

SUPPLEMENTARY AGENDA

Notice is hereby given that an Ordinary Meeting of Council will be held at the Civic Centre, Dee Why on

Tuesday 25 March 2014

Beginning at 6:00pm for the purpose of considering and determining matters included in this agenda.

Rik Hart General Manager



Supplementary Agenda for an Ordinary Meeting of Council to be held on Tuesday 25 March 2014 at the Civic Centre, Dee Why Commencing at 6:00pm

6.0	GENERAL MANAGER'S REPORTS
6.3	Adoption of Public Interest Disclosures Policy1



ITEM 6.3 ADOPTION OF PUBLIC INTEREST DISCLOSURES POLICY

REPORTING MANAGER GENERAL MANAGER

TRIM FILE REF 2014/078537

ATTACHMENTS 1 Public Interest Disclosures Policy - March 2014

REPORT

PURPOSE

To adopt the new Warringah Council Public Interest Disclosures Policy - March 2014

REPORT

The *Public Interest Disclosures Act 1994* (formerly known as the *Protected Disclosures Act 1994*) requires public authorities, including councils, to have relevant policies and procedures to deal with public interest disclosures.

Warringah Council has had a Disclosures Operational Management Standard (OMS 155) since 2010. Protected disclosures (up to 2011) and public interest disclosures (from 2011) have been handled pursuant to this OMS. However, the OMS needs updating and this new policy has been drafted in line with the requirements of the newer legislation and the guidelines issued by the NSW Ombudsman.

Members of the public are not able to make public interest disclosures. Disclosures can only be made by public officials, and the spirit of the legislation is to provide a framework for internal disclosures within public authorities. As such, and in accordance with Council's policy PL 910 Policy Development and Management, it is recommended that this policy is not placed on public exhibition as the costs of the exhibition and delay in adopting the policy outweighs the likely benefit realised from public exhibition of this policy.

FINANCIAL IMPACT

Nil

POLICY IMPACT

This Public Interest Disclosures Policy will replace the Operational Management Standard OMS 155 Disclosure.

RECOMMENDATION OF GENERAL MANAGER

That Council adopts the Public Interest Disclosures Policy – March 2014.





Warringah Council Policy

Policy No. FINAL DRAFT

Public Interest Disclosures Policy

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1. Purpose and context of the policy

Warringah Council is committed to providing services to the community of Warringah and Council's customers in an ethical, accountable and transparent manner. Warringah Council will not tolerate any form of misconduct, including corrupt conduct, maladministration, or the serious and substantial waste of public money. This stance is strongly endorsed by the Mayor and the General Manager, and is reflected in Council's Code of Conduct.

Under section 6D of the *Public Interest Disclosures Act 1994* (the PID Act), public authorities are required to have a policy and procedures for receiving, assessing and dealing with public interest disclosures (PIDs). The provisions of the PID Act are intended to support accountability and ethical conduct by encouraging and facilitating the disclosure of certain types of misconduct (see section 4). The Act also provides for the protection of those making disclosures from any reprisals by Council against them for having made their disclosure.

Council strongly encourages all staff and Councillors to do their duty to report all forms of misconduct. Council is committed to protecting those who make reports of misconduct, whether as a PID or otherwise.

This policy provides the procedures for the reporting and handling of PIDs within Council and it applies to all staff and Councillors. It should be read in conjunction with the Code of Conduct, the Internal Ombudsman Guidelines, and the Complaint Management Policy and Procedures (all available on Council's intranet).

Staff and Councillors who require more information about the PID Act, or about making a report of misconduct, should contact the Internal Ombudsman for advice.

2. Organisational commitment

Warringah Council is committed to achieving a high ethical standard of conduct in all its business and in dealing effectively with misconduct. Specifically Council is committed to the following:

- creating a climate of trust, where people are comfortable and confident about reporting wrongdoing.
- · encouraging individuals to come forward if they are aware of wrongdoing within Council.
- keeping the identity of the person disclosing wrongdoing confidential, where this is possible and appropriate.

