AGENDA

Ordinary Meeting of Council

26 February 2013
EUROBODALLA SHIRE COUNCIL

ETHICAL DECISION MAKING AND
CONFLICTS OF INTEREST

A GUIDING CHECKLIST FOR COUNCILLORS, OFFICERS
AND COMMUNITY COMMITTEES

ETHICAL DECISION MAKING

- Is the decision or conduct legal?
- Is it consistent with Government policy, Council’s objectives and Code of Conduct?
- What will the outcome be for you, your colleagues, the Council, anyone else?
- Does it raise a conflict of interest?
- Do you stand to gain personally at public expense?
- Can the decision be justified in terms of public interest?
- Would it withstand public scrutiny?

CONFLICT OF INTEREST

A conflict of interest is a clash between private interest and public duty. There are two types of conflict: Pecuniary – regulated by the Local Government Act and Department of Local Government; and Non-Pecuniary – regulated by Codes of Conduct and policy, ICAC, Ombudsman, Department of Local Government (advice only).

THE TEST FOR CONFLICT OF INTEREST

- Is it likely I could be influenced by personal interest in carrying out my public duty?
- Would a fair and reasonable person believe I could be so influenced?
- Conflict of interest is closely tied to the layperson’s definition of “corruption” – using public office for private gain.
- Important to consider public perceptions of whether you have a conflict of interest.

IDENTIFYING PROBLEMS

1st Do I have private interests affected by a matter I am officially involved in?
2nd Is my official role one of influence or perceived influence over the matter?
3rd Do my private interests conflict with my official role?

Whilst seeking advice is generally useful, the ultimate decision rests with the person concerned.

AGENCY ADVICE

Officers of the following agencies are available during office hours to discuss the obligations placed on Councillors, Officers and Community Committee members by various pieces of legislation, regulation and Codes.

<table>
<thead>
<tr>
<th>CONTACT</th>
<th>PHONE</th>
<th>EMAIL</th>
<th>WEBSITE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eurobodalla Shire Council Public Officer</td>
<td>4474-1000</td>
<td><a href="mailto:council@eurocoast.nsw.gov.au">council@eurocoast.nsw.gov.au</a></td>
<td><a href="http://www.esc.nsw.gov.au">www.esc.nsw.gov.au</a></td>
</tr>
<tr>
<td>ICAC</td>
<td>8281 5999</td>
<td><a href="mailto:icac@icac.nsw.gov.au">icac@icac.nsw.gov.au</a></td>
<td><a href="http://www.icac.nsw.gov.au">www.icac.nsw.gov.au</a></td>
</tr>
<tr>
<td>Local Government Department</td>
<td>4428 4100</td>
<td><a href="mailto:dlg@dlg.nsw.gov.au">dlg@dlg.nsw.gov.au</a></td>
<td><a href="http://www.dlg.nsw.gov.au">www.dlg.nsw.gov.au</a></td>
</tr>
<tr>
<td>NSW Ombudsman</td>
<td>8286 1000</td>
<td><a href="mailto:nswombo@ombo.nsw.gov.au">nswombo@ombo.nsw.gov.au</a></td>
<td><a href="http://www.ombo.nsw.gov.au">www.ombo.nsw.gov.au</a></td>
</tr>
<tr>
<td>Toll Free 1800 451 524</td>
<td></td>
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</tbody>
</table>
Reports to Committee are presented generally by ‘exception’ - that is, only those items that do not comply with legislation or policy, or are the subject of objection, are discussed in a report.

Reports address areas of business risk to assist decision making. Those areas include legal, policy, environment, asset, economic, strategic and financial.

Reports may also include key planning or assessment phrases such as:

- **Setback**: Council’s planning controls establish preferred standards of setback (eg 7.5m front; 1m side and rear);
- **Envelope**: taking into account the slope of a lot, defines the width and height of a building with preferred standard of 8.5m high;
- **Footprint**: the percentage of a lot taken up by a building on a site plan.

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Meaning</th>
<th>Description</th>
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<tbody>
<tr>
<td>ACR</td>
<td>Australian Capital Region</td>
<td>The political and strategic grouping of the ACT government and 17 adjacent councils.</td>
</tr>
<tr>
<td>AEP</td>
<td>Annual Exceedance Probability</td>
<td>For floods expressed as a % eg 1% = 1:100 year event. The NSW Flood Guidelines nominate types of development and controls.</td>
</tr>
<tr>
<td>AHD</td>
<td>Australian Height Datum</td>
<td>Floor levels for buildings set to remain at or above flood level (expressed as 'freeboard').</td>
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<tr>
<td>APZ</td>
<td>Asset Protection Zone</td>
<td>Area to be cleared and maintained around habitable buildings in bushfire prone areas.</td>
</tr>
<tr>
<td>AS</td>
<td>Australian Standard</td>
<td>Standards set by national body as minimum construction, service, system, planning or design requirements.</td>
</tr>
<tr>
<td>BCA</td>
<td>Building Code of Australia</td>
<td>Prescribes minimum standards or performance base for building construction.</td>
</tr>
<tr>
<td>CAMP</td>
<td>Companion Animal Management Plan</td>
<td>Required by state law, plan nominating management of dogs and cats and areas for access for the exercise of dogs (eg beaches and reserves).</td>
</tr>
<tr>
<td>CC</td>
<td>Construction Certificate</td>
<td>Floor plans approved by council or private certifier in compliance with development conditions and BCA.</td>
</tr>
<tr>
<td>COPW</td>
<td>Condition of Public Works Report</td>
<td>Required by state law to define the condition of infrastructure assets, the cost to upgrade to defined standards, the current costs of maintenance and desired levels of maintenance.</td>
</tr>
<tr>
<td>CP</td>
<td>Cultural Plan</td>
<td>A cultural plan enables identification of cultural assets, identity and needs as well as providing a framework to develop cultural initiatives to increase opportunities for residents.</td>
</tr>
<tr>
<td>CSR</td>
<td>Complaint and Service Request</td>
<td>Requests received from public by phone, letter, email or Councillor to attend to certain works (eg pothole) or complain of certain service or offence (eg dogs barking).</td>
</tr>
<tr>
<td>DA</td>
<td>Development Application</td>
<td>Required by state law to assess suitability and impacts of a proposed development.</td>
</tr>
<tr>
<td>DAP</td>
<td>Disability Action Plan</td>
<td>Council plan outlining proposed works and services to upgrade facilities to progressively meet Disability Discrimination Act.</td>
</tr>
<tr>
<td>DCP</td>
<td>Development Control Plan</td>
<td>Local planning policy defining the characteristics sought in residential, commercial land.</td>
</tr>
<tr>
<td>DECCW</td>
<td>Department of Environment, Climate Change and Water (formerly EPA, NPWS, DEC)</td>
<td>State agencies (former Environment Protection and National Parks), DNR managing state lands and natural resources and regulating council activity or advising on development applications.</td>
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<tr>
<td>Abbreviation</td>
<td>Full Form</td>
<td>Description</td>
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<tr>
<td>DWE</td>
<td>Department of Water and Energy</td>
<td>State agency managing funding and approvals for town and country water and sewer services and State energy requirements.</td>
</tr>
<tr>
<td>DoP</td>
<td>Department of Planning</td>
<td>State agency managing state lands and regulating council activity or advising on development applications or strategic planning.</td>
</tr>
<tr>
<td>DLG</td>
<td>Department of Local Government</td>
<td>State agency responsible for regulating local government.</td>
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<tr>
<td>DoL</td>
<td>Department of Lands</td>
<td>State agency managing state lands and advising on development applications or crown land management.</td>
</tr>
<tr>
<td>DoC</td>
<td>Department of Commerce</td>
<td>State agency (formerly Public Works) managing state public water, sewer and buildings infrastructure and advising/supervising on council infrastructure construction.</td>
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<tr>
<td>DoH</td>
<td>Department of Health</td>
<td>State agency responsible for oversight of health care (community and hospital) programs. Also responsible for public warning of reportable health risks.</td>
</tr>
<tr>
<td>DOTAR</td>
<td>Department of Infrastructure, Transport and Regional Development and Local Government</td>
<td>Federal agency incorporating infrastructure, transport system, and assisting regions and local government.</td>
</tr>
<tr>
<td>EBP</td>
<td>Eurobodalla Bike Plan</td>
<td>Strategic Plan identifying priorities and localities for cycleways in the Shire.</td>
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<tr>
<td>EIS</td>
<td>Environmental Impact Statement</td>
<td>Required for designated and state developments researching and recommending solutions to social, economic and environmental impacts.</td>
</tr>
<tr>
<td>EMP</td>
<td>Estuary Management Plan</td>
<td>Community based plan, following scientific research of hydrology and hydraulics, recommending actions to preserve or enhance social, economic and environmental attributes of estuary.</td>
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<tr>
<td>EMS</td>
<td>Environmental Management System</td>
<td>Plans prepared by council (such as waste management and strategic planning) around AS14000.</td>
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<tr>
<td>EOI</td>
<td>Expressions of Interest</td>
<td>Often called in advance of selecting tenders to ascertain capacity and cost of private sector performing tasks or projects on behalf of council.</td>
</tr>
<tr>
<td>EP&amp;A</td>
<td>Environment Planning &amp; Assessment Act</td>
<td>State law defining types of development on private and public lands, the assessment criteria and consent authorities.</td>
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<tr>
<td>ESC</td>
<td>Eurobodalla Shire Council</td>
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<tr>
<td>ESD</td>
<td>Ecologically Sustainable Development</td>
<td>Global initiative recommending balance of social, economic and environmental values in accord with 7 ESD principles.</td>
</tr>
<tr>
<td>ESS</td>
<td>Eurobodalla Settlement Strategy</td>
<td>Council strategy prepared with assistance of government to identify best uses and re-uses of urban lands, the appropriate siting of private and public investment (eg institutions, employment areas or high density residential) based on current and planned infrastructure and land capacity.</td>
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<tr>
<td>ET</td>
<td>Equivalent Tenement</td>
<td>Basis of calculation of demand or impact of a single dwelling on water and sewer system.</td>
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<tr>
<td>Abbreviation</td>
<td>Description</td>
<td>Details</td>
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<tr>
<td>FAG</td>
<td>Financial Assistance Grant</td>
<td>Federal general purpose grant direct to local government based on population and other 'disability' factors.</td>
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<tr>
<td>FSR</td>
<td>Floor Space Ratio</td>
<td>A measure of bulk and scale, it is a calculation of the extent a building floor area takes up of an allotment.</td>
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<tr>
<td>GIS</td>
<td>Geographic Information System</td>
<td>Computer generated spatial mapping of land and attributes such as infrastructure, slope, zoning.</td>
</tr>
<tr>
<td>GSAHS</td>
<td>Greater Southern Area Health Service</td>
<td>State board commissioned with oversight of health care in Highlands, Monaro and Far South Coast.</td>
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<tr>
<td>IPART</td>
<td>Independent Pricing &amp; Regulatory Tribunal</td>
<td>State body that reviews statutory or government business regulatory frameworks and pricing levels.</td>
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<tr>
<td>IPWEA</td>
<td>Institute Public Works Engineers Australia</td>
<td>Professional association.</td>
</tr>
<tr>
<td>IWCMS</td>
<td>Integrated Water Cycle Management Strategy (or Plan)</td>
<td>Council plan identifying risk and social, economic and environmental benefit of proposed augmentation to water, sewer and stormwater systems.</td>
</tr>
<tr>
<td>IWMS</td>
<td>Integrated Waste Management (Minimisation) Strategy</td>
<td>Council plan identifying risk and social, economic and environmental benefit of proposed augmentation of waste (solids, effluent, contaminated, liquid trade waste).</td>
</tr>
<tr>
<td>LEP</td>
<td>Local Environment Plan</td>
<td>The statutory planning instrument defining the zones and objectives of urban and rural areas.</td>
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<tr>
<td>LGAct</td>
<td>Local Government Act</td>
<td>State law defining the role of Mayor, Councillors, staff, financing, approvals etc.</td>
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<td>LGA</td>
<td>Local Government Authority</td>
<td></td>
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<td>LGMA</td>
<td>Local Government Managers Australia</td>
<td>Professional association.</td>
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<tr>
<td>LGSA</td>
<td>Local Government &amp; Shires Association</td>
<td>Representative advisory and advocacy group for councils in NSW.</td>
</tr>
<tr>
<td>MOU</td>
<td>Memorandum of Understanding</td>
<td>Agreement in principle between parties (eg council and agency) to achieve defined outcomes.</td>
</tr>
<tr>
<td>NPWS</td>
<td>National Parks &amp; Wildlife Service</td>
<td>Now merged into DECCW.</td>
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<tr>
<td>NRM</td>
<td>Natural Resource Management</td>
<td></td>
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<tr>
<td>NVC</td>
<td>Native Vegetation Act 2003</td>
<td>State law defining means of protection of threatened legislation and approval processes to clear land.</td>
</tr>
<tr>
<td>OC</td>
<td>Occupation Certificate</td>
<td>Issued by council or private certifier that building is safe to occupy and in compliance with development conditions and BCA.</td>
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<tr>
<td>OSMS</td>
<td>On site sewage management system</td>
<td>Includes septic tanks, aerated systems, biocycles etc.</td>
</tr>
<tr>
<td>PCA</td>
<td>Principal Certifying Authority</td>
<td>The person or organisation appointed by applicant to inspect and certify structures.</td>
</tr>
<tr>
<td>PIA</td>
<td>Planning Institute of Australia</td>
<td>Professional association.</td>
</tr>
<tr>
<td>Acronym</td>
<td>Description</td>
<td>Definition</td>
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<tr>
<td>PoM</td>
<td>Plan of Management (usually for community land)</td>
<td>Council plan nominating type of uses for community land and range of facilities progressively to be provided on land.</td>
</tr>
<tr>
<td>PPP</td>
<td>Public Private Partnerships</td>
<td></td>
</tr>
<tr>
<td>PTS</td>
<td>Public Transport Strategy</td>
<td>Council strategy to initiate mechanisms to promote and facilitate public transport (bus, taxi, community transport, cycles) in design of subdivisions, developments and council works.</td>
</tr>
<tr>
<td>REF</td>
<td>Review of Environmental Factors</td>
<td>Council examination of risk and social, economic and environmental benefit of proposed works, assessed against state planning, environment and safety laws.</td>
</tr>
<tr>
<td>REP</td>
<td>Regional Environment Planning Policy</td>
<td>Outlines compulsory state planning objectives to be observed in development assessment and strategic planning.</td>
</tr>
<tr>
<td>RFS</td>
<td>Rural Fire Service</td>
<td>State agency responsible for providing equipment and training for volunteer firefighter brigades, and the assessment and approval of developments in bushfire prone lands.</td>
</tr>
<tr>
<td>RLF</td>
<td>Regional Leaders Forum</td>
<td>The group of mayors and general managers representing the councils in the ACR.</td>
</tr>
<tr>
<td>RMS</td>
<td>Roads and Maritime Services</td>
<td>State agency responsible for funding, construction and maintenance of state roads, the approval of council works on arterial roads and development applications.</td>
</tr>
<tr>
<td>S64</td>
<td>S64 Contributions Plan</td>
<td>Developer contributions plan to enable, with council and state funds, the augmentation of water, sewer and stormwater infrastructure.</td>
</tr>
<tr>
<td>S94</td>
<td>S94 Contributions Plan S94A Contributions Plan Levy Plan</td>
<td>Developer contributions to enable construction of public infrastructure and facilities such as roads, reserves, carparks, amenities etc.</td>
</tr>
<tr>
<td>SCG</td>
<td>Southern Councils Group</td>
<td>Political and strategic grouping of councils along the NSW south coast from Wollongong to the border, lobbying government for assistance (eg highways) and resourcing sharing initiatives.</td>
</tr>
<tr>
<td>SCRS</td>
<td>South Coast Regional Strategy</td>
<td>Regional Strategy prepared by DoP for ESC, BVSC and part SCC to guide new LEPs.</td>
</tr>
<tr>
<td>SEA</td>
<td>Strategic Environment Assessment</td>
<td>Spatial assessment of environmental constraints of land considered in design and assessment of subdivision and infrastructure. Scientific research behind assessment of capacity of land and waterways in rural residential and urban expansion lands to sustain human settlement.</td>
</tr>
<tr>
<td>SEPP</td>
<td>State Environmental Planning Policy</td>
<td>Outlines compulsory state planning objectives.</td>
</tr>
<tr>
<td>SoER</td>
<td>State of the Environment Report</td>
<td>Required by state law, the comprehensive assessment (every four years) of the condition and the pressures on the social, economic and environmental features of the Shire and appropriate responses to address or preserve those issues.</td>
</tr>
<tr>
<td>SP</td>
<td>Social Plan</td>
<td>Required by state law, the comprehensive assessment (every four years) of the condition and the pressures on the social framework of the community, their services and facilities and economic interactions.</td>
</tr>
<tr>
<td>Acronym</td>
<td>Description</td>
<td>Definition</td>
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<tr>
<td>......SP</td>
<td>Structure Plan</td>
<td>Plan promoting landuses and siting of infrastructure and facilities in towns (eg, BBSP – Batemans Bay Structure Plan).</td>
</tr>
<tr>
<td>SRCMA</td>
<td>Southern Rivers Catchment Management Authority</td>
<td>State agency commissioned with assessment and monitoring of health and qualities of catchments from Wollongong to the border, and determine directions and priorities for public and private investment or assistance with grants.</td>
</tr>
<tr>
<td>STP</td>
<td>Sewer Treatment Plant</td>
<td>Primary, secondary and part tertiary treatment of sewage collected from sewers before discharge into EPA approved water ways or irrigation onto land.</td>
</tr>
<tr>
<td>TAMS</td>
<td>Total Asset Management System</td>
<td>Computer aided system recording condition and maintenance profiles of infrastructure and building assets.</td>
</tr>
<tr>
<td>TBL</td>
<td>Triple Bottom Line</td>
<td>Commercial term coined to encourage business to consider and disclose social and environmental risk, benefit and costs in the conduct of business to guide investors as to the long term sustainability and ethics of a business. Taken up by Council to record the basis of prioritisation, the review of condition, the monitor of progress and the financial disclosure of preventative or maintenance investment in council based social and environmental activities.</td>
</tr>
<tr>
<td>ToR</td>
<td>Terms of Reference</td>
<td></td>
</tr>
<tr>
<td>TSC</td>
<td>Threatened Species Conservation Act 1995</td>
<td>State law governing the protection of nominated species and relevant assessment and development controls.</td>
</tr>
<tr>
<td>WCF</td>
<td>Water Cycle Fund</td>
<td>Combination of water, sewer and stormwater activities and their financing arrangements.</td>
</tr>
<tr>
<td>WSUD</td>
<td>Water Sensitive Urban Design</td>
<td>Principle behind the IWCMS and council development codes requiring new developments to reduce demand and waste on water resources through contemporary subdivision and building design.</td>
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ORDINARY MEETING OF COUNCIL
TO BE HELD IN THE COUNCIL CHAMBERS, MORUYA

