
- 9.13 The Division must notify the person who requested the review and the complaints coordinator of the outcome of the Division's review in writing and the reasons for its decision. In doing so, the Division may comment on any other matters the Division considers to be relevant.
- 9.14 Where the Division considers that the investigator or Council has erred, the Division may recommend that a decision to impose a sanction under these procedures be reviewed.
- 9.15 In the case of a sanction implemented by the General Manager or Mayor under clause 8.42, where the Division recommends that the decision to impose a sanction be reviewed:
- a) the complaints coordinator must provide a copy of the Division's determination in relation to the matter to the General Manager or the Mayor, and
 - b) the General Manager or Mayor must review any action taken by them to implement the sanction, and
 - c) the General Manager or Mayor must consider the Division's recommendation in doing so.
- 9.16 In the case of a sanction imposed by Council by resolution under clause 8.56, where the Division recommends that the decision to impose a sanction be reviewed:
- a) the complaints coordinator must, where practicable, arrange for the Division's determination to be tabled at the next ordinary Council meeting unless the meeting is to be held within the 4 weeks prior to an ordinary local government election, in which case it must be tabled at the first ordinary Council meeting following the election, and
 - b) Council must:
 - i. review its decision to impose the sanction, and
 - ii. consider the Division's recommendation in doing so, and
 - iii. resolve to either rescind or reaffirm its previous resolution in relation to the matter.
- 9.17 Where having reviewed its previous decision in relation to a matter under clause 9.16 Council resolves to reaffirm its previous decision, Council must state in its resolution its reasons for doing so.

Procedures for the Administration of the Manly Code of Conduct FEB 2013 V 1.0

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013
Draft Procedures for the Administration of the Manly Code of Conduct Procedures

28

PART 10 PROCEDURAL IRREGULARITIES

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

PART 11 PRACTICE DIRECTIONS

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

PART 12 REPORTING ON COMPLAINTS STATISTICS

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

Procedures for the Administration of the Manly Code of Conduct FEB 2013 V 1.0

ATTACHMENT 3

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013

Draft Procedures for the Administration of the Manly Code of Conduct Procedures

29

- 12.2 Council is to provide the Division with a report containing the statistics referred to in clause 12.1 within 3 months of the end of September of each year.

PART 13 CONFIDENTIALITY

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

Version Control

Version #	Date	Details	Council Meeting Date
DRAFT	Feb 2013	Model Code of Conduct Procedures issued by the Division of LG	04/02/2013

Procedures for the Administration of the Manly Code of Conduct FEB 2013 V 1.0

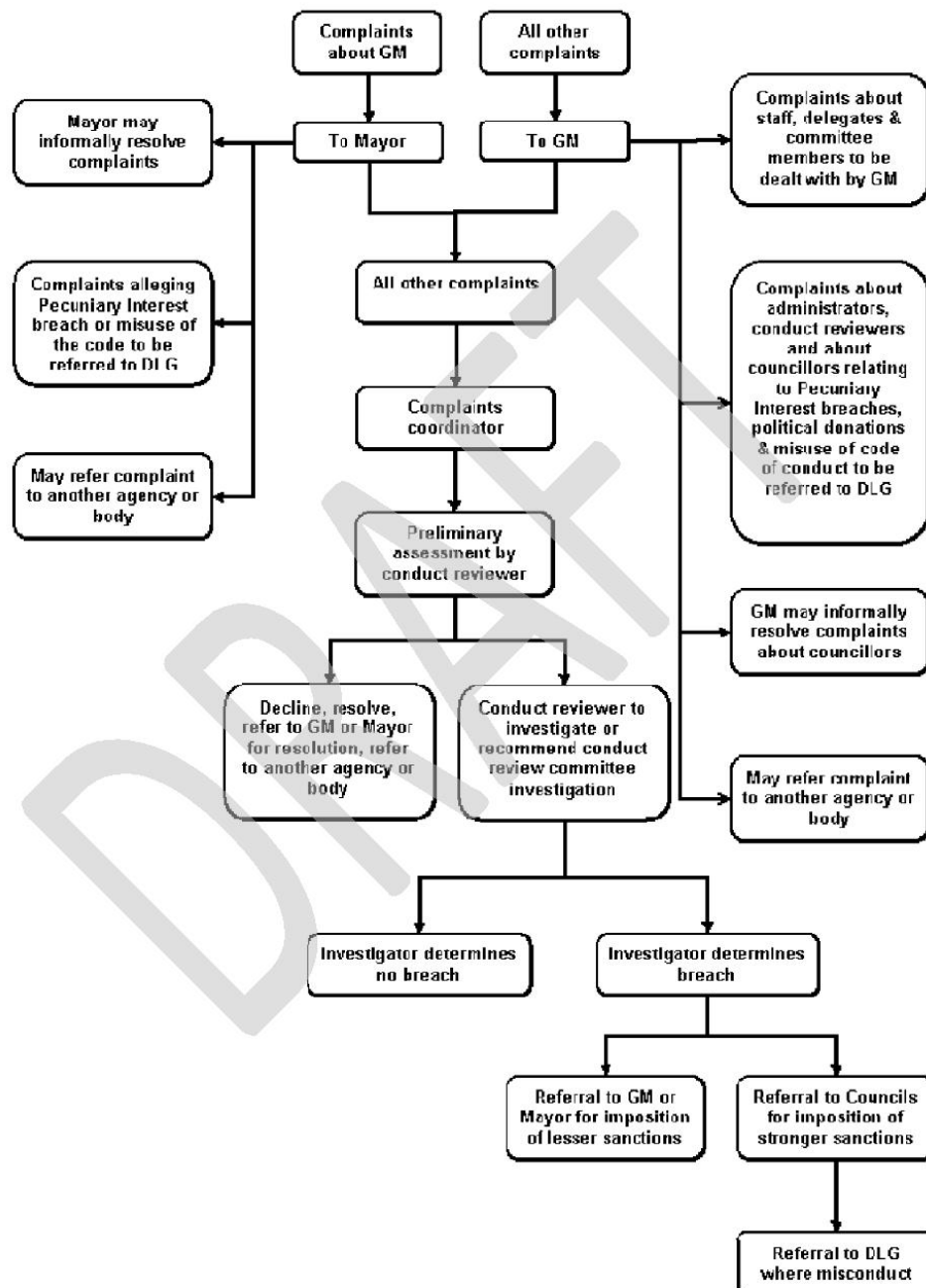
ATTACHMENT 3

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013

Draft Procedures for the Administration of the Manly Code of Conduct Procedures

30

Manly Code of Conduct Procedures Flowchart



Procedures for the Administration of the Manly Code of Conduct FEB 2013 V 1.0

ATTACHMENT 3

Corporate Services Division Report No. 1.DOC - The New Model Code of Conduct and adoption of the Manly Code of Conduct and Procedures for the Administration of the Manly Code of Conduct 2013

Draft Procedures for the Administration of the Manly Code of Conduct Procedures