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- protecting the person from any adverse action resulting from them making a report.
- dealing with reports thoroughly and impartially, and if some form of wrongdoing has been found, taking appropriate action to rectify it.
- · keeping the individual who makes a report informed of the progress and the outcome.
- encouraging the reporting of wrongdoing within Council, but respect any decision to disclose wrongdoing outside Council that is made in accordance with the provisions of the PID Act.
- ensuring managers and supervisors at all levels in Council understand the benefits of reporting wrongdoing, are familiar with this policy, and aware of the needs of those who report wrongdoing.
- · reviewing the policy periodically to ensure it is relevant and effective.
- · providing adequate resources to:
 - encourage reports of wrongdoing.
 - protect and support those who make reports.
 - provide training about how to make reports and the benefits of internal reports to the Council and the public interest generally.
 - properly investigate allegations.
 - properly manage any workplace issues that the allegations identify or that result from a report.
 - appropriately address any identified problems.

3. Roles and responsibilities of staff

Under the PID Act, the General Manager is responsible for ensuring that:

- · Council has an internal reporting policy.
- the staff of Council and Councillors are aware of the contents of the policy and the protection under the PID Act for people who make public interest disclosures.
- · Council complies with the policy and Council's obligations under the PID Act.
- one or more staff are nominated as being responsible for receiving PIDs.
- · there are systems in place in to support and protect people who report wrongdoing.

All staff and Councillors have a responsibility to:

- · abide by this policy and Council's Code of Conduct.
- · report all forms of misconduct through the established mechanisms.

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 to support those who do report misconduct, and not harass or victimise those who make reports.

Specific responsibilities in relation to PIDs and complaints are detailed in section 9 of this policy.

4. What should be reported?

You should report any suspected wrongdoing you see within Warringah Council. Reports about the five categories of serious wrongdoing [(1) corrupt conduct, (2) maladministration, (3) serious and substantial waste of public money, (4) government information contravention, and (5) local government pecuniary interest contravention] are eligible to be dealt with under the PID Act as public interest disclosures and according to this policy.

a. Corrupt conduct

Corrupt conduct is the dishonest or partial exercise of official functions by a public official.

For example, this could include:

- · the improper use of knowledge, power or position for personal gain or the advantage of others.
- · acting dishonestly or unfairly, or breaching public trust.
- a council official using their position in a way that is dishonest, biased or breaches public trust.
- · misuse of Council resources.

For more information about corrupt conduct, see the NSW Ombudsman's guideline on what can be reported.

b. Maladministration

Maladministration is conduct that involves action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives.

For example, this could include:

- · making a decision and/or taking action that is unlawful.
- refusing to grant an approval for reasons that are not related to the merits of the application.

For more information about maladministration, see the NSW Ombudsman's guideline on what can be reported.

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c. Serious and substantial waste in local government

Serious and substantial waste is the uneconomical, inefficient or ineffective use of resources that could result in the loss or wastage of local government money. This includes all revenue, loans and other money collected, received or held by, for or on account of the Council.

For example, this could include:

- · poor project management practices leading to projects running over time.
- having poor or no processes in place for a system involving large amounts of public funds.

For more information about serious and substantial waste, see the NSW Ombudsman's guideline on what can be reported.

d. Government information contravention

A government information contravention is a failure to properly fulfil functions under the Government Information (Public Access) Act 2009 (GIPA Act).

For example, this could include:

- · destroying, concealing or altering records to prevent them from being released.
- knowingly making decisions that are contrary to the legislation.
- · directing another person to make a decision that is contrary to the legislation.

For more information about government information contravention, see the NSW Ombudsman's guideline on what can be reported.

e. Local government pecuniary interest contravention

A local government pecuniary interest contravention is a failure to fulfil certain functions under the Local Government Act 1993 relating to the management of pecuniary interests. These include obligations to lodge disclosure of interests returns, lodge written declarations and disclose pecuniary interests at council and council committee meetings. 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.

For example, this could include:

- a senior council staff member recommending a family member for a council contract and not declaring the relationship
- a general manager holding an undisclosed shareholding in a company competing for a council contract

For more information about local government pecuniary interest contravention, see the NSW Ombudsman's guideline on what can be reported.