ON TUESDAY 26 FEBRUARY 2013
COMMENCING AT 10.00AM

AGENDA
(Proceedings of this meeting will be recorded as per Eurobodalla Shire Council’s Code of Meeting Practice)

WELCOME AND EVACUATION MESSAGE

APOLOGIES

QUESTIONS FROM THE PUBLIC GALLERY (Agenda Items Only)

CONFIRMATION OF MINUTES OF PREVIOUS MEETING
Ordinary Council Meeting held on 18 December 2012
Extraordinary Council Meeting held on 14 January 2013.

DECLARATIONS OF INTEREST OF MATTERS ON THE AGENDA
(Declarations also to be made prior to discussions on each item)

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QUESTIONS/URGENT BUSINESS

CLOSED SESSION TO CONSIDER CONFIDENTIAL MATTERS

In accordance with Section 10A(2) of the Local Government Act 1993, Council exclude members of the public from the meeting and go into Closed Session to consider the following confidential matters.

In accordance with Section 10A(4) of the Local Government Act 1993 the Chairperson invites members of the public to make verbal representations to the Council on whether the meeting should be closed to consider the following matters.

Discussion of the material would be contrary to the public interest for reasons relating to one or more of the matters prescribed by the Local Government Act 1993 Section 10A(2)(a-h).

(a) personnel matters concerning particular individuals; or
(b) the personal hardship of any resident or ratepayer; or
(c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business; or
(d) commercial information of a confidential nature that would, if disclosed;
   (i) prejudice the commercial position of the person who supplied it, or
   (ii) confer a commercial advantage on a competitor of the council, or
   (iii) reveal a trade secret,
(e) information that would, if disclosed, prejudice the maintenance of law; or
(f) matters affecting the security of the council, councillors, council staff or council property; or
(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege or information concerning the nature and location of a place; or
(h) an item of Aboriginal significance on community land.
CONFIDENTIAL REPORTS

O13/27 Variation to Lease – Moruya Airport

This report is classified Confidential under Section 10A(2)(d) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following:

(d) commercial information of a confidential nature that would, if disclosed;
   (i) prejudice the commercial position of the person who supplied it, or
   (ii) confer a commercial advantage on a competitor of the council, or
   (iii) reveal a trade secret,

ROB NOBLE
GENERAL MANAGER
SYNOPSIS

The NSW Government’s reform of the planning system is reaching a critical stage with the pending release and exhibition of the White Paper. The Government’s agenda for reform clearly indicates that the changes being proposed will be the most significant shift in planning in this state since the introduction of the Environmental Planning & Assessment Act 1979.

The reforms will be far reaching, impacting on people’s rights to be involved in the decision making process and the stages of the planning process at which they can express their views. In addition the reforms are likely to further dilute the local political involvement in the planning process, particularly with respect to the determination of development applications. It will also change the processes we currently follow and the resources required, impacting on the organisation and the community.

Our community has clearly indicated through consultation undertaken in preparing the Community Strategic Plan that they see the development of local jobs, our local economy, and that growth and development are carefully controlled and planned so as it does not impact the amenity of the area and has a minimal impact on the environment, as significant priorities. It is the planning system and policy framework provided by the state that most significantly influences council and the community’s ability to address such matters.

Given the critical nature of the reforms and the significant impact that they may have on the community and the council, I believe that it is essential that the exhibition period for the White Paper provides ample time for the NSW Government to inform and educate all stakeholders, in particular council and the community, of the changes proposed and their likely impacts. Further the exhibition period should be long enough to enable the council and the community to fully consider information provided by the NSW Government and to provide well considered and informed submissions to the reform. This reform process is too important to rush through one of the most critical stages of the reform agenda, I therefore recommend:

RECOMMENDED

THAT:

1. Council notes the potential widespread impact on the council and our local community of the proposed planning reform being undertaken by the NSW government.

2. Council writes to the Premier Mr Barry O’Farrell and Planning Minister Mr Brad Hazzard calling on the government to ensure there is at least four months of public consultation on the planning reform White Paper when it is released and that the NSW Government hold at least one community information session on the white paper in the Eurobodalla Local Government Area, and that such session provide a detailed explanation of the proposed reforms followed by an opportunity for the community to provide feedback on the reforms.
3. Councillors and relevant staff attend the information sessions if they are held to gain an understanding of the reforms and of the community’s views and opinions related to the proposed reforms.

4. Once staff have reviewed the White Paper and have identified potential issues, that a workshop be held with interested community members to present issues and concerns identified and to obtain the views of the community, and that such information be used to assist in informing the preparation of the draft submission to be reported to council for consideration.

COUNCILLOR FERGUS THOMSON

(refer to the following website for information on a New Planning System for NSW. http://www.planning.nsw.gov.au/a-new-planning-system-for-nsw#white_paper)
NM13/02 CALL FOR REPORT ON BATEMANS BAY BEACH RESORT INVESTMENT
E00.4623; E80.2575.C

SYNOPSIS

The Batemans Bay Beach Resort is a significant council investment. The latest quarterly financial report indicates that, notwithstanding changes made by the last council to the form of its management contract, the resort is not meeting its budgeted profit targets.

There are public policy objections to council holding this form of asset. These relate to the ability of a government organization with deep pockets to compete on unequal terms with private operators of similar businesses. The audit committee has recommended previously that council should separately report on the finances of this asset/liability to meet its competitive neutrality obligations under national competition policy.

Notwithstanding this general objection, it has long been apparent that the resort is highly unlikely to meet the (just less than 10%) return on investment target set for it at the time council made a very large and expensive upgrade of its facilities. Moreover, the qualifications of council staff to manage an asset of this type require clarification and justification.

In these circumstances it is appropriate that the new council reviews the options open to it to retain or dispose of the resort.

RECOMMENDATION

THAT Council calls for a report from the audit committee which details the financial history of the resort, the annual returns on community funds over the last eight years, the expected date the target rate of return will be met, a current valuation of the business, legislative or other constraints on its ownership or operation and options for its retention or disposal.

COUNCILLOR LIZ INNES

CLRS
SYNOPSIS

Bunnings’ withdrawal, in September 2012, from four years of negotiations for a 6.1ha development site at Surf Beach holds a number of major lessons for council:

- The current practice of giving the general manager open ended contract negotiating briefs needs review; regular progress reports to the last council should have been demanded and when it became apparent that negotiations had stalled council should have intervened to allow other developers an opportunity to make proposals;
- The 120ha public land at Surf Beach is unsuitable for a commercial attractive bulky goods precinct – it is too steep, environmentally constrained and close to residential areas.

Apart from the sale of a site to the NSW Ambulance Service, there has been little real investor interest in this development.

Notwithstanding community requests that its planning status be clarified, the land was given no environmental protection in ELEP 2012 - it is currently zoned SP2 (to allow the continuing operation of the tip and sewage treatment plant) and B5 special business.

A number of decisions need to be taken to get the Surf Beach development project back on track. These three motions together specify what needs to be done.

RECOMMENDATION

THAT the General Manager prepares for council consideration:

1. An amendment to ELEP 2012 to give effect to the application of the latest environmental studies of council land at Surf Beach, including all studies prepared for or on behalf of Bunnings and the Walker Corporation;

2. An amended concept plan for the development of all council land at Surf Beach, which reflects the approved rezoning;

3. Consistent with this concept plan, a new business plan for the development and sale of surplus land at Surf Beach. The business plan is to provide an option for a private sector developer to undertake future marketing and sales responsibility;

4. A proposal for the selection and development of a site, within easy driving distance of Batemans Bay, to the standard required for a commercially attractive bulky goods precinct in a regional centre.

COUNCILLOR PETER SCHWARZ
GENERAL MANAGER’S COMMENTS:

I have made enquiries and I have been advised as follows:

The Surf Beach precinct has had a long standing industrial zoning, and expectation of development which has been reflected in the 2012 Eurobodalla LEP. The community objection to the development of the area has primarily come from a group called Friends of Beaches, which is understood to be convened by persons who reside in a nearby residential area. It has been this same group that has advocated for the application of environmental zoning over part of the site.

The Surf Beach precinct does have suitable, developable land, including land at the location where Bunnings was proposed. The decision by Bunnings not to proceed is understood to have primarily related to frustrations with untimely responses that lacked any certainty from the NSW Office of Environment and Heritage. As Councillors are aware, a key requirement of the development sector is the need for certainty and unfortunately with a lack of clarity and certainty around the advice being provided at the time, there was an adverse impact on the project. The assessment of the environmental constraints has indicated that there is significant developable land at the locality.

As the development application for Bunnings has been withdrawn, under the EPA regulation the application is deemed to have never been lodged. The material and studies submitted in support of the application are the property of the owner and Council would need to negotiate the purchase or approval to use such material for the benefit of supporting any future application or to justify any changes in zoning.

The Eurobodalla Shire is highly constrained, with Batemans Bay and adjoining suburbs being located between the coast line, State Forest and other steep forested land. Opportunities for further development and the ability to find areas of significant size and which are suitable for a bulky goods precinct are limited, highlighting the strategic value of the Surf Beach precinct and the need to ensure that maximum value is obtained from the development of the area.

ROB NOBLE
GENERAL MANAGER
SYNOPSIS

Section 377(1) of the Local Government Act 1993 (the Act) allows Council, by resolution, to delegate to the General Manager any of the functions of Council, other than those functions specified in that section. Section 380 of the Act requires Council to review all its delegations during the first 12 months of its term of office.

At the Ordinary meeting of 23 October 2012 Council resolved to accept the General Manager’s recommendation to revoke all previous delegations and delegate to the General Manager all “functions, powers, duties and authorities of the Council” that the relevant legislation permits, as well as the authority to write-off debts to Council up to the limit of $10,000 (pursuant to Clauses 131 and 132 of the Local Government (General) Regulation 2005).

At that meeting the “updated delegations register”, as prepared by Sparke Helmore Lawyers, was not reviewed by councillors. In fact, councillors were not presented with a copy of the Delegations. Endorsement of them was made by Council within a matter of minutes.

Given the significance of the delegation of Council’s functions to the General Manager, I believe that given six months of this Council’s term have already passed, it is none too soon to undertake that review.

RECOMMENDED

THAT:

1. As a matter of priority, pursuant to the requirement of section 380 of the Local Government Act 1993, Council review the Delegations currently provided to the General Manager;

2. The process of review commence not later than 1 March 2013 and that it be undertaken through Workshops which, given the scope of the task, are to provide ample opportunity for a thorough review by all councillors;

3. The Review of Delegations Workshops are to be open to the public in the way that Workshops have been open in the past and that notice of the Workshops is to be advertised both on Council’s website and in the local newspapers; and

4. At the conclusion of the review process, a report and recommendation that presents the background and outcome of that process, which may involve the presentation of options (of what should or should not be excluded from the Delegations), is to be presented to Council by the General Manager, for resolution by Council.

COUNCILLOR PETER SCHWARZ
Councillor Thomson asked that at the moment there are numerous commercial beehives on rural roads, some within hand distance from the side of vehicles travelling on these roads. Someone driving along these roads with car windows open could end up with a car full of bees, with possible dangerous consequences. Can beekeepers be required to place signs on the side of roads warning motorists in advance of beehives ahead.

Reply

Forests NSW issue occupation permits to apiarists who place their beehives within Forests NSW lands. A spokesperson for Forests NSW has advised that the permits have various conditions imposed which include the need for signs ‘warning bees’ ahead. Beehives should be set back 10 metres from a primary road with any side tracks being an undescribed distance. The sites selected are mostly near level sites with easy accessibility for loading and unloading. Currently Forests NSW are undertaking audits and looking at improving signage for this type of occupation permit. A letter has been sent to Forest NSW requesting that the placement of warning bee hives ahead be erected in all cases. Signage recently spotted in the Shallow Crossing area:

RECOMMENDED

THAT the response to Question QN12/50 regarding the location of bee hives on rural roads raised by Councillor Thomson be received and noted.

ROB NOBLE
GENERAL MANAGER
SYNOPSIS
At the Extraordinary meeting of Council held on 27 September 2012, councillors adopted the existing Code of Meeting Practice and resolved to hold a workshop to consider amendments to the code. The Code was then advertised in accordance with the requirements of the Local Government Act.

This report seeks Council’s endorsement of a date to workshop the Code of Meeting Practice.

BACKGROUND
In August 2009, the Office of Local Government (Department and Premier and Cabinet) produced a meeting practice note following amendments to the Act and updated Codes of Conduct to deal with the new regime of pecuniary interest and non-pecuniary interest.

The current code takes into consideration the meeting practice note which was workshoped with the former Council and placed on public exhibition (as per Section 361 of the Local Government Act) and subsequently approved on 23 March 2010.

The Code of Meeting Practice guides the conduct of all council meetings. The Code of Meeting Practice, as presently adopted, reflects the structure and responsibilities of council and its principal committees. The current structure is:

1. Council meetings will be held on the fourth Tuesday of the month commencing at 10.00am.

2. The Policy and Strategy Committee comprising the full nine elected members will meet on the first Tuesday of the month.

3. The Finance and Services Committee will meet on the second Tuesday of the month.

CONSIDERATIONS
Council can make amendments to the Code of Meeting practice as per Section 360 and 361 of the Local Government Act:

360 Conduct of meetings of councils and committees
1. The regulations may make provision with respect to the conduct of meetings of councils and committees of councils of which all the members are councillors.