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f. Other wrongdoing

Although reports about the previous five categories of conduct can attract the specific protections of the PID Act, you should report all activities or incidents that you believe are wrong.

For example, these could include:

- · workplace bullying.
- · harassment or unlawful discrimination.
- · reprisal action against a person who has reported wrongdoing.
- · practices that endanger the health or safety of staff or the public.

These types of issues should be reported to the Internal Ombudsman or a supervisor, in line with Warringah Council's policies, including but not limited to the following:

- Code of Conduct
- Internal Ombudsman Guidelines
- · Workplace Bullying & Harassment OMS
- Gifts & Benefits Policy
- Conflict of Interest Policy
- Recruitment OMS

(Note: All of these policy and OMS documents are available on Council's intranet.)

Even if these reports are not dealt with as public interest disclosures, Warringah Council will consider each matter and make every attempt to protect the staff member making the report from any form of reprisal.

5. When will a report be protected?

Warringah Council will support any person that reports wrongdoing. For a report to be considered a public interest disclosure, it has to meet all of the requirements under the PID Act. These requirements are:

- The person making the disclosure must honestly believe on reasonable grounds that the information shows or tends to show wrongdoing.
- The report has to be made to a position nominated in this policy (see section 9) or an investigating authority (see section 10).

Reports by staff and councillors will not be considered to be public interest disclosures if they:

- · mostly question the merits of the policy of the governing body of the council.
- · are made with the sole or substantial motive of avoiding dismissal or other disciplinary action.

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6. How to make a report

You can report wrongdoing in writing or verbally. You are encouraged to make a report in writing as this can help to avoid any confusion or misinterpretation.

If a report is made verbally, the person receiving the report must make a written record of the disclosure and ask the person making the disclosure to acknowledge this record, either by signature or by email. The individual making the report should keep a copy of this written record.

Reports of wrongdoing can be made as a PID to any of the Nominated Disclosure Officers listed in section 9 of this policy.

Any reports, whether made as a PID or not, can be made directly to the Office of the Internal Ombudsman.

The Office of the Internal Ombudsman can be contacted via the IO Hotline (ph. 9942 2105) or via email, internalombudsman@warringah.nsw.gov.au

7. Can a report be anonymous?

There will be some situations where you may not want to identify yourself when you make a report. Although these reports will still be dealt with by Warringah Council, it is best if you identify yourself. This allows us to provide you with any necessary protection and support, as well as feedback about the outcome of any investigation into the allegations.

It is important to realise that an anonymous disclosure may not prevent you from being identified. Also, if we do not know who made the report, it is very difficult for us to prevent any reprisal action.

8. Maintaining confidentiality

Warringah Council realises many staff will want their report to remain confidential. This can help to prevent any action being taken against you for reporting wrongdoing.

We are committed to keeping your identity, and the fact you have reported wrongdoing, confidential. However there may be situations where this may not be possible or appropriate. We will discuss with you whether it is possible to keep your report confidential.

If confidentiality cannot be maintained, we will develop a plan to support and protect you from risks of reprisal. You will be involved in developing this plan. You will also be told if your report will be dealt with under Council's Code of Conduct, as this may mean certain information and/or a report will have to be provided to the General Manager and relevant senior management, or tabled at a Council meeting where the matter involves a councillor or the General Manager.

If you report wrongdoing, it is important that you only discuss your report with the staff of Warringah Council responsible to deal with it. This will include the Disclosure Coordinator (the

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Internal Ombudsman) and the General Manager. In the case of a report about the General Manager, you should only discuss your report with the Disclosure Coordinator and the Mayor.

Where your complaint is made under Council's Code of Conduct and relates to the General Manager or a councillor, you may be required to discuss it with a Conduct Reviewer.

The Internal Ombudsman can provide more detailed advice around confidentiality provisions for a PID.

9. Who can receive a report within Warringah Council?

You may make a report of misconduct directly to the Internal Ombudsman or to your supervisor or manager. However the PID Act requires that for a report to be a public interest disclosure, it must be made to a public official in accordance with Council's disclosure procedures, namely this policy.

This policy sets down certain positions within Council to be Nominated Disclosure Officers and the Disclosure Coordinator for the purposes of the PID Act (see list below).

Any supervisor who receives a report that they believe may be a public interest disclosure must immediately refer the individual making the report to a Nominated Disclosure Officer.

Disclosure Coordinator:

Internal Ombudsman (ph. 9942 2508 – direct line)

Nominated Disclosure Officers:

Internal Ombudsman (ph. 9942 2508, or c/- 9942 2105)
 Assistant Internal Ombudsman (ph. c/- 9942 2105)
 Mayor (ph. c/- 9942 2422)
 General Manager (ph. c/- 9942 2430)
 Executive Corporate Lawyer (ph. c/- 9942 2219)
 Legal Officer (ph. c/- 9942 2219)

A disclosure concerning the Mayor or a councillor should be made to the Internal Ombudsman or the General Manager. A disclosure concerning the General Manager should be made to the Internal Ombudsman or the Mayor.

Nominated Disclosure Officers have the following specific responsibilities:

- Assessing if a matter reported to them is a PID.
- Ensuring the person making the report has the PID Act provisions explained to them.
- Recording the report in a written format.

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 Forwarding the report without delay to the Disclosure Coordinator for it to be dealt with pursuant to Council's Code of Conduct and Internal Ombudsman Guidelines.

The Disclosure Coordinator has the following specific responsibilities:

- Ensuring all reports, once received in the Office of the Internal Ombudsman, are handled according to the PID Act.
- Establishing operational protocols or procedures within the Office of the Internal Ombudsman to handle PIDs.
- Ensuring that all necessary external referrals are carried out, subject where applicable to sign off form the General Manager or the Mayor.
- Compiling any statutory reports relating to PIDs.

10. Who can receive a report outside of Warringah Council?

Staff and councillors are encouraged to report wrongdoing within Warringah Council, but internal reporting is not your only option. If you follow the guidance below, you can make a public interest disclosure to:

- an investigating authority. If your report is about both the General Manager and the Mayor, you
 may wish to consider making the report to an investigating authority.
- a Member of Parliament or a journalist, but only in limited circumstances outlined below.

a. Investigating authorities

The PID Act lists a number of investigating authorities in NSW that staff and councillors can report wrongdoing to and the categories of wrongdoing each authority can deal with.

In relation to council, these authorities are:

- · the Independent Commission Against Corruption (ICAC) for corrupt conduct.
- the NSW Ombudsman for maladministration.
- the Director-General of the Division of Local Government, Department of Premier and Cabinet
 for disclosures about local government agencies.
- the Information Commissioner for disclosures about a government information contravention.

You should contact the relevant authority for advice about how to make a disclosure to them. Contact details for each investigating authority are provided at the end of this policy.

You should be aware that it is very likely the investigating authority will discuss the case with Warringah Council. We will make every effort to assist and cooperate with the investigating authority to ensure the matter is dealt with appropriately and there is a satisfactory outcome. We will also provide appropriate support and assistance to individuals who report wrongdoing to an investigating authority.

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b. Members of Parliament or journalists

To have the protections of the PID Act, a person reporting wrongdoing to a Member of Parliament (MP) or a journalist must have already made substantially the same report to one of the following:

- the Disclosure Coordinator.
- · a Nominated Disclosure Officer (as per this policy).
- · an investigating authority in accordance with the PID Act.

Also, Warringah Council or the investigating authority that received the report must have either:

- decided not to investigate the matter.
- decided to investigate the matter, but not completed the investigation within six months of the original report.
- investigated the matter but not recommended any action as a result.
- not told the person who made the report, within six months of the report being made, whether the matter will be investigated.

Most importantly – to be protected under the PID Act – if you report wrongdoing to an MP or a journalist you will need to be able to prove that you have reasonable grounds for believing that the disclosure is substantially true and that it is in fact substantially true.

If you report wrongdoing to a person or an organisation that is not listed above, you will not be protected under the PID Act. This may mean you will be in breach of legal obligations or our Code of Conduct – by, for example, disclosing confidential information.