2. A council may adopt a code of meeting practice that incorporates the regulations made for the purposes of this section and supplements those regulations with provisions that are not inconsistent with them.

3. A council and a committee of the council of which all the members are councillors must conduct its meetings in accordance with the code of meeting practice adopted by it.
361 Preparation, public notice and exhibition of draft code

1. Before adopting a code of meeting practice, a council must prepare a draft code.
2. The council must give public notice of the draft code after it is prepared.
3. The period of public exhibition must not be less than 28 days.
4. The public notice must also specify a period of not less than 42 days after the date on which the draft code is placed on public exhibition during which submissions may be made to the council.
5. The council must publicly exhibit the draft code in accordance with its notice.

Seven submissions were received from individuals and organisations following advertising of the Code of Meeting Practice.

It is now proposed to hold a workshop to review the Code of Meeting Practice. The workshop will be widely advertised with members of the public invited to address Council. From the outcomes of the workshop, a draft Code will be produced for consideration by Council at the next available Policy and Strategy meeting.

It is proposed to hold the workshop on Tuesday 19 March 2013, commencing at 9.30am.

CONCLUSION

Council is required to review the Code of Meeting Practice. In accordance with its previous resolution, it is proposed to hold the workshop to review the Code on Tuesday 19 March.

RECOMMENDED

THAT:

1. Council conduct a workshop on Tuesday 19 March 2013, commencing at 9.30am to review the Code of Meeting Practice;

2. The workshop be widely advertised and members of the public be invited to address Council.

ROB NOBLE
GENERAL MANAGER
SYNOPSIS

This report presents the State Government’s new Model Code of Conduct for consideration and adoption.

BACKGROUND

The existing Model Code of Conduct has been in use for a considerable period time and, whilst there have been outcomes from it, many parties have felt aggrieved by the methodology used, by who is required under the Act to manage complaints and by some of the outcomes.

The result has been the creation by the Division of Local Government (DLG) of a new Model Code with associated framework. These are backed up by new provisions in the Local Government Act 1993.

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 Code framework is to commence on 1 March 2013 and as a result, council needs to adopt the new Model Code prior to this date.

Transitional arrangements will apply to ensure that complaints made or yet to be finalised by 1 March 2013 are to be dealt with under the current Model Code and procedures, whilst complaints received after 1 March 2013, but where the alleged conduct occurred prior to this date, are to be assessed against the standards prescribed under the current Model Code but dealt with under the new procedures.

Subsequently, complaints relating to alleged conduct occurring after 1 March 2013 are to be assessed against the new Code and procedures.

CONSIDERATIONS

Apart from being a legislative requirement, it is important that local councils have a framework in place to enable them to effectively deal with any difficult situations that occur through alleged inappropriate conduct of general managers or councillors. There is a need for fairness for all parties involved and for there to be an ability to effectively deal with both non serious and serious complaints, allowing councils to fulfil their primary functions of serving their communities.
Attached for information are Division of Local Government Circular 12-45 *The New Model Code of Conduct Framework* and the new Model Code of Conduct.

The circular advises councils must:

- 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. (Note: the South East Regional Organisation of Councils (SEROC) currently has a panel of conduct reviewers which is used by SEROC members. SEROC will ensure the new panel is in place by 30 September 2013.)

**CONCLUSION**

The new Model Code of Conduct framework, including the Model Code and Procedures are submitted to Council for adoption.

**RECOMMENDED**

THAT Council:

1. Adopts the new Model Code of Conduct for Local Councils in NSW and Procedures for the Administration of the Model Code;

2. Appoints Mr Jeff Phillips, Governance & Insurance/Risk Coordinator, as Complaint Coordinator, and Mr Anthony O’Reilly, Divisional Manager Finance & Governance, as Alternate Complaints Coordinator;

3. Notes that the South East Regional Organisation of Councils will be recommending the creation of a panel of conduct reviewers in accordance with the requirements of the new Model Code prior to 30 September 2013.

ROB NOBLE  
GENERAL MANAGER

Attach:  
DLG Circular 12-45  
The New Model Code of Conduct  
Procedures for the New Model Code of Conduct
THE NEW MODEL CODE OF CONDUCT FRAMEWORK

Purpose

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

Issue


- 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
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
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.
The Model Code of Conduct for Local Councils in NSW

March 2013
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PART 1  INTRODUCTION

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

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

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

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

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

- understand the standards of conduct that are expected of them
- enable them to fulfil their statutory duty to act honestly and exercise a reasonable degree of care and diligence (section 439)
- act in a way that enhances public confidence in the integrity of local government.
PART 3 GENERAL CONDUCT OBLIGATIONS

General conduct
3.1 You must not conduct yourself in carrying out your functions in a manner that is likely to bring the council or holders of civic office into disrepute. Specifically, you must not act in a way that:
   a) contravenes the Act, associated regulations, council’s relevant administrative requirements and policies
   b) is detrimental to the pursuit of the charter of a council
   c) is improper or unethical
   d) is an abuse of power or otherwise amounts to misconduct
   e) causes, comprises or involves intimidation, harassment or verbal abuse
   f) causes, comprises or involves discrimination, disadvantage or adverse treatment in relation to employment
   g) causes, comprises or involves prejudice in the provision of a service to the community. (Schedule 6A)

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

3.3 You must treat others with respect at all times.

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

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

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.

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

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

**Binding caucus votes**

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

3.10 For the purposes of clause 3.9, a binding caucus vote is a process whereby a group of councillors are compelled by a threat of disciplinary or other adverse action to comply with a predetermined position on a matter before the council or committee irrespective of the personal views of individual members of the group on the merits of the matter before the council or committee.

3.11 Clause 3.9 does not prohibit councillors from discussing a matter before the council or committee prior to considering the matter in question at a council or committee meeting or from voluntarily holding a shared view with other councillors on the merits of a matter.

3.12 Clause 3.9 does not apply to a decision to elect the Mayor or Deputy Mayor or to nominate a person to be a member of a council committee.
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.

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 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 benefitted from a reportable political donation:
   a) made by a major political donor in the previous four years, and
   b) where the major political donor has a matter before council, then the councillor must declare a non-pecuniary conflict of interests, disclose the nature of the interest, and manage the conflict of interests in accordance with clause 4.16(b).

4.22 For the purposes of this Part:
   a) a “reportable political donation” is a “reportable political donation” for the purposes of section 86 of the *Election Funding, Expenditure and Disclosures Act 1981*,
   b) a “major political donor” is a “major political donor” for the purposes of section 84 of the *Election Funding, Expenditure and Disclosures Act 1981*.

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

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

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

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

4.27 The Chief Executive will only exempt a councillor from complying with a requirement under this Part where:
   a) compliance by councillors with a requirement under the Part in relation to a matter will result in the loss of a quorum, and
   b) the matter relates to the exercise of a function of the council that may not be delegated under section 377 of the Act.

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

4.29 A councillor, who would otherwise be precluded from participating in the consideration of a matter under this Part because they have a non-pecuniary conflict of interests in the matter, is permitted to participate in consideration of the matter, if:
   a) the matter is a proposal relating to
      i) the making of a principal environmental planning instrument applying to the whole or a significant part of the council’s area, or
      ii) the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant part of the council’s area, and
   b) the councillor declares any interest they have in the matter that would otherwise have precluded their participation in consideration of the matter under this Part.

Other business or employment

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

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

4.32 You may have reason to deal with your council in your personal capacity (for example, as a ratepayer, recipient of a council service or applicant for a consent granted by council). You must not expect or request preferential treatment in relation to any matter in which you have a private interest because of your position. You must avoid any action that could lead members of the public to believe that you are seeking preferential treatment.
PART 5 PERSONAL BENEFIT

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

Gifts and benefits

5.1 You must avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to secure favourable treatment from you or from the council.

5.2 You must take all reasonable steps to ensure that your immediate family members do not receive gifts or benefits that give rise to the appearance of being an attempt to secure favourable treatment. Immediate family members ordinarily include parents, spouses, children and siblings.

Token gifts and benefits

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

Gifts and benefits of value

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

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

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

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d) accept any gift or benefit of more than token value
e) accept an offer of cash or a cash-like gift, regardless of the amount.

5.6 For the purposes of clause 5.5(e), a “cash-like gift” includes but is not limited to gift vouchers, credit cards, debit cards with credit on them, prepayments such as phone or internal credit, memberships or entitlements to discounts.

5.7 Where you receive a gift or benefit of more than token value that cannot reasonably be refused or returned, this must be disclosed promptly to your supervisor, the Mayor or the general manager. The recipient, supervisor, Mayor or general manager must ensure that any gifts or benefits of more than token value that are received are recorded in a Gifts Register. The gift or benefit must be surrendered to council, unless the nature of the gift or benefit makes this impractical.

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.
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.

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.
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.

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 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
   b) for other non-official purposes.

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

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

Councillor access to council buildings

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

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

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

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

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 are to be made to the general manager.
PART 9 DEFINITIONS

In the Model Code of Conduct the following definitions apply:

the Act

the *Local Government Act 1993*

act of disorder

see the definition in clause 256 of the Local Government (General) Regulation 2005

administrator

an administrator of a council appointed under the Act other than an administrator appointed under section 66

Chief Executive

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

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

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

March 2013
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Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW – March 2013
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PART 1 INTRODUCTION

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

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

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

PART 2 DEFINITIONS

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

"the Act" the Local Government Act 1993

"administrator" an administrator of a council appointed under the Act other than an administrator appointed under section 66

"code of conduct" a code of conduct adopted under section 440 of the Act

"code of conduct complaint" a complaint that alleges conduct on the part of a council official acting in their official capacity that on its face, if proven, would constitute a breach of the standards of conduct prescribed under the council’s code of conduct

"complainant" a person who makes a code of conduct complaint

"complainant councillor" a councillor who makes a code of conduct complaint

"complaints coordinator" a person appointed by the general manager under these procedures as a complaints coordinator
“conduct reviewer” a person appointed under these procedures to review allegations of breaches of the code of conduct by councillors or the general manager

“council committee” a committee established by resolution of council

“council committee member” a person other than a councillor or member of staff of a council who is a member of a council committee

“councillor” a person elected or appointed to civic office and includes a Mayor

“council official” includes councillors, members of staff of council, administrators, council committee members, conduct reviewers and delegates of council

“delegate of council” a person (other than a councillor or member of staff of a council) or body and the individual members of that body to whom a function of the council is delegated

“the Division” the Division of Local Government, Department of Premier and Cabinet

“investigator” a conduct reviewer or conduct review committee

“the Regulation” the Local Government (General) Regulation 2005

“subject person” a person whose conduct is the subject of investigation by a conduct reviewer or conduct review committee under these procedures

PART 3 ADMINISTRATIVE FRAMEWORK

The establishment of a panel of conduct reviewers

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

3.2 The council may by resolution enter into an arrangement with one or more other councils to share a panel of conduct reviewers.
3.3 The panel of conduct reviewers is to be established following a public expression of interest process.

3.4 An expression of interest for members of the council’s panel of conduct reviewers must, at a minimum, be advertised locally and in the Sydney metropolitan area.

3.5 To be eligible to be a member of a panel of conduct reviewers, a person must, at a minimum, meet the following requirements:
   a) an understanding of local government, and
   b) knowledge of investigative processes including but not limited to procedural fairness requirements and the requirements of the Public Interest Disclosures Act 1994, and
   c) knowledge and experience of one or more of the following:
      i) investigations, or
      ii) law, or
      iii) public administration, or
      iv) public sector ethics, or
      v) alternative dispute resolution, and
   d) meet the eligibility requirements for membership of a panel of conduct reviewers under clause 3.6.

3.6 A person is not be eligible to be a member of the panel of conduct reviewers if they are
   a) a councillor, or
   b) a nominee for election as a councillor, or
   c) an administrator, or
   d) an employee of a council, or
   e) a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or
   f) a nominee for election as a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or
   g) a person who has a conviction for an indictable offence that is not an expired conviction.

3.7 A person is not precluded from being a member of the council’s panel of conduct reviewers if they are a member of another council’s panel of conduct reviewers.

3.8 A panel of conduct reviewers established under this Part is to have a term of up to four years.

3.9 The council may terminate the panel of conduct reviewers at any time by resolution.

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

**The appointment of complaints coordinators**

3.12 The general manager must appoint a member of staff of the council to act as a complaints coordinator. Where practicable, the complaints coordinator should be a senior and suitably qualified member of staff.

3.13 The general manager may appoint other members of staff to act as alternates to the complaints coordinator.

3.14 The general manager must not undertake the role of complaints coordinator.

3.15 The person appointed as complaints coordinator or alternate complaints coordinator must also be a nominated disclosures coordinator appointed for the purpose of receiving and managing reports of wrongdoing under the *Public Interest Disclosures Act 1994*.

3.16 The role of the complaints coordinator is to:
   a) coordinate the management of complaints made under the council’s code of conduct,
   b) liaise with and provide administrative support to a conduct reviewer or conduct review committee,
   c) liaise with the Division of Local Government, and
   d) arrange the annual reporting of code of conduct complaints statistics.

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

**What is a “code of conduct complaint”?”**

4.1 For the purpose of these procedures, a code of conduct complaint is a complaint that alleges conduct on the part of a council official acting in their official capacity that on its face, if proven, would constitute a breach of the standards of conduct prescribed under the council’s code of conduct.

4.2 Only code of conduct complaints are to be dealt with under these procedures. Complaints that do not satisfy the definition of a “code of conduct complaint” are to be dealt with under council’s routine complaints management processes.
When must a code of conduct complaint be made?

4.3 A code of conduct complaint must be made within three months of the alleged conduct occurring or within three months of the complainant becoming aware of the alleged conduct.

4.4 A complaint made after 3 months may only be accepted if the general manager, or, in the case of a complaint about the general manager, the Mayor, is satisfied that there are compelling grounds for the matter to be dealt with under the code of conduct.

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

4.5 All code of conduct complaints other than those relating to the general manager are to be made to the general manager in writing.

4.6 Where a code of conduct complaint about a council official other than the general manager cannot be made in writing, the complaint must be confirmed with the complainant in writing as soon as possible after the receipt of the complaint.

4.7 In making a code of conduct complaint about a council official other than the general manager, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.

4.8 The general manager or, where the complaint is referred to a conduct reviewer, the conduct reviewer, must consider the complainant’s preferences in deciding how to deal with the complaint.

4.9 Notwithstanding clauses 4.5 and 4.6, where the general manager becomes aware of a possible breach of the council’s code of conduct, he or she may initiate the process for the consideration of the matter under these procedures without a written complaint.

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

4.10 Code of conduct complaints about the general manager are to be made to the Mayor in writing.

4.11 Where a code of conduct complaint about the general manager cannot be made in writing, the complaint must be confirmed with the 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.

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.
**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.
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 the council is subsequently advised otherwise by the referral agency or body.

Disclosure of the identity of complainants

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

e) it is otherwise in the public interest to do so.

5.30 Clause 5.29 does not apply to code of conduct complaints made by councillors about other councillors or the general manager.

5.31 Where a councillor makes a code of conduct complaint about another councillor or the general manager and the complainant councillor considers that compelling grounds exist that would warrant information that identifies or tends to identify them as the complainant not to be disclosed, they may request in writing that such information not be disclosed.

5.32 A request made by a complainant councillor under clause 5.31 must be made at the time they make a code of conduct complaint and must state the grounds upon which the request is made.

5.33 The general manager or Mayor or, where the matter is referred, a conduct reviewer or conduct review committee must consider a request made under clause 5.31 before disclosing information that identifies or tends to identify the complainant councillor but are not obliged to comply with the request.

5.34 Where a complainant councillor makes a request under clause 5.31, the general manager or Mayor or, where the matter is referred, a conduct reviewer or conduct review committee shall notify the councillor in writing of their intention to disclose information that identifies or tends to identify them prior to disclosing the information.

**Code of conduct complaints made as public interest disclosures**

5.35 Code of conduct complaints that are made as public interest disclosures under the *Public Interest Disclosures Act 1994* are to be managed in accordance with the requirements of that Act, the council’s internal reporting policy and any guidelines issued by the NSW Ombudsman that relate to the management of public interest disclosures.