For more information about reporting wrongdoing outside Warringah Council, contact Council's Disclosure Coordinator. Alternatively contact the NSW Ombudsman's Public Interest Disclosures Unit (their contact details are provided at the end of this policy).

Feedback to the individual who reported wrongdoing

The individual who reported wrongdoing will be told what is happening in response to their report. When you make a report, you will be given:

- an acknowledgement that your disclosure has been received.
- the timeframe for when you will receive further updates.
- the name and contact details of the people who can tell you what is happening.

The PID Act requires that you are provided with an acknowledgement letter and a copy of this policy within 45 days after you have made your report. We will attempt to get this information to you within two working days from the date you make your report.

After a decision is made about how your report will be dealt with, you will be given:

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- information about the action that will be taken in response to your report.
- · likely timeframes for any investigation.
- information about the resources available within Warringah Council to handle any concerns you
 may have.
- information about external agencies and services you can access for support.

This information will be given to you within 10 working days from the date you make your report.

During any investigation, and with due regard for the integrity of the investigation, you will be given:

- · information on the ongoing nature of the investigation.
- information about the progress of the investigation and reasons for any delay.
- advice if your identity needs to be disclosed for the purposes of investigating the matter, and an
 opportunity to talk about this.

At the end of any investigation, you will be given:

- enough information to show that adequate and appropriate action was taken and/or is
 proposed to be taken in response to your disclosure and any problem that was identified.
- advice about whether you will be involved as a witness in any further matters, such as disciplinary or criminal proceedings.

Behaviour of all people involved in the PID process needs to adhere to Council's Code of Conduct. A breach of the Code of Conduct could result in disciplinary action.

12. Protection against reprisals

The PID Act provides protection for people reporting wrongdoing by imposing penalties on anyone who takes detrimental action substantially in reprisal for them making the public interest disclosure. It may also be a breach of Council's Code of Conduct.

Warringah Council will not tolerate any reprisal action against a person who reports wrongdoing. The criminal penalties that can be imposed include imprisonment or fines. Detrimental action is also misconduct that justifies disciplinary action. People who take detrimental action against someone who has made a disclosure can also be required to pay damages for any loss suffered by that person.

Detrimental action means action causing, comprising or involving any of the following:

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

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disciplinary proceedings.

a. Responding to reprisals

Warringah Council will act to protect those who report wrongdoing from reprisals.

When a report is received, we will ensure that a risk assessment is conducted. This will identify any risks to the member of staff or councillor who reported the wrongdoing, as well as strategies to deal with those risks.

If you believe that detrimental action has been or is being taken against you or someone else who has reported wrongdoing in reprisal for making a report, you should tell the Disclosure Coordinator (the Internal Ombudsman) or the General Manager immediately. In the case of an allegation of reprisal action by the General Manager, you should tell the Disclosure Coordinator or the Mayor immediately.

All supervisors must report any suspicions they have that reprisal action against a staff member is occurring, or any reports that are made to them, to the Disclosure Coordinator or the General Manager, or in the case of an allegation of reprisal by the General Manager, to the Disclosure Coordinator or the Mayor.

If the Disclosure Coordinator becomes aware of, or reasonably suspects that, reprisal action is or has been taken against a person who has made a disclosure, they will ensure that the matter is reported under Council's Code of Conduct and dealt with in accordance with Council's Code of Conduct procedures.

If you report reprisal action, you will be kept informed of the progress of any investigation and the outcome.

The General Manager may issue specific directions to help protect against reprisals, including:

- issuing warnings to those alleged to have taken reprisal action against the individual who made the disclosure.
- relocating the member of staff who made the disclosure or an officer the subject of the allegations within the current workplace.
- transferring the member of staff who made the disclosure or the staff member who is the subject of the allegations to another position for which they are qualified.
- granting the member of staff who made the disclosure or the subject officer leave of absence during the investigation of the disclosure.

In relation to staff who make reports, such directions will only be made if the member of staff agrees to it. The Disclosure Coordinator will make it clear to other staff that this action was taken in consultation with the staff member and with management support – and it is not a punishment.