5.36 For a code of conduct complaint to be dealt with as a public interest disclosure, the complainant must state at the outset and in writing at the time of making the complaint that it is made as a public interest disclosure.

5.37 Where a councillor makes a code of conduct complaint about another councillor or the general manager as a public interest disclosure, before the matter may be dealt with under these procedures, the complainant councillor must consent in writing to the disclosure of their identity as the complainant.
5.38 Where a complainant councillor declines to consent to the disclosure of their identity as the complainant under clause 5.37, the general manager or the Mayor must refer the complaint to the Division for consideration. Such a referral must be made under section 26 of the Public Interest Disclosures Act 1994.

**Special complaints management arrangements**

5.39 The general manager may request in writing that the Division enter into a special complaints management arrangement with the council in relation to code of conduct complaints made by or about a person or persons.

5.40 Where the Division receives a request under clause 5.39, it may agree to enter into a special complaints management arrangement where it is satisfied that the number or nature of code of conduct complaints made by or about a person or persons has:

   a) imposed an undue and disproportionate cost burden on the council’s administration of its code of conduct, or
   
   b) impeded or disrupted the effective administration by the council of its code of conduct, or
   
   c) impeded or disrupted the effective functioning of the council.

5.41 A special complaints management arrangement must be in writing and must specify the following:

   a) the code of conduct complaints the arrangement relates to, and
   
   b) the period that the arrangement will be in force.

5.42 The Division may by notice in writing, amend or terminate a special complaints management arrangement at any time.

5.43 While a special complaints management arrangement is in force, an officer of the Division (the assessing Divisional officer) must undertake the preliminary assessment of the code of conduct complaints specified in the arrangement in accordance with the requirements of these procedures except as provided by clause 5.44 below.

5.44 Where, following a preliminary assessment, the assessing Divisional officer determines that a code of conduct complaint warrants investigation by a conduct reviewer or a conduct review committee, the assessing Divisional officer shall notify the complaints coordinator in writing of their determination and the reasons for their determination. The complaints coordinator must comply with the recommendation of the assessing Divisional officer.

5.45 Prior to the expiry of a special complaints management arrangement, the Division shall, in consultation with the general manager, review the arrangement to determine whether it should be renewed or amended.
5.46 A special complaints management arrangement shall expire on the date specified in the arrangement unless renewed under clause 5.45.

PART 6 PRELIMINARY ASSESSMENT

Referral of code of conduct complaints to conduct reviewers

6.1 The complaints coordinator must refer all code of conduct complaints about councillors or the general manager submitted to the complaints coordinator within 21 days of receipt of a complaint by the general manager or the Mayor.

6.2 For the purposes of clause 6.1, the complaints coordinator will refer a complaint to a conduct reviewer selected from:
   a) a panel of conduct reviewers established by the council, or
   b) a panel of conduct reviewers established by an organisation approved by the Chief Executive of the Division.

6.3 In selecting a suitable conduct reviewer, the complaints coordinator may have regard to the qualifications and experience of members of the panel of conduct reviewers.

6.4 A conduct reviewer must not accept the referral of a code of conduct complaint where:
   a) they have a conflict of interests in relation to the matter referred to them, or
   b) a reasonable apprehension of bias arises in relation to their consideration of the matter, or
   c) they or their employer has entered into one or more contracts with the council in the 2 years preceding the referral and they or their employer have received or expect to receive payments under the contract or contracts of a cumulative value that exceeds $100K, or
   d) at the time of the referral, they or their employer are the council’s legal service providers or are a member of a panel of legal service providers appointed by the council.

6.5 For the purposes of clause 6.4(a), a conduct reviewer will have a conflict of interests in a matter where a reasonable and informed person would perceive that they could be influenced by a private interest when carrying out their public duty (see clause 4.1 of the Model Code of Conduct).

6.6 For the purposes of clause 6.4(b), a reasonable apprehension of bias arises where a fair-minded observer might reasonably apprehend that the conduct reviewer might not bring an impartial and unprejudiced mind to the matter referred to the conduct reviewer.
6.7 Where the complaints coordinator refers a matter to a conduct reviewer, they will provide the conduct reviewer with a copy of the code of conduct complaint and any other information relevant to the matter held by the council.

6.8 The complaints coordinator must notify the complainant in writing that the matter has been referred to a conduct reviewer and advise which conduct reviewer the matter has been referred to.

Preliminary assessment by a conduct reviewer

6.9 The conduct reviewer is to undertake a preliminary assessment of a complaint referred to them by the complaints coordinator for the purposes of determining how the complaint is to be managed.

6.10 The conduct reviewer may determine to do one or more of the following in relation to a complaint referred to them by the complaints coordinator:
   a) to take no action, or
   b) to resolve the complaint by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology, or
   c) to refer the matter back to the general manager or, in the case of a complaint about the general manager, the Mayor, for resolution by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, or apology, or
   d) to refer the matter to another agency or body such as, but not limited to, the ICAC, the NSW Ombudsman, the Division or the Police, or
   e) to investigate the matter, or
   f) to recommend that the complaints coordinator convene a conduct review committee to investigate the matter.

6.11 In determining how to deal with a matter under clause 6.10, the conduct reviewer must have regard to the complaint assessment criteria prescribed under clause 6.27.

6.12 The conduct reviewer may make such enquiries the conduct reviewer considers to be reasonably necessary to determine what option to exercise under clause 6.10.

6.13 The conduct reviewer may request the complaints coordinator to provide such additional information the conduct reviewer considers to be reasonably necessary to determine what option to exercise in relation to the matter under clause 6.10. The complaints coordinator will, as far as is reasonably practicable, supply any information requested by the conduct reviewer.
6.14 The conduct reviewer must refer to the Division any complaints referred to him or her that should have been referred to the Division under clauses 5.16 and 5.21.

6.15 The conduct reviewer must determine to take no action on a complaint that is not a code of conduct complaint for the purposes of these procedures.

6.16 Where the conduct reviewer completes their preliminary assessment of a complaint by determining to exercise an option under clause 6.10, paragraphs (a), (b) or (c), they must provide the complainant with written notice of their determination and provide reasons for it and this will finalise consideration of the matter under these procedures.

6.17 Where the conduct reviewer refers a complaint to another agency or body, they must notify the complainant of the referral in writing where it is appropriate for them to do so.

6.18 The conduct reviewer may only determine to investigate a matter or to recommend that a conduct review committee be convened to investigate a matter where they are satisfied as to the following:
   a) that the complaint is a “code of conduct complaint” for the purposes of these procedures, and
   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.

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,
m) such other considerations that the conduct reviewer considers may be relevant to the assessment of the complaint.

PART 7 OPERATIONS OF CONDUCT REVIEW COMMITTEES

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

7.2 The complaints coordinator must convene a conduct review committee comprising three conduct reviewers selected from:
   a) a panel of conduct reviewers established by the council, or
   b) a panel of conduct reviewers established by an organisation approved by the Chief Executive of the Division.

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.

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

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 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.

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.
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,
   b) make a determination that the conduct investigated either,
      i. constitutes a breach of the code of conduct, or
      ii. does not constitute a breach of the code of conduct, and
   c) provide reasons for the determination.

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

8.36 Where the investigator determines that the conduct investigated does not constitute a breach of the code of conduct, the investigator may make one or more of the following recommendations:
   a) that the council revise any of its policies or procedures,
   b) that a person or persons undertake any training or other education.

8.37 In making a recommendation under clause 8.35, the investigator may have regard to the following:
   a) the seriousness of the breach,
   b) whether the breach can be easily remedied or rectified,
c) whether the subject person has remedied or rectified their conduct,
d) whether the subject person has expressed contrition,
e) whether there were any mitigating circumstances,
f) the age, physical or mental health or special infirmity of the subject person,
g) whether the breach is technical or trivial only,
h) any previous breaches,
i) whether the breach forms part of a pattern of conduct,
j) the degree of reckless intention or negligence of the subject person,
k) the extent to which the breach has affected other parties or the council as a whole,
l) the harm or potential harm to the reputation of the council or local government arising from the conduct,
m) whether the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny,
n) whether an educative approach would be more appropriate than a punitive one,
o) the relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action,
p) what action or remedy would be in the public interest.

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

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

8.41 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 8.35, paragraph (a), the complaints coordinator must provide a copy of the investigator’s report to the general manager. Where the general manager agrees with the recommendation/s, the general manager is responsible for implementing the recommendation/s.

8.42 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 8.35, paragraphs (b) or (c), the complaints coordinator must provide a copy of the investigator’s report to the general manager or, where the report relates to the general manager’s conduct, to the Mayor. The general manager is responsible for arranging the implementation of the recommendation/s where the report relates to a councillor’s conduct. The Mayor is responsible for arranging the implementation of the recommendation/s where the report relates to the general manager’s conduct.

8.43 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 8.35, paragraphs (d) to (h), the complaints coordinator must, where practicable, arrange for the investigator’s report to be reported to the next ordinary council meeting for the council’s consideration unless the meeting is to be held within the 4 weeks prior to an ordinary local government election, in which case the report must be reported to the first ordinary council meeting following the election.

**Consideration of the final investigation report by council**

8.44 The role of the council in relation to a final investigation report is to impose a sanction where an investigator determines that there has been a breach of the code of conduct and makes a recommendation in their final report under clause 8.35, paragraphs (d) to (h).

8.45 The council is to close its meeting to the public to consider the final investigation report where it is permitted to do so under section 10A of the Act.

8.46 Where the complainant is a councillor, they must absent themselves from the meeting and take no part in any discussion or voting on the matter. The complainant councillor may absent themselves without making any disclosure of interests in relation to the matter unless otherwise required to do so under the Act or the Model Code.
8.47 Prior to imposing a sanction, the council must provide the subject person with an opportunity to make an oral submission to the council. The subject person is to confine their submission to addressing the investigator’s recommendation/s.

8.48 Once the subject person has completed their oral submission they must absent themselves from the meeting and, where they are a councillor, take no part in any discussion or voting on the matter.

8.49 The council must not invite oral submissions from other persons for the purpose of seeking to rehear evidence previously considered by the investigator.

8.50 Prior to imposing a sanction, the council may by resolution:
   a) request that the investigator make additional enquiries and/or provide additional information to it in a supplementary report, or
   b) seek an opinion by the Division in relation to the report.

8.51 The council may, by resolution, defer further consideration of the matter pending the receipt of a supplementary report from the investigator or an opinion from the Division.

8.52 The investigator may make additional enquiries for the purpose of preparing a supplementary report.

8.53 Where the investigator prepares a supplementary report, they must provide copies to the complaints coordinator who shall provide a copy each to the council, the subject person and the complainant.

8.54 The investigator is not obliged to notify or consult with any person prior to submitting the supplementary report to the complaints coordinator.

8.55 The council is only required to provide the subject person a further opportunity to address it on a supplementary report where the supplementary report contains new information that is adverse to them.

8.56 A council may by resolution impose one or more of the following sanctions on a subject person:
   a) that the subject person apologise to any person or organisation affected by the breach in such a time and form specified by the resolution,
   b) that findings of inappropriate conduct be made public,
   c) in the case of a breach by the general manager, that action be taken under the general manager’s contract for the breach,
   d) in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the Act,
   e) in the case of a breach by a councillor:
      i. that the councillor be formally censured for the breach under section 440G of the Act, and
ii. that the matter be referred to the Division for further action under the misconduct provisions of the Act.

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

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

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

PART 9 RIGHTS OF REVIEW

Failure to comply with a requirement under these procedures

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

Practice rulings

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

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

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

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

Requests for review

9.6 A person the subject of a sanction imposed under Part 8 of these procedures other than one imposed under clause 8.56, paragraph (e),
may, within 28 days of the sanction being imposed, seek a review of the investigator’s determination and recommendation by the Division.

9.7 A review under clause 9.6 may be sought on the following grounds:
   a) that the investigator has failed to comply with a requirement under these procedures, or
   b) that the investigator has misinterpreted or misapplied the standards of conduct prescribed under the code of conduct, or
   c) that the council has failed to comply with a requirement under these procedures in imposing a sanction.

9.8 A request for a review made under clause 9.6 must be made in writing and must specify the grounds upon which the person believes the investigator or the council has erred.

9.9 The Division may decline to conduct a review, where the grounds upon which the review is sought are not sufficiently specified.

9.10 The Division may undertake a review of a matter without receiving a request under clause 9.6.

9.11 The Division will undertake a review of the matter on the papers. However, the Division may request that the complaints coordinator provide such further information that the Division considers reasonably necessary for it to review the matter. The complaints coordinator must, as far as is reasonably practicable, provide the information requested by the Division.

9.12 Where a person requests a review under clause 9.6, the Division may direct the council to defer any action to implement a sanction. The council must comply with a direction to defer action by the Division.

9.13 The Division must notify the person who requested the review and the complaints coordinator of the outcome of the Division’s review in writing and the reasons for its decision. In doing so, the Division may comment on any other matters the Division considers to be relevant.

9.14 Where the Division considers that the investigator or the council has erred, the Division may recommend that a decision to impose a sanction under these procedures be reviewed.

9.15 In the case of a sanction implemented by the general manager or Mayor under clause 8.42, where the Division recommends that the decision to impose a sanction be reviewed:
   a) the complaints coordinator must provide a copy of the Division’s determination in relation to the matter to the general manager or the Mayor, and
   b) the general manager or Mayor must review any action taken by them to implement the sanction, and
c) the general manager or Mayor must consider the Division’s recommendation in doing so.

9.16 In the case of a sanction imposed by the council by resolution under clause 8.56, where the Division recommends that the decision to impose a sanction be reviewed:
   a) the complaints coordinator must, where practicable, arrange for the Division’s determination to be tabled at the next ordinary council meeting unless the meeting is to be held within the 4 weeks prior to an ordinary local government election, in which case it must be tabled at the first ordinary council meeting following the election, and
   b) the council must:
      i. review its decision to impose the sanction, and
      ii. consider the Division’s recommendation in doing so, and
      iii. resolve to either rescind or reaffirm its previous resolution in relation to the matter.

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

PART 10 PROCEDURAL IRREGULARITIES

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

10.2 A failure to comply with these procedures will not render a decision made in relation to a matter invalid where:
   a) the non-compliance is isolated and/or minor in nature, or
   b) reasonable steps are taken to correct the non-compliance, or
   c) reasonable steps are taken to address the consequences of the non-compliance.

PART 11 PRACTICE DIRECTIONS

11.1 The Division may at any time issue a practice direction in relation to the application of these procedures.

11.2 The Division will issue practice directions in writing, by circular to all councils.

11.3 All persons performing a function prescribed under these procedures must consider the Division’s practice directions when performing the function.
PART 12  REPORTING ON COMPLAINTS STATISTICS

12.1 The complaints coordinator must arrange for the following statistics to be reported to the council within 3 months of the end of September of each year:

a) the total number of code of conduct complaints made about councillors and the general manager under the code of conduct in the year to September,

b) the number of code of conduct complaints referred to a conduct reviewer,

c) the number of code of conduct complaints finalised by a conduct reviewer at the preliminary assessment stage and the outcome of those complaints,

d) the number of code of conduct complaints investigated by a conduct reviewer,

e) the number of code of conduct complaints investigated by a conduct review committee,

f) without identifying particular matters, the outcome of code of conduct complaints investigated by a conduct reviewer or conduct review committee under these procedures,

g) the number of matter reviewed by the Division and, without identifying particular matters, the outcome of the reviews, and

h) The total cost of dealing with code of conduct complaints made about councillors and the general manager in the year to September, including staff costs.

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

PART 13  CONFIDENTIALITY

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

Complaints about GM

To Mayor

All other complaints

To GM

Complaints about staff, delegatee & committee members to be dealt with by GM

Complaints about pecuniary interest breaches or misuse of the code to be referred to DLG

May refer complaint to another agency or body

Complaints coordinator

May refer complaint to another agency or body

Decline, resolve, refer to GM or Mayor for resolution, refer to another agency or body

Conduct reviewer to investigate or recommend conduct review committee investigation

Investigator determines no breach

Referral to GM or Mayor for imposition of lesser sanctions

Investigator determines breach

Referral to Councils for imposition of stronger sanctions

May refer complaint to another agency or body

Referral to DLG where misconduct

Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW – March 2013
REPORT TO ORDINARY MEETING OF EUROBODALLA SHIRE COUNCIL
HELD ON TUESDAY 26 FEBRUARY 2013

O13/03 MEETING DATES IN APRIL 2013

SYNOPSIS

This report seeks to cancel the Policy and Strategy Committee meeting set down for 2 April 2013 and hold a combined Finance and Services and Policy and Strategy Committee meeting on Tuesday 9 April 2013.

BACKGROUND

Council and Committee meetings are held on the first, second and fourth Tuesday of each month. In April, the first Tuesday falls on 2 April 2013, which is the recognised staff Union Picnic Day under the Local Government Award. In Eurobodalla the Union Picnic Day is held on the Tuesday immediately following Easter Monday.

To cater for this, it is proposed that we cancel the meeting set down for 2 April 2013 and hold a combined Finance and Services and Policy and Strategy Committee meeting on Tuesday 9 April 2013.

RECOMMENDED

THAT:

1. The Policy and Strategy Committee meeting set down for 2 April 2013 be cancelled;

2. A combined Finance and Services and Policy and Strategy Committee meeting be held on 9 April 2013.

ROB NOBLE
GENERAL MANAGER
SYNOPSIS

The 2013 National General Assembly of Local Government (NGA) will be held in Canberra from 17 to 19 June 2013.

BACKGROUND

The NGA is convened by the Australian Local Government Association (ALGA). The Association is the national voice of local government, representing more than 600 councils across the country.

Key activities of ALGA include representation of local government on national bodies and ministerial councils, providing submissions to government and parliamentary inquiries, raising the profile and concerns of local government at the national level and providing forums for local government to guide the development of national local government policies.

The theme for the 2013 National General Assembly for Local Government (NGA) is: “Foundations for the Future – Twenty 13”. Further details on the National General Assembly can be found at www.alga.asn.au

In the past the Mayor and General Manager have represented Council at the National General Assembly.

The Regional Cooperation and Development Forum, held in conjunction with the NGA on Sunday 16 June 2013, is an opportunity for local government to explore the challenges and opportunities arising out of regional development. The Forum is also when the State of the Regions Report is launched and provides an opportunity to hear from the Report’s authors, National Economics.

ISSUES

Motions

ALGA has identified “Foundations for the Future – Twenty 13” as this year’s theme and encourages Council to submit motions for the 2013 National General Assembly.

To assist in preparing motions, a discussion paper has been prepared. This paper provides background information on the theme and is designed to assist councils when developing motions. The Discussion Paper is available at http://alga.asn.au/site/misc/alga/downloads/events/2013NGA/Discussion_Paper.pdf

To be eligible for inclusion in the National General Assembly Business Papers, motions must:

1. Fall under the NGA theme – Foundations for the Future – Twenty 13
2. Be relevant to the work of local government nationally; and
3. Complement or build on the policy objectives of state or territory associations.
Motions must be received by 26 April 2013.

Motions that are carried by the National General Assembly become Resolutions. These resolutions are then considered by the ALGA Board when setting national local government policy and will also feed into the Australian Council of Local Government processes.

**Attendance at Conference**

**Delegates**

Council’s policy provides that attendance at seminars and conferences will normally be limited to two. The principle of having one Councillor and an appropriate staff member attend is considered as “best practice”.

In accordance with the Councillors’ Expenses and Facilities Policy, with the exception of the Mayor, Councillors will be allocated the sum of $3,300 annually to specifically provide for professional development. The registration, travelling and accommodation costs associated with the annual Local Government Association Conference is excluded from this amount.

Council will reimburse or pay registration fees, accommodation, meals, parking, telephone and travel expenses associated with attendance at the conference plus any other reasonable and directly related out of pocket expenses.

**Registration**

Conference registration before 22 April 2013 is $899. This includes attendance at all Conference sessions and the Welcome Reception but does not include the Conference Dinner at Parliament House on Tuesday, 18 June 2013 ($125.00) or the Buffet Dinner on Monday, 17 June 2013 ($95.00). Forum registration for NGA delegates is $195.

**Accommodation, Travel and Sustenance**

Accommodation is to be restricted to a maximum of NRMA 4 1/2 star rating and where possible at the function venue so as to avoid other costs and inconvenience.

The Assembly organisers have obtained special accommodation rates at local hotels for delegates.

Daily costs other than accommodation and travel are not to exceed $100 (i.e. food and out of pocket expenses etc).

Councillors are to be provided where possible with a pooled vehicle if this is a cost effective and appropriate means of travel. Where a councillor elects to use a private vehicle the maximum cost of the pooled vehicle will be reimbursed.
Delegate’s Report following Conference

Councillors attending training, seminars and conferences are to provide a detailed report to Council on the outcome and issues following the conference.

RECOMMENDED

THAT:

1. Council be represented at the 2013 National General Assembly of Local Government to be held in Canberra from 17 - 19 June 2013 and the Regional Cooperation and Development Forum to be held on 16 June 2013 with the Mayor as its delegate and the General Manager as its observer.

2. Council determine whether it wishes to submit Motions to the Assembly and if so, the Motions should:
   a. fall under the NGA theme – Foundations for the Future – Twenty 13
   b. be relevant to the work of local government nationally; and
   c. complement or build on the policy objectives of state or territory associations.

ROB NOBLE
GENERAL MANAGER
SYNOPSIS

The National Sea Change Taskforce is hosting the Australian Coastal Councils Conference at Glenelg in South Australia from Monday 25 March to Wednesday 27 March 2013.

Councillor Thomson is Council’s nominee and a NSW representative on the Sea Change Taskforce Executive. Early bird registration for this conference closed on 25 January 2013 and the Mayor used his executive powers under Section 226 of Local Government Act to authorise Councillor Thomson’s attendance.

BACKGROUND

The Australian Coastal Councils Conference is the national event where representatives of coastal local government areas come together to consider the issues they share which are of concern to their community.

Major topics to be considered include:

- Findings of the research project conducted by University of Adelaide, which is aimed at assessing the impact of tourists and non-resident populations on coastal communities
- The 2013 coastal advisory campaign for the forthcoming Federal elections
- The implications for coastal communities of the Commonwealth marine reserve networks

The three day event comprises discussion and research sessions, concurrent sessions plus networking events. There will also be a pre-conference function on the Sunday.


As Council’s nominee and NSW representative on the Sea Change Taskforce, Councillor Thomson will also be attending the National Sea Change Taskforce Committee meeting on Sunday, 24 March 2013 in Glenelg.

CONSIDERATIONS

Delegates

Council’s policy provides that attendance at seminars and conferences will normally be limited to two. The principle of having one Councillor and an appropriate staff members attend is considered as “best practice”.

In accordance with Councillors’ Expenses and Facilities Policy, with the exception of the Mayor, Councillors will be allocated the sum of $3,300 annually to specifically provide for professional development.
Registration

Registration for the 2013 Australian Coastal Councils Conference is $1620 and includes attendance at all conference sessions, conference materials, day time catering, the welcome reception and the conference dinner.

Accommodation, Travel and Sustenance

Council will reimburse or pay registration fees; accommodation, meals, parking, telephone and travel expenses associated with attendance at the conference plus any other reasonable and directly related out of pocket expenses.

Accommodation is to be restricted to a maximum of NRMA 4 ½ star rating and where possible at the function venue so as to avoid other costs and inconvenience.

Delegate Report following Conference

Councillors attending training, seminars and conferences are to provide a brief report to Council on outcome and issues following the conference.

RECOMMENDED

THAT:

1. Council endorse the use of the Mayor’s powers under Section 226 of the Local Government Act to approve the attendance of Councillor Thomson at the Australian Coastal Councils Conference to be held at Glenelg in South Australia from Monday 25 March to Wednesday 27 March 2013,

2. All out of pocket expenses to be reimbursed in accordance with the Councillors’ Expenses and Facilities Policy.

ROB NOBLE
GENERAL MANAGER
SYNOPSIS

The 2013 Floodplain Management Association National Conference will be hosted by Tweed Shire Council from 28 to 31 May 2013. This report gives details of the Conference and if Council wishes to be represented, seeks the nomination of a delegate to attend.

BACKGROUND

The theme of this year’s conference is National Floodplain Management-Shared Experiences, National Solutions.

The Floodplain Management Association Conference has been held annually for over 50 years and is the most respected floodplain industry event held in Australia. With major flooding occurring over much of Australia in recent years it is time for a national conference to review learning from these events, explore opportunities and develop national solutions.

The 2013 conference will be the first aimed at involving flood risk managers from across Australia, and to ensure its success it is guided by a Conference Advisory Committee with representatives from every state and territory.

The three day event involves keynote speakers, plenary sessions, concurrent sessions, field trips addressing floodplain issues in northern NSW and the Gold Coast, plus networking events. There will also be a pre-conference workshop on the Tuesday.

Further details on the conference can be found at http://www.floodplainconference.com/

Councillor Schwarz is Council’s delegate for the Floodplain Management Association.

CONSIDERATIONS

Delegates

Council’s policy provides that attendance at seminars and conferences will normally be limited to two. The principle of having one Councillor and an appropriate staff members attend is considered as “best practice”.

In accordance with Councillors’ Expenses and Facilities Policy, with the exception of the Mayor, Councillors will be allocated the sum of $3,300 annually to specifically provide for professional development.

Registration

Registration for the 2013 Floodplain Management Association National Conference is $1000 and includes attendance at all conference sessions, conference materials, day time catering, the welcome reception and the conference dinner.
FLOODPLAIN MANAGEMENT ASSOCIATION NATIONAL CONFERENCE
TWEED HEADS – 28-31 MAY 2013

Accommodation, Travel and Sustenance

Council will reimburse or pay registration fees; accommodation, meals, parking, telephone and travel expenses associated with attendance at the conference plus any other reasonable and directly related out of pocket expenses.

Accommodation is to be restricted to a maximum of NRMA 4 ½ star rating and where possible at the function venue so as to avoid other costs and inconvenience.

Delegate Report following Conference

Councillors attending training, seminars and conferences are to provide a brief report to Council on outcomes and issues following the conference.

CONCLUSION

Attendance at the 2013 Floodplain Management Association National Conference provides an opportunity to review past flood events, explore the opportunities and help to develop a national solution. Any councillor attending will have an opportunity to discuss floodplain issues firsthand with practitioners in the field and with councillors and staff from other local government areas.

RECOMMENDED

THAT Council determine whether it wishes to be represented at the 2013 Floodplain Management Association National Conference to be held in Tweed Heads from 28 – 31 May 2013 and if it so determines:

1. Council nominate a delegate to attend the 2013 Floodplain Management Association National Conference;

2. Council’s delegate be reimbursed out of pocket expenses in accordance with the Councillors’ Expenses and Facilities Policy.

ROB NOBLE
GENERAL MANAGER
SYNOPSIS

The Australian Local Government Women’s Association (ALGWA) NSW Conference will be hosted by Gosford City Council from 14 to 16 March 2013.

This report seeks endorsement from Council for the use of the Mayor’s executive powers under Section 226 of the Local Government Act to approve attendance of Councillors Brice, Harding and Innes at the ALGWA Conference in order to gain the benefit of Early Bird discounts on registration for the Conference.

BACKGROUND

Council resolved on 18 December 2012 to nominate to host the 2015 ALGWA Conference in the Eurobodalla. Councillors and staff will be attending the 2013 conference in order to bid for the 2015 conference.

Early bird registration for the ALGWA Conference closed on 31 December 2012. Registration after this date would have incurred an additional $100 per delegate.

The theme of this year’s conference is Strong Actions, New Directions.

The conference will provide valuable networking opportunities combined with an outstanding program of guest speakers.

A copy of the conference program is available at: http://www.algwa2013gosford.org/

CONSIDERATIONS

Delegates

Council’s policy provides that attendance at seminars and conferences will normally be limited to two. The principle of having one Councillor and an appropriate staff members attend is considered as “best practice”. This may be varied by resolution of Council.

In accordance with Councillors’ Expenses and Facilities Policy, with the exception of the Mayor, Councillors will be allocated the sum of $3,300 annually to specifically provide for professional development.

Registration

Early Bid Registration for the 2013 ALGWA (NSW) Conference was $960 and includes attendance at all conference sessions, conference materials, day time catering, the welcome reception, retro bash and the conference dinner.
Accommodation, Travel and Sustenance

Council will reimburse or pay registration fees; accommodation, meals, parking, telephone and travel expenses associated with attendance at the conference plus any other reasonable and directly related out of pocket expenses.

Accommodation is to be restricted to a maximum of NRMA 4 ½ star rating and where possible at the function venue so as to avoid other costs and inconvenience.

Delegate Report following Conference

Councillors attending training, seminars and conferences are to provide a brief report to Council on outcome and issues following the conference.

RECOMMENDED

THAT:

3. Council endorse the use of the Mayor’s powers under Section 226 of the Local Government Act to approve the attendance of Councillors Brice, Harding and Innes at the ALGWA NSW Conference to be held at Gosford from Thursday 14 March to Saturday 16 March 20130

4. Council’s delegates be reimbursed out of pocket expenses in accordance with the Councillors’ Expenses and Facilities Policy.

ROB NOBLE
GENERAL MANAGER
O13/08 AUDIT COMMITTEE - APPOINTMENT OF INDEPENDENT MEMBERS

SYNOPSIS

The Audit Committee met on 30 January 2012 to consider the appointment of two independent members to the Committee. This report seeks Council’s endorsement of the Audit Committee’s recommendations for appointment.

BACKGROUND

The Policy and Strategy Committee at its meeting held on 2 October 2012 considered report PS12/22 Audit Committee Composition and subsequently determined to:

1. Vacate all membership positions on the Audit Committee and invite community nominations for the two vacant independent seats;
2. Nominate and vote in two councillors as members of the committee.

Councillors Burnside and Schwarz were elected as Council’s representatives on the Committee and nominations were called for the two vacant independent member positions.

CONSIDERATIONS

Copies of all nominations received for appointment as an independent member of the Audit Committee are attached for Council’s consideration together with the Audit Committee’s recommendations for appointment.

RECOMMENDED

THAT Council appoint the preferred applicants (as identified in the confidential attachment) as the two independent members of the Audit Committee in accordance with Council’s adopted Audit Committee Terms of Reference and the Division of Local Government’s Internal Audit Guidelines.

ROB NOBLE
GENERAL MANAGER

Crs.
SYNOPSIS

The purposes of this report are:
- To certify the Council’s investments in financial instruments have been made in accordance with the legal and policy requirements.
- Provide information on and details of investments.
- Raise other matters relevant to investing as required.

CERTIFICATION

Pursuant to provision of Clause 1 (Reg 212) of the Local Government (General) Regulation 2005, I hereby certify that these investments have been made in accordance with the Act and related Regulations.

INVESTING INFORMATION

Policy

Investments comply with Council policy with the exception of Government Guaranteed deposits that are 0.52% under the policy limit of 20%. Deposits with St George are currently at 0.81% above the policy limit of 20%. This is a normal situation when the investments are rebalancing to the policy.

Legal

Actual legal (general) costs for the financial years 2008-2012 are $229.6k. Budgeted legal fees are $59.3k for 2012/2013 with $13.1k expenditure incurred year to date.

The Australian Federal Court Judge, Steven Rares, was expected to hand down his orders on 22 November 2012 in the case of three Australian Councils versus Lehman Brothers Australia however no decision has been published.

On the 5 November the Federal Court of Australia found against Standard & Poor’s (S&P), investment bank ABN AMRO and the Local Government Financial Services (LGFS), in a claim over investments sold to NSW councils prior to the global financial crisis. Justice Jagot has not yet handed down her orders in respect of this case.

The Palladin CDO matter will remain in the courts for a considerable time before a result can be expected.

Council Investing Overall

<table>
<thead>
<tr>
<th>Investments Written Down Value ($'m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>GOVERNMENT DEPOSITS</td>
</tr>
<tr>
<td>GOVERNMENT BONDS</td>
</tr>
<tr>
<td>BANK DEPOSIT</td>
</tr>
<tr>
<td>CDO</td>
</tr>
</tbody>
</table>

- 5.00 10.00 15.00 20.00 25.00 30.00 35.00 40.00 45.00 50.00
Council has 96% ($55.73m) invested in bank deposits, government bonds or Northern Territory government guaranteed term deposits. Bank Deposits are in banks rated greater than A or covered by the AAA rated Government Guarantee (except $3.75m with IMB (Rated BBB), $843k with the Greater Building Society (Rated BBB) and $1.75m with the Bank of Queensland (Rated BBB+)). Investment in Government guaranteed deposits is $11.28m and represents 19.48% of the portfolio which is under the 20% required under the policy.