If you have reported wrongdoing and feel that any reprisal action is not being dealt with effectively, contact the NSW Ombudsman, the ICAC, or the Chief Executive of the Division of Local

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Government – depending on the type of wrongdoing you reported. Contact details for all these investigating authorities are included at the end of this policy.

b. Protection against legal action

If you make a disclosure in accordance with the PID Act, you will not be subject to any liability and no action, claim or demand can be taken against you for making the disclosure. You will not have breached any confidentiality or secrecy obligations and you will have the defence of absolute privilege in defamation.

13. Support for those reporting wrongdoing

Warringah Council will make sure that staff who have reported wrongdoing, regardless of whether they have made a public interest disclosure, are provided with access to any professional support they may need as a result of the reporting process – such as stress management, counselling services, legal or career advice.

We also have staff that will provide support for those who report wrongdoing. They are responsible for initiating and coordinating support, particularly to those who are suffering any form of reprisal.

The Internal Ombudsman can be contacted directly (ph. 9942 2508).

The Office of the Internal Ombudsman can be contacted via the IO Hotline (ph. 9942 2105) or via email, internalombudsman@warringah.nsw.gov.au

All supervisors must notify the Disclosure Coordinator (the Internal Ombudsman) if they believe a staff member is suffering any detrimental action as a result of disclosing wrongdoing.

14. Sanctions for making false or misleading disclosures

It is important that all staff and councillors are aware that it is a criminal offence under the PID Act to wilfully make a false or misleading statement when reporting wrongdoing. It may also be a breach of Council's Code of Conduct and may result in disciplinary action. In the case of councillors, such disciplinary action may be taken under the misconduct provisions of the Local Government Act 1993 and may include suspension or disqualification from civic office.

15. Support for the subject of a report

Warringah Council is committed to ensuring people who are the subject of a report of wrongdoing are treated fairly and reasonably. If you are the subject of a report, you will be:

- · treated fairly and impartially.
- · told your rights and obligations under our policies and procedures.

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- · kept informed during any investigation.
- · given the opportunity to respond to any allegation made against you.
- · told the result of any investigation.

16. Ownership & Implementation

As per the provisions of the PID Act, the General Manager is the owner of this policy and is responsible for its implementation.

17. Review & Amendments

This policy will be reviewed by Council every two years. The next review is due in June 2016. There are no amendments to this policy as this version is the first iteration.

18. More information

Staff and councillors can also access advice and guidance from Council's Disclosure Coordinator and the Office of the Internal Ombudsman.

Also, advice can be accessed from the NSW Ombudsman's website at www.ombo.nsw.gov.au.

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19. Resources

The contact details for external investigating authorities that staff and councillors can make a public interest disclosure to or seek advice from are listed below.

For disclosures about corrupt conduct:

Independent Commission Against Corruption

(ICAC)

Phone: 02 8281 5999 Toll free: 1800 463 909

Tel. typewriter (TTY): 02 8281 5773

Facsimile: 02 9264 5364 Email: icac@icac.nsw.gov.au Web: www.icac.nsw.gov.au

Address: Level 21, 133 Castlereagh Street,

Sydney NSW 2000

For disclosures about maladministration:

NSW Ombudsman Phone: 02 9286 1000

Toll free (outside Sydney metro): 1800 451 524 Tel. typewriter (TTY): 02 9264 8050

Facsimile: 02 9283 2911 Email: nswombo@ombo.nsw.gov.au

Web: www.ombo.nsw.gov.au

Address: Level 24, 580 George Street, Sydney

NSW 2000

For disclosures about breaches of the GIPA

Information Commissioner Toll free: 1800 463 626 Facsimile: 02 8114 3756 Email: oicinfo@oic.nsw.gov.au Web: www.oic.nsw.gov.au

Address: Level 11, 1 Castlereagh Street,

Sydney NSW 2000

For disclosures about council:

Director-General, Division of Local Government in the Department of Premier and Cabinet

Phone: 02 4428 4100

Tel. typewriter (TTY): 02 4428 4209

Facsimile: 02 4428 4199 Email: dlg@dlg.nsw.gov.au Web: www.dlg.nsw.gov.au

Address: 5 O'Keefe Avenue, Nowra, NSW 2541

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