All other investments (4%) are considered to be at “some limited” or higher risk. The highest area of risk is within the CDO investments.

The weighted average return for all investments for the month is 4.44% which is above the Council policy benchmark of the Bank Bill Swap rate (“BBSW”) + 0.25% (3.47%).

**Collateralised Debt Obligation (“CDO”)**

The carrying value of Council’s CDOs reflects “realisable value” based on the advice of financial advisors (CPG Research & Advisory Pty Ltd and Structured Credit Research & Advisory Pty Ltd) and is listed in the table below. The written down value of CDOs at 30 November 2012 is 48.70% of the original purchase price and there has been no notable change in the market value from 30 June 2012.

**Table of CDO values.**

<table>
<thead>
<tr>
<th>Investment Type</th>
<th>Purchase Price</th>
<th>WDV 30/06/2009</th>
<th>WDV 30/06/2010</th>
<th>WDV 30/06/2011</th>
<th>WDV 30/06/2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>CDO</td>
<td>$4,089,539</td>
<td>$2,872,750</td>
<td>$3,590,800</td>
<td>$3,473,550</td>
<td>$2,155,500</td>
</tr>
</tbody>
</table>

Note 1: WDV means “written down value” which is based on market value (Council writes these investments down to market value at the end of the financial year).

Note 2: The WDV and Purchase Price exclude CDOs that have matured, been sold or where losses have been “realised”.

**Floating Rate Notes (FRNs)**

The remaining floating rate note matured on 9 November 2012 and paid 100% of the principal and all coupons. This is the last of the FRNs to mature and council is unable to invest in FRNs unless it is senior debt of the bank.
Summary Investment Information

The following tables summarises investment categories and balances at month end.

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>WDV ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>At Call Deposit Government Guaranteed</td>
<td>500,000</td>
</tr>
<tr>
<td>At Call Deposit</td>
<td>6,809,192</td>
</tr>
<tr>
<td>CDO'S</td>
<td>2,155,500</td>
</tr>
<tr>
<td>Term Deposits</td>
<td>37,392,844</td>
</tr>
<tr>
<td>Government Bonds</td>
<td>2,030,988</td>
</tr>
<tr>
<td>Term Deposits Government Guaranteed</td>
<td>9,000,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$57,888,524</strong></td>
</tr>
</tbody>
</table>

Weighted Average Interest %: 4.4454%

Average 90 day BBSW + 25%: 3.4700%

Notes:
1. **“Amount”**: Investments are recorded at their Written Down Value (WDV)

Policy and Liquidity Risk

The investment policy is divided into two risk categories of credit risk (risk of ultimately not being able to redeem funds) and liquidity risk (risk of loss due to the need to redeem funds earlier than the investment term). Our investments comply with the risk policy as shown in the following table.

<table>
<thead>
<tr>
<th>Policy Risk</th>
<th>Low Liquidity Risk %</th>
<th>Medium Liquidity Risk %</th>
<th>High Liquidity Risk %</th>
<th>Total % WDV</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remote Risk</td>
<td>19.48</td>
<td></td>
<td></td>
<td>19.48</td>
</tr>
<tr>
<td>Policy Limit</td>
<td>100.00</td>
<td>70.00</td>
<td>50.00</td>
<td></td>
</tr>
<tr>
<td>Near Risk Free</td>
<td>65.84</td>
<td></td>
<td></td>
<td>65.84</td>
</tr>
<tr>
<td>Policy Limit</td>
<td>80.00</td>
<td>50.00</td>
<td>30.00</td>
<td></td>
</tr>
<tr>
<td>Some Limited Risk</td>
<td>10.96</td>
<td></td>
<td></td>
<td>10.96</td>
</tr>
<tr>
<td>Policy Limit</td>
<td>30.00</td>
<td>20.00</td>
<td>10.00</td>
<td></td>
</tr>
<tr>
<td>At Risk</td>
<td></td>
<td></td>
<td></td>
<td>3.72</td>
</tr>
<tr>
<td>Policy Limit</td>
<td>0.00</td>
<td>0.00</td>
<td>20.00</td>
<td></td>
</tr>
<tr>
<td>Grand Total</td>
<td>96.28</td>
<td>0.00</td>
<td>3.72</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Restrictions and Explanation of Level of Funds

The ‘Restrictions’ of all externally restricted funds at 30 June 2012 was $27.42m (audited). The total of internally restricted funds at 30 June 2012 was $13.8m (audited) giving a total for all restricted funds of $41.2m (audited).

The unrestricted current ratio is the amount of unrestricted current assets compared to each dollar of current liability. The Department of Local Government suggests 2:1 and at 30 June 2012 the ratio was 2.91:1.

Recommended

THAT the certification that the investments as at 30 November 2012 have been made in accordance with the Act, the Regulations and Council’s investment policies, in accordance with the provision of Clause 1 (Reg 212) of the Local Government (General) Regulation 2005, be received.

ANTHONY O’REILLY
DIVISIONAL MANAGER
FINANCE AND GOVERNANCE
SYNOPSIS

The purposes of this report are:

- To certify the Council’s investments in financial instruments have been made in accordance with the legal and policy requirements.
- Provide information on and details of investments.
- Raise other matters relevant to investing as required.

CERTIFICATION

Pursuant to provision of Clause 1 (Reg 212) of the Local Government (General) Regulation 2005, I hereby certify that these investments have been made in accordance with the Act and related Regulations.

INVESTING INFORMATION

Policy

Investments comply with Council policy.

Legal

Actual legal (general) costs for the financial years 2008-2012 are $229.6k. Budgeted legal fees are $59.3k for 2012/2013 with $16.2k expenditure incurred year to date.

The Australian Federal Court Judge, Steven Rares, on 21 December 2012 adjourned the application for damages orders until 18 March 2013. The judge desired significant progress from the liquidator in the preparation of the scheme to distribute the insurance with at least one court hearing desired to be held before 18 March 2013.

This action benefits Council as, although not directly involved in the case it allows time for the liquidator to distribute the proceeds from Lehman Brothers Australia of which Eurobodalla Shire Council will be entitled to claim.

On 5 November 2012 the Federal Court of Australia found against Standard & Poor’s (S&P), investment bank ABN AMRO and the Local Government Financial Services (LGFS), in a claim over investments sold to NSW councils prior to the global financial crisis. Justice Jagot has not yet handed down her orders in respect of this case.

The Palladin CDO matter remains in the courts with no result expected soon.
**Council Investing Overall**

**Investments Written Down Value ($’m)**

<table>
<thead>
<tr>
<th>Type</th>
<th>CDO</th>
<th>Bank Deposits</th>
<th>Government Bonds</th>
<th>Government Deposits</th>
<th>Grand Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investments WDV ($’m)</td>
<td>2.16</td>
<td>44.80</td>
<td>2.03</td>
<td>7.00</td>
<td>55.99</td>
</tr>
<tr>
<td>WDV %</td>
<td>3.84</td>
<td>80.06</td>
<td>3.63</td>
<td>12.47</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Council has 96% ($53.83m) invested in bank deposits, government bonds or Northern Territory government guaranteed term deposits. Bank Deposits are in banks rated greater than A or covered by the AAA rated Government Guarantee (except $3.75m with IMB (Rated BBB), $843k with the Greater Building Society (Rated BBB) and $1.25m with the Bank of Queensland (Rated BBB+)). Investment in Government guaranteed deposits is $11.53m and represents 20.60% of the portfolio which complies with the policy. All other investments (4%) are considered to be at “some limited” or higher risk. The highest area of risk is within the CDO investments.

The weighted average return for all investments for the month is 4.21% which is above the Council policy benchmark of the Bank Bill Swap rate (“BBSW”) + 0.25% (3.41%).

**Collateralised Debt Obligation (“CDO”)**

The carrying value of Councils CDOs reflects “realisable value” based on the advice of financial advisors (CPG Research & Advisory Pty Ltd and Structured Credit Research & Advisory Pty Ltd) and is listed in the table below. The written down value of CDOs at 31 December 2012 is 49.46% of the original purchase price and there has been no notable change in the market value from 30 June 2012.

**Table of CDO values.**

<table>
<thead>
<tr>
<th>Investment Type</th>
<th>Purchase Price 30/06/2009</th>
<th>WDV 30/06/2009</th>
<th>WDV 30/06/2010</th>
<th>WDV 30/06/2011</th>
<th>WDV 30/06/2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>CDO</td>
<td>$4,089,539</td>
<td>$2,872,750</td>
<td>$3,590,800</td>
<td>$3,473,550</td>
<td>$2,155,500</td>
</tr>
</tbody>
</table>

*Note 1: WDV means “written down value” which is based on market value (Council writes these investments down to market value at the end of the financial year).*

*Note 2: The WDV and Purchase Price exclude CDOs that have matured, been sold or where losses have been “realised”.*
Summary Investment Information

The following tables summarises investment categories and balances at month end.

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>WDV ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>At Call Deposit Government Guaranteed</td>
<td>500,000</td>
</tr>
<tr>
<td>At Call Deposit</td>
<td>7,312,228</td>
</tr>
<tr>
<td>CDO'S</td>
<td>2,155,500</td>
</tr>
<tr>
<td>Term Deposits</td>
<td>34,992,534</td>
</tr>
<tr>
<td>Government Bonds</td>
<td>2,030,988</td>
</tr>
<tr>
<td>Term Deposits Government Guaranteed</td>
<td>9,000,000</td>
</tr>
<tr>
<td></td>
<td><strong>$55,991,250</strong></td>
</tr>
<tr>
<td>Weighted Average Interest %:</td>
<td>4.2119%</td>
</tr>
<tr>
<td>Average 90 day BBSW + 25%:</td>
<td>3.4100%</td>
</tr>
</tbody>
</table>

*Note 3: “Amount” means Investments are recorded at their Written Down Value (WDV)*

Policy and Liquidity Risk

The investment policy is divided into two risk categories of credit risk (risk of ultimately not being able to redeem funds) and liquidity risk (risk of loss due to the need to redeem funds earlier than the investment term). Our investments comply with the risk policy as shown in the following table.

<table>
<thead>
<tr>
<th>Policy Risk</th>
<th>Low Liquidity Risk %</th>
<th>Medium Liquidity Risk %</th>
<th>High Liquidity Risk %</th>
<th>Total % WDV</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remote Risk</td>
<td>20.60</td>
<td></td>
<td></td>
<td>20.60</td>
</tr>
<tr>
<td>Policy Limit</td>
<td>100.00</td>
<td>70.00</td>
<td>50.00</td>
<td></td>
</tr>
<tr>
<td>Near Risk Free</td>
<td>65.10</td>
<td></td>
<td></td>
<td>65.10</td>
</tr>
<tr>
<td>Policy Limit</td>
<td>80.00</td>
<td>50.00</td>
<td>30.00</td>
<td></td>
</tr>
<tr>
<td>Some Limited Risk</td>
<td>10.46</td>
<td></td>
<td></td>
<td>10.46</td>
</tr>
<tr>
<td>Policy Limit</td>
<td>30.00</td>
<td>20.00</td>
<td>10.00</td>
<td></td>
</tr>
<tr>
<td>At Risk</td>
<td></td>
<td></td>
<td></td>
<td>3.84</td>
</tr>
<tr>
<td>Policy Limit</td>
<td>0.00</td>
<td>0.00</td>
<td>20.00</td>
<td></td>
</tr>
<tr>
<td>Grand Total:</td>
<td>96.16</td>
<td>0.00</td>
<td>3.84</td>
<td>100.00</td>
</tr>
</tbody>
</table>

RESTRICTIONS AND EXPLANATION OF LEVEL OF FUNDS

The ‘Restrictions’ of all externally restricted funds at 30 June 2012 was $27.42m (audited). The total of internally restricted funds at 30 June 2012 was $13.8m (audited) giving a total for all restricted funds of $41.2m (audited).

The unrestricted current ratio is the amount of unrestricted current assets compared to each dollar of current liability. The Department of Local Government suggests 2:1 and at 30 June 2012 the ratio was 2.91:1.
O13/10    INVESTMENTS MADE AS AT 31 DECEMBER 2012    E99.3517

RECOMMENDED

THAT the certification that the investments as at 31 December 2012 have been made in accordance with the Act, the Regulations and Council's investment policies, in accordance with the provision of Clause 1 (Reg 212) of the Local Government (General) Regulation 2005, be received.

ANTHONY O’REILLY
DIVISIONAL MANAGER
FINANCE AND GOVERNANCE
SYNOPSIS

The purposes of this report are:
- To certify the Council’s investments in financial instruments have been made in accordance with the legal and policy requirements.
- Provide information on and details of investments.
- Raise other matters relevant to investing as required.

CERTIFICATION

Pursuant to provision of Clause 1 (Reg 212) of the Local Government (General) Regulation 2005, I hereby certify that these investments have been made in accordance with the Act and related Regulations.

INVESTING INFORMATION

Policy

Investments comply with Council policy.

Legal

Actual legal (general) costs for the financial years 2008-2012 are $229.6k. Budgeted legal fees are $59.3k for 2012/2013 with $19.9k expenditure incurred year to date.

There has been no further significant progress with legal cases.

Council Investing Overall

<table>
<thead>
<tr>
<th>Investments Written Down Value ($'m)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Type</strong></td>
</tr>
<tr>
<td>-------------------------------------</td>
</tr>
<tr>
<td>Investments WDV ($'m)</td>
</tr>
<tr>
<td>WDV %</td>
</tr>
</tbody>
</table>

Council has 96% ($53.79m) invested in bank deposits, government bonds or Northern Territory government guaranteed term deposits. Bank Deposits are in banks rated greater than A or covered by the AAA rated Government Guarantee (except $3.75m with IMB (Rated BBB), $843k with the Greater Building Society (Rated BBB) and $1.25m with the Bank of Queensland (Rated BBB+)). Investment in Government guaranteed deposits is $11.53m and represents 20.61% of the portfolio which complies with the policy. All other investments
(3.84%) are considered to be at “some limited” or higher risk. The highest area of risk is within the CDO investments.

The weighted average return for all investments for the month is 4.09% which is above the Council policy benchmark of Bank Bill Swap rate (“BBSW”) + 0.25% (3.30%).

**Collateralised Debt Obligation (“CDO”)**

The carrying value of Councils CDOs reflects “realisable value” based on the advice of financial advisors (CPG Research & Advisory Pty Ltd and Structured Credit Research & Advisory Pty Ltd) and is listed in the table below. The estimated realiseable value of CDOs at 31 January 2013 is 51.66% of the original purchase price and there has been no notable change in the market value from 30 June 2012 (52.7%) as listed in Councils accounts.

There has been no further significant progress with legal cases.

**Table of CDO values.**

<table>
<thead>
<tr>
<th>Investment Type</th>
<th>Purchase Price</th>
<th>WDV 30/06/2009</th>
<th>WDV 30/06/2010</th>
<th>WDV 30/06/2011</th>
<th>WDV 30/06/2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>CDO</td>
<td>$4,089,539</td>
<td>$2,872,750</td>
<td>$3,590,800</td>
<td>$3,473,550</td>
<td>$2,155,500</td>
</tr>
</tbody>
</table>

*Note 1: WDV means “written down value” which is based on market value (Council writes these investments down to market value at the end of the financial year).*

*Note 2: The WDV and Purchase Price exclude CDOs that have matured, been sold or where losses have been “realised”).*

**Summary Investment Information**

The following tables summarises investment categories and balances at month end.

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>WDV ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>At Call Deposit Government Guaranteed</td>
<td>500,000</td>
</tr>
<tr>
<td>At Call Deposit</td>
<td>7,364,296</td>
</tr>
<tr>
<td>CDO’S</td>
<td>2,155,500</td>
</tr>
<tr>
<td>Term Deposits</td>
<td>34,392,844</td>
</tr>
<tr>
<td>Government Bonds</td>
<td>2,030,988</td>
</tr>
<tr>
<td>Term Deposits Government Guaranteed</td>
<td>9,500,000</td>
</tr>
<tr>
<td></td>
<td><strong>$55,943,628</strong></td>
</tr>
</tbody>
</table>

*Note: “Amount” means Investments are recorded at their Written Down Value (WDV)*

**Policy and Liquidity Risk**

The investment policy is divided into two risk categories of credit risk (risk of ultimately not being able to redeem funds) and liquidity risk (risk of loss due to the need to redeem funds earlier than the investment term). Our investments comply with the risk policy as shown in the following table.
O13/11 INVESTMENTS MADE AS AT 31 JANUARY 2013 E99.3517

<table>
<thead>
<tr>
<th>Policy Risk</th>
<th>Low Liquidity Risk %</th>
<th>Medium Liquidity Risk %</th>
<th>High Liquidity Risk %</th>
<th>Total % WDV</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remote Risk</td>
<td>20.61</td>
<td></td>
<td></td>
<td>20.61</td>
</tr>
<tr>
<td>Policy Limit</td>
<td>100.00</td>
<td>70.00</td>
<td>50.00</td>
<td></td>
</tr>
<tr>
<td>Near Risk Free</td>
<td>63.75</td>
<td></td>
<td></td>
<td>63.75</td>
</tr>
<tr>
<td>Policy Limit</td>
<td>80.00</td>
<td>50.00</td>
<td>30.00</td>
<td></td>
</tr>
<tr>
<td>Some Limited Risk</td>
<td>11.79</td>
<td></td>
<td></td>
<td>11.79</td>
</tr>
<tr>
<td>Policy Limit</td>
<td>30.00</td>
<td>20.00</td>
<td>10.00</td>
<td></td>
</tr>
<tr>
<td>At Risk</td>
<td>3.85</td>
<td></td>
<td></td>
<td>3.85</td>
</tr>
<tr>
<td>Policy Limit</td>
<td>0.00</td>
<td>0.00</td>
<td>20.00</td>
<td></td>
</tr>
<tr>
<td>Grand Total:</td>
<td>96.15</td>
<td>0.00</td>
<td>3.85</td>
<td>100.00</td>
</tr>
</tbody>
</table>

RESTRICTIONS AND EXPLANATION OF LEVEL OF FUNDS

The ‘Restrictions’ of all externally restricted funds at 30 June 2012 was $27.42m (audited). The total of internally restricted funds at 30 June 2012 was $13.8m (audited) giving a total for all restricted funds of $41.2m (audited).

The unrestricted current ratio is the amount of unrestricted current assets compared to each dollar of current liability. The Department of Local Government suggests 2:1 and at 30 June 2012 the ratio was 2.91:1.

RECOMMENDED

THAT the certification that the investments as at 31 January 2013 have been made in accordance with the Act, the Regulations and Council’s investment policies, in accordance with the provision of Clause 1 (Reg 212) of the Local Government (General) Regulation 2005, be received.

ANTHONY O’REILLY
DIVISIONAL MANAGER
FINANCE AND GOVERNANCE
SYNOPSIS

Council’s agreement is sought to accept a Youth Opportunities Program grant of $73,500 from NSW Office of Communities to implement the youth social media “Channel E” Project during 2013 and 2014.

BACKGROUND

The Far South Coast of NSW is characterised by social isolation and low socio economic status when compared with other parts of NSW. This is demonstrated by the region’s ABS Census demography, rural geography, poor public transport, low school retention rates and high youth unemployment. Despite this, young people in the region can remain connected through emerging digital communications, especially mobile phones and social media.

In consultation with local youth as part of the development and review of the Eurobodalla Youth Strategy 2008-13, Council identified digital communications as a primary mode of connecting young people with each other and the wider community.

In August 2012 the NSW government launched a new youth project funding opportunity via the reviewed “Better Futures” program called “Youth Opportunities” program.

The Channel E project will connect youth with their community by using new technologies and social media platforms designed, produced and managed by youth for youth. Importantly, the project will connect young people to the digital economy, with skills development and the potential to lead to real employment opportunities.

Operationally, Channel E will facilitate two-way communication between young people and their community. It will disseminate information to youth and allow youth to broadcast information about events, services and activities in a moderated way. Forums will foster and increase connection with youth with similar interests and serve as a means for a larger number of young people to have input into local plans and projects.

Developmentally, Channel E will be designed, developed and managed by young people, with the support of mentors, a business model and associated plans, policies and procedures that support operations, marketing and governance.

Sustainably, Channel E will become a commercially viable entity that generates business income and a growing stakeholder base through youth driven priorities such as mobile phone apps, forums, discussion boards and advertising. This project will provide a medium for youth to identify and act upon local issues and activities in a moderated and accessible environment.
CONSIDERATIONS

Council will work in partnership with South Coast Workplace Learning, the University of Canberra, other education providers, Moruya Chamber of Commerce and relevant government agencies to deliver anticipated outcomes of the project such as:

- addressing disadvantage and barriers such as social and geographic isolation. Young people will remain connected with each other, the wider community, business and government in order that local issues and events may be highlighted and acted upon;
- increasing the numbers of the target audience as the project outputs develop potentially reaching a larger number of youth across the region;
- the project group achieving accredited qualifications with pathways into tertiary awards. There may be opportunities to post on-line lower entry units for local youth to engage in technology qualifications locally;
- improved local mentoring capacity via training community champions who will be able to apply new mentoring skills to other young people and projects;
- project participants gaining new skills including leadership, presentations and governance;
- improved use of technology/social media by local services and community as project outputs will require the project group to train others - in particular service providers on how to interface with Channel E;
- retention of youth in local area by connecting them with local options for study, support, work, networks and other opportunities;
- improved opportunities for youth service providers to connect with young people.
- Increased capacity for young people to have a say in local, regional governance and broader policy issues; and
- opportunities to link young people in with other emerging online projects.

Financial

The project has attracted a one-off offer of funding of $73,500 from the NSW Office of Communities under the Youth Opportunities program. This funding will enable the project to be realised in 2013 and 2014. No Council funding is required to undertake the project.

CONCLUSION

This project is an innovative youth engagement program with benefits for the local community. The project has funding that will enable Council to engage with young people.
O13/12  YOUTH OPPORTUNITIES PROJECT FUNDING  E12.6453

RECOMMENDED

THAT:

1. Council accept the $73,500 funding from the NSW Office of Communities’ Youth Opportunities program; and

2. This report be received and noted.

KERRY FOSTER
DIRECTOR
COMMUNITY AND CORPORATE OUTCOMES
O13/13 EASEMENT FOR ACCESS AND SERVICES – FOR CORS PILLAR, TUROSS HEAD

SYNOPSIS

Land and Property Information (LPI) previously requested and Council consented to the acquisition of a parcel of Council land at Kyla Park, Tuross Head being Lot 77 DP 260321 to house a Trigonometrical (Trig) Reserve for the establishment of a Continuously Operating Reference Station (CORS). After further consideration LPI has now requested an easement for access and services instead. This report recommends creation of the easement within Lot 77.

BACKGROUND

AuSCOPE CORS is a network of Global Navigational Satellite System Continuously Operating Reference Stations (CORS) located around Australia which forms part of the federally funded AuSCOPE program.

CORS technology is now being used worldwide with applications developing in many fields including scientific research, precision navigation, engineering and precision agriculture. A few examples of the applications which may use information produced by the AuSCOPE CORS network are monitoring both slow and rapid movement of the earth’s crust, calculating and monitoring sea level change, updating coordinate datums and atmospheric modelling.

Currently there are close to 100 AuSCOPE CORS planned for Australia with ten of these to be constructed in NSW in partnership with the LPI.

LPI will integrate the ten scientific AuSCOPE CORS into the State’s own growing network of CORS, ultimately providing state-wide coverage for its satellite data service currently known as CORSnet NSW.

LPI identified part of Council-owned land at Kyla Park, Tuross Head as a suitable site.

Council previously resolved on 27 April 2010 for the LPI to compulsorily acquire a parcel of land at Kyla Park, Tuross Head for the CORS however it is considered more suitable not to subdivide the Council land and alternatively create an easement over Lot 77 in favour of the State of NSW.

CONSIDERATIONS

The area of land required for the proposed CORS is 25 metres long and 2 metres wide.

LPI require a secure form of tenure to ensure long term use of the site and an easement for access and power is suitable both to LPI and to Council.
O13/13 EASEMENT FOR ACCESS AND SERVICES – FOR CORS PILLAR, TUROSS HEAD 10.4221.B

A plan showing the proposed site is below.

Legal

Lot 77 is classified as community land.

“Section 46 of the Local Government Act states that: A lease, licence or other estate in respect of community land: (a) may be granted for the provision of public utilities and works associated with or ancillary to public utilities ..”

Asset

The availability of a GPS base station located central to the Shire will have immediate benefits with the current use of GPS equipment by Council staff, greatly improving accuracy.

This same benefit will also be shared by private surveyors and increased use in the future by the general public as more GPS applications are developed for private use.

Financial

It is proposed the easement be acquired without monetary compensation but subject to LPI granting Council free access to the CORS data.

The current fee to access state wide CORS data is in the order of $2,000pa.
CONCLUSION

The construction of a CORS in the Shire will be extremely beneficial to current and future operations involving the use of GPS technology by Council staff. Free access to the CORS data is considered reasonable compensation for the proposed easement for access and services for the Trig Reserve.

RECOMMENDED

THAT:

1. Consent be given for the creation of an easement for access and services 2m wide and various within Lot 77 DP 260321 in favour of the State of NSW without monetary compensation subject to an agreement to provide Council with free ongoing access to the data from the CORS constructed on the site.

2. Consent be given to affix the Common Seal of Council to the Plan of Easement and Section 88B Instrument within Lot 77 DP 260321.

KERRY FOSTER
DIRECTOR
COMMUNITY AND CORPORATE OUTCOMES
SYNOPSIS

Council has previously resolved to acquire part of Mogo State Forest for water supply purposes with the intention of classifying it as operational land on acquisition. This report recommends the land be classified as operational land.

BACKGROUND

As part of the new water pipeline system constructed between the Moruya River intake and Deep Creek Dam, a balance tank was installed. The facility is located within Mogo State Forest and Council is now in the process of acquiring the land by compulsory process.

At its ordinary meeting held on 23 October 2012 Council resolved:

THAT:

1. Application be made to the Minister for Local Government and the Governor to acquire part of Mogo State Forest at Deep Creek for Water Supply purposes by compulsory process in accordance with Council’s power under Section 187(1) of the Local Government Act 1993 and in accordance with the provisions of the Land Acquisition (Just Terms Compensation) Act 1991.

2. If consent is granted all necessary action be taken to finalise the acquisition in accordance with the provisions of the Land Acquisition (Just Terms Compensation) Act.
3. Public notice be given of Council’s intention to resolve:
   “THAT the part of Mogo State Forest at Deep Creek required for water supply
   purposes be acquired as operational land.”

4. A period of 28 days be given for members of the public to make submissions.

5. A further report be presented following the advertising period.

CONSIDERATIONS

A Plan of Acquisition to accommodate the balance tank has been lodged to create Lot 1 DP 1182561. A copy of the plan is set out below.

In accordance with the provisions of the local Government Act 1993, the land to be acquired is to be classified as either community or operational land. The land is to be acquired for operational purposes and therefore it is appropriate for the land to be classified as operational land.

Legal

In accordance with Section 34 of the Local Government Act, public notice has been given of Council’s intention to classify the land as operational land and 28 days allowed for written submissions.

No submissions have been received.
O13/14 CLASSIFICATION OF LAND – DEEP CREEK

CONCLUSION

There would appear to be no objection to the classification of the land as operational land.

RECOMMENDED

THAT upon acquisition Lot 1 DP 1182561 be classified as operational land.

KERRY FOSTER
DIRECTOR
COMMUNITY AND CORPORATE OUTCOMES
O13/15   LAND ACQUISITION FOR ROAD WIDENING
WAMBAN ROAD, MORUYA
89.3179.B

SYNOPSIS

Acquisition of land for road widening purposes to upgrade a section of Wamban Road, Moruya necessitates the acquisition of part Lot 63 Deposited Plan 786923 as public road.

This report recommends acquisition of the required land.

This report contains a confidential attachment for Councillors’ information only pursuant to Section 10A(2) of the Local Government Act 1993.

BACKGROUND

Council is to undertake road works on a section of Wamban Road, Moruya. The works proposed necessitate acquisition of part Lot 63 DP 786923 being approximately 220 square metres. Lot 63 DP 786923 has a total of 2.67 hectares.

The name of the registered proprietor is set out in the Councillors’ Attachment.

Discussions have been held with the landowner and he has given concurrence to the proposal.

CONSIDERATIONS

Sketches of the area proposed to be acquired are set out below.
Legal

The acquisition of the land is necessary to legalise the proposed road widening.

Policy

The acquisition of land for road purposes will proceed in accordance with Council’s Code of Practice for Acquiring Land for Public Purposes.

Financial

Compensation will be determined by a Registered Valuer in accordance with the provisions of the Land Acquisition (Just Terms Compensation) Act 1991. Together with the compensation, Council will be responsible for all reasonable costs associated with the acquisition including survey and legal fees. Based on previous similar acquisitions sufficient funds are available within allocated budgets.

CONCLUSION

The acquisition of part Lot 63 Deposited Plan 786923 is required for road widening purposes on a section of Wamban Road.
O13/15  LAND ACQUISITION FOR ROAD WIDENING
WAMBAN ROAD, MORUYA 89.3179.B

RECOMMENDED

THAT:

1. All actions necessary be taken for the acquisition of land required for road widening within Lot 63 DP 786923 in accordance with Council’s Code of Practice for Acquiring Land for Public Purposes.

2. All survey and legal costs associated with the land acquisition be borne by Council.

KERRY FOSTER
DIRECTOR
COMMUNITY AND CORPORATE OUTCOMES

Clrs.
O13/16     ASSIGNMENT OF LEASE – MORUYA AIRPORT 02.6484

SYNOPSIS

A request has been received from the lessee of Lot 133 DP 813595 to assign her lease to a third party who proposes to redevelop the site. This report recommends consent be given to assign the lease.

This report contains a confidential attachment for Councillors’ information only pursuant to Section 10A(2) of the Local Government Act 1993.

BACKGROUND

Council granted a 15-year lease to the current lessee commencing 1 June 2002. A request has been received from the lessee to assign her lease to a third party whose name and credentials are set out in the Councillors’ Attachment.

CONSIDERATIONS

Legal

In accordance with the provisions of the lease the lessee cannot assign the lease without the written consent of the lessor, which consent may be refused in the absolute discretion of the Lessor.

Subject to the assignee being respectable, responsible and financially secure there would be no reason not to consent to the proposed assignment. From the details provided by the current lessee, the proposed assignee would appear to satisfy the desired attributes.

If consent is granted, it will be necessary for Council to enter into a Deed of Assignment with an assignee and to execute a Transfer of Lease.

Asset

The site currently houses a relatively small hangar. The proposed assignee intends to redevelop the site with larger premises.

Financial

All costs associated with the proposed assignment of the lease should be borne by the lessee including Council’s legal costs and administrative costs of $1,100 including GST.

CONCLUSION

The proposed assignee is considered a worthy lessee and redevelopment of the property will be beneficial to the airport.
O13/16    ASSIGNMENT OF LEASE – MORUYA AIRPORT  02.6484

RECOMMENDED

THAT:

1. Consent be given to the assignment of the Lease of Lot 133 DP 813595 at Moruya Airport subject to all costs associated with the proposed assignment including Council’s legal costs and an administrative fee of $1,100 including GST being borne by the lessee.

2. Consent be given to affix the Common Seal of Council to:

(a) A Deed of Assignment; and

(b) The Transfer of Lease associated with the assignment of the lease of Lot 133 DP 813595.

KERRY FOSTER
DIRECTOR
COMMUNITY AND CORPORATE OUTCOMES

Crs.
SYNOPSIS

The twelve-month licence to graze livestock within part Lot 36 DP 264448 at Glenduart expires on 31 March 2013. This report recommends a six-month licence with a monthly carryover provision be granted.

This report contains a confidential attachment for Councillors’ information only pursuant to Section 10A(2) of the Local Government Act 1993.

BACKGROUND

At its meeting on 28 February 2012 Council resolved:

“THAT:

1. Public notice be given of Council’s intention to grant a twelve-month licence for grazing over part Lot 36 DP 264448 in accordance with Section 47A of the Local Government Act 1993.

2. If any submissions are received a report be presented to Council for further consideration.

3. If no submissions are received a twelve-month licence be granted to the registered proprietor of Lot 83 DP 747852 with a fee set out in the Councillors’ Attachment to report O12/23 Licence To Graze Livestock – Glenduart.”

As no submissions were received from the public a twelve-month licence was granted. That licence expires on 31 March 2013 and the licensee has requested a further licence be granted.

A plan showing the licence area is below.
O13/17 LICENCE TO GRAZE LIVESTOCK - GLENDUART 93.5760.B

CONSIDERATIONS

The land is currently classified as community land, however Council has resolved to reclassify it as operational land as a result of the recreation strategy adopted in 2011 with a view to selling it. It was anticipated that the land would be reclassified before the end of 2012, however the Gateway Proposal for reclassification is still with the Planning Minister.

It is considered appropriate for the current licensee to be granted a six–month licence with provision of a carryover on a month to month basis for a maximum period of twelve months. This should allow sufficient time for the reclassification of the land to be finalised.

Legal

In accordance with the provisions of Section 47A of the Local Government Act, the licence must be advertised for a period of not less than 28 days and Council is to consider any submissions prior to granting a licence.

Community Consultation

Public notice of Council’s intention to grant a licence will have to be given and the public will have the opportunity to make submissions.

Financial

A fee based on the fee for the last twelve month period increased in line with the CPI is considered appropriate. This amount is set out in the Councillors’ Attachment.

CONCLUSION

As that part of Lot 36 DP 264448 comprising the current licence area is proposed to be reclassified as operational land and sold, granting a licence for six months with a monthly carryover provision is considered appropriate.
RECOMMENDED

THAT:

1. Public notice be given of Council’s intention to grant a six month licence for grazing over part Lot 36 DP 264448 with a monthly carryover provision for a maximum of twelve months in accordance with Section 47A of the Local Government Act 1993.

2. If any submissions are received a report be presented to Council for further consideration.

3. If no submissions are received a six-month licence be granted to the registered proprietor of Lot 83 DP 747852 with a fee set out in the Councillors’ Attachment to report O13/ Licence To Graze Livestock – Glenduart with provision for a carryover on a month to month basis for a maximum of twelve months.

KERRY FOSTER
DIRECTOR
COMMUNITY AND CORPORATE OUTCOMES

Clrs.
SYNOPSIS

The two-year licence for the use of Council land being Lots 61 and 62 and part Lot 58 DP 244154 adjacent to the Moruya Sewage Treatment Plant for agricultural purposes expires on 28 February 2013. The licence provides for three one-year options and the licensees have requested Council grant the first option. This report recommends that the option for a one-year extension be granted.

BACKGROUND

At its meeting on 22 February 2011 Council resolved:

“THAT:

1. A licence for the use of Lots 61, 62 and part Lot 58 DP 244154 for agricultural purposes be granted to BJ and LM McCauley with rental being $1265 inc GST per annum.

2. The term be two years with three one-year options to be granted at Council’s absolute discretion.”

The current licence expires on 28 February 2013 and the Licensees have requested an option for a one year extension.

A plan showing the licence area is below.
O13/18  LICENCE FOR AGRICULTURAL PURPOSES - MORUYA  E00.4465

CONSIDERATIONS

The Moruya Sewage Treatment works is located on operational land at the eastern end of Queen Street, Moruya. Part of the land is not currently required for sewage purposes and has been licensed to the neighbouring landowner for grazing cattle for many years.

Legal

It is a condition of the current licence that Council, at its absolute discretion, for three consecutive years may grant a further licence of the licensed area for a period of one year subject to the licensee not being in default of the licence conditions.

Asset

The 7.4 hectares is currently not required for sewerage purposes and licensing of the land for agricultural purposes is considered to be the best use.

Financial

The current licence fee is $1,150.00 plus GST. It is a fixed fee for the term of the licence.

CONCLUSION

The licensees are not in default of their licence conditions and the land is still not required for Council operational purposes. It is therefore considered appropriate that the licence be renewed for a further one year.

RECOMMENDED

THAT the option for a further one-year licence for the use of Lots 61, 62 and part Lot 58 DP 244154 for agricultural purposes be granted to B J and L M McCauley in accordance with the provisions of the current licence.

KERRY FOSTER
DIRECTOR
COMMUNITY AND CORPORATE OUTCOMES
SYNOPSIS

The two-month trial period granted to Sustainable Agriculture and Gardening Eurobodalla Inc. (SAGE) to hold a weekly Farmers’ Market at Riverside Park, Moruya finishes on 28 February 2013. A request has been received from SAGE for an extension to the licence to enable the markets to operate on a full time basis. This report recommends that a further temporary licence be granted terminating 28 February 2014.

BACKGROUND

Following an approach from SAGE seeking approval to commence a Farmers’ Market at Riverside Park, Moruya, a report was presented to Council at its meeting held on 18 December 2012 and it was resolved:

THAT Council as Trust Manager for Eurobodalla (Central) Reserve Trust consent to the granting of a temporary licence, in accordance with Section 108 of the Crown Lands Act 1989, to conduct markets on Crown Reserve R82377 at Riverside Park, Moruya to Sustainable Agriculture and Gardening Eurobodalla Inc commencing 1 January 2013 and terminating 28 February 2013 with terms and conditions including:

1. A license fee based on $13 including GST per unpowered stall site and $16 including GST per powered stall site per market day.

2. The licensee must maintain public liability insurance in accordance with Council policy.

3. The location of the markets within the Reserve to be determined by Council staff dependent on ground and weather conditions.

4. No more than 120 market stalls be permitted at each market event. Market stalls are not to exceed 3m x 6m in area.

5. The Farmers Markets are permitted every Tuesday in January 2013 and must not commence before 5am and must conclude no later than 8pm. Retail trade associated with the Farmers Markets must not commence before 7am and must conclude no later than 7pm.

6. All market stalls where food is prepared for consumption by the public must comply with the National Code for Temporary Food Premises published by the Australian Institute of Environmental Health and National Food safety Standard 3.2.3. – ‘Food Premises and Equipment’.

7. Unless separate approval is obtained under section 68 of the Local Government Act 1993, loud speakers or sound amplifying devices are not permitted to be set-up, operated or used at any time during market activity.

8. A Waste Management Plan and Traffic Management Plan are to be prepared and approved by Council prior to issue of any license.
9. Vehicles only permitted within the market area during set-up and set-down period of the markets except stallholder vehicles required for operation of the market which will be permitted to remain within the market area during the running of the markets.

10. Council submit an application to modify the consent for markets at Riverside Park to enable the use of amplified music no louder than 75db during daylight hours only.

A request has now been received from SAGE for an extension to their current licence to enable the markets to operate on a full time basis.

CONSIDERATIONS

The Farmers’ Market has been running since the beginning of January and from information provided by SAGE increasing in popularity by both sellers and customers.

In a submission with their request, SAGE advised that by the end of January:

“The number of stallholders has increased steadily since the first market, with numbers now over 20 stalls. The diversity of products is also increasing. Customers can now purchase local milk, bread, seafood, oysters, honey, blueberries, stone fruit, mushrooms, herbal teas, fruit wines, condiments, jams and chutneys, and all seasonal vegetables and fruits.”

Economic Development

The two-month trial of the markets was to allow the level of community support as well as the impact on the Saturday Markets and on Moruya shops to be assessed.

A representative of the Moruya Country Markets has verbally advised that the Farmers’ Market has not detrimentally impacted on the Saturday markets.

SAGE advised:

“The markets are providing extra income for at least 15 families who have been unable to secure a place at the Saturday markets.”

To date no objections have been received however given the short timeframe and the fact that January is the peak tourist season it is considered reasonable to allow a longer period to fully assess the impact on local shops. It would be appropriate for an assessment of the impact on local retail businesses to be sought from the Moruya Chamber of Commerce during the extended licence period.

A twelve-month licence would also allow SAGE to determine the viability of holding markets throughout a whole year.

Legal

Moruya Riverside Park is a Crown Reserve for Public Recreation under the control of the Eurobodalla (Central) Reserve Trust for which Council is the Trust Manager.
As Trust Manager, Council can grant a licence for a period not exceeding twelve months without the consent of the Minister administering the Crown Lands Act.

A further temporary licence should contain the same conditions as the current licence.

**Financial**

Licence fees in accordance with Council’s adopted Fees and Charges would be appropriate. These are currently $13 including GST per stall for unpowered sites and $16 including GST per stall for powered sites.

**CONCLUSION**

The holding of a Farmers’ Market in Moruya appears to be having a positive outcome for the community. However it is considered appropriate to grant a further licence to operate the Farmers’ Market for a twelve month period til 28 February 2014 to fully assess the impact over a whole year.

**RECOMMENDED**

THAT Council as Trust Manager for Eurobodalla (Central) Reserve Trust consent to the granting of a temporary licence, in accordance with Section 108 of the Crown Lands Act 1989, to conduct markets on Crown Reserve R82377 at Riverside Park, Moruya to Sustainable Agriculture and Gardening Eurobodalla Inc. commencing 1 March 2013 and terminating 28 February 2014 with terms and conditions including:

1. A licence fee based on Council’s adopted fees and charges for market stalls currently $13 including GST per unpowered stall site and $16 including GST per powered stall site per market day.

2. The licensee must maintain public liability insurance in accordance with Council policy.

3. The location of the markets within the Reserve to be determined by Council staff dependent on ground and weather conditions.

4. No more than 120 market stalls be permitted at each market event. Market stalls are not to exceed 3m x 6m in area.

5. The Farmers Markets are permitted every Tuesday and must not commence before 1 pm and must conclude no later than 8pm. Retail trade associated with the Farmers Markets must not commence before 3.30pm and must conclude no later than 7pm.

6. All market stalls where food is prepared for consumption by the public must comply with the National Code for Temporary Food Premises published by the Australian Institute of Environmental Health and National Food safety Standard 3.2.3. – ‘Food Premises and Equipment’.
7. Unless separate approval is obtained under section 68 of the Local Government Act 1993, loud speakers or sound amplifying devices are not permitted to be set-up, operated or used at any time during market activity.

8. A Waste Management Plan and Traffic Management Plan are to be prepared and approved by Council prior to issue of any licence.

9. Vehicles only permitted within the market area during set-up and set-down period of the markets except stallholder vehicles required for operation of the market which will be permitted to remain within the market area during the running of the markets.
O13/20  EVENT APPLICATION - GAMAKATSU HOBIE FISHING SERIES  E07.1162

SYNOPSIS

An event application has been received to conduct a fishing tournament based from Korners Park, Batemans Bay on 14 April 2013. This report recommends that the application be approved and a temporary licence granted.

BACKGROUND

Australian Fishing Tournaments Pty Ltd has been running fishing tournaments for six years throughout New South Wales and Queensland. They have lodged an event application to use Korners Park from 5.00am to 3.30pm on Sunday, 14 April 2013 to conduct a bream fishing tournament in the Clyde River.

The area of the proposed location is shown below.

CONSIDERATIONS

The tournament involves participant’s registering at Korners Park at 6.00am, fishing in the Clyde River and returning at 1.30pm for weigh-in and presentation which takes approximately two hours.

Boats are launched from Council boat ramps and pull up on the shore adjacent to the tournament set up area in Korners Park for registration and weigh-in.

Legal

The site at Korners Park is within a Crown reserve for Public Recreation R 84531 for which Council is Trust Manager for the Eurobodalla (North) Reserve Trust.
In accordance with Section 108 of the Crown Lands Act 1989 Council as Trust Manager can issue a temporary licence for a period not exceeding 12 months.

Approval to conduct a fishing tournament is also required from the Marine Park Authority and Roads and Maritime Services.

Social Impact
This operation will provide an attraction and activity for local residents as well as bringing tourists to this area.

Financial
The licence fee for the event is proposed to be $272 including GST being the fee for the use of a Council reserve plus a general cleaning bond of $218.

CONCLUSION
This low impact event will provide an activity for local residents and bring angling tourist to the Shire.

RECOMMENDED
THAT Council, as Trust Manager for the Eurobodalla (North) Reserve Trust, consent to the granting of a temporary licence to Australian Fishing Tournaments Pty Ltd, in accordance with Section 108 of the Crown Lands Act 1989, for land based activity associated with a fishing tournament within Crown Reserve R84531 with a fee of $272 including GST from 5.00am to 6.00pm on Sunday, 14 April 2013 subject to conditions including:

(a) Obtaining all necessary approvals from the Marine Park Authority and the Roads and Maritime Services;

(b) Provision of a risk management plan;

(c) Provision of public liability insurance in the amount of $20,000,000; and

(d) The area is to be kept in a clean and tidy condition with all rubbish removed from the site at the end of the day.

KERRY FOSTER
DIRECTOR
COMMUNITY AND CORPORATE OUTCOMES
O13/21  EVENT APPLICATION - TILBA EASTER FESTIVAL  E06.0208

SYNOPSIS
An event application has been received to conduct the Tilba Easter Festival on 30 March 2013. This report recommends consent be granted.

BACKGROUND
The Tilba Easter Festival is organised through a sub-committee of the Central Tilba Chamber of Commerce.

The Festival Committee has submitted an application to run the event on Easter Saturday, 30 March 2013.

The event has been successfully held for a number of years.

CONSIDERATIONS
The proposed event will involve the following:

- the closure of Bate Street, Central Tilba at both approaches;
- the use of private land for carparking with access from Corkhill Drive;
- Corkhill Drive from Latimer Lane to Tilba Tilba being one-way southbound;
- the use of the Tilba sports oval for additional parking (Lot 3 DP 1058667);
- the potential for the interruption of traffic flow on the Princes Highway and Corkhill Drive; and
- the use of a shuttle bus to transport patrons from the carparks to Bate Street.

Assistance has previously been given in the form of the preparation of a traffic management plan with the Committee providing their own suitably qualified people to carry out the traffic management functions.

Legal
Events involving the temporary closure of a public road require consent of Council and the Police. The event will also be subject to concurrence by the Local Traffic Committee.

Conditions of Consent
In accordance with previous years consent to hold the event should be subject to conditions including the following:

- All traffic control personnel need to be suitably RTA accredited.

- The organisers are required to list the temporary food vendors and have them inspected by Council’s Ordinance Officer.

- In accordance with Council policy the organisers are required to produce evidence of public liability insurance cover in the amount of at least $20 million.

- Any temporary structures erected must comply with the requirements set out in Part H102 “Temporary Structures” of the Building Code of Australia.
O13/21  EVENT APPLICATION - TILBA EASTER FESTIVAL  E06.0208

- Provide confirmation from the Central Tilba RFS that they have been informed of the proposed road closure and will have a fire truck stationed either side of the village.

- In the interest of public health and safety, provide confirmation that the ambulance and hospital have been notified of the event.

**Financial**

The licence fee for the hire of the Tilba oval is $272 including GST per day. In accordance with Council’s policy on donations to not-for-profit groups it would be appropriate for a donation in the amount of the proposed licence fee of $272 be granted to the organisers.

Funds are available in Council’s budget allocation for donations.

**CONCLUSION**

A successfully run Tilba Easter Festival is considered to be a benefit to the Shire as an attraction for locals and tourists alike and the financial and economic benefits which flow on from this event will be significant for the area. As such the event should be supported by Council.

**RECOMMENDED**

THAT:

1. Consent be given to conduct the Tilba Easter Festival on Easter Saturday, 30 March 2013 subject to approval by the Police and the conditions set out in the body of the report.

2. Consent be given to close Bate Street and alter traffic movements along Corkhill Drive in accordance with an approved Traffic Management Plan.

3. A licence for carparking be granted over Lot 3 DP 1058667 for a term commencing 6am on 30 March 2013 and terminating at 6pm on 30 March 2013 with a rental of $272 including GST.

4. A donation in the amount of the licence fee of $272 including GST be made to the Tilba Easter Festival Committee.

5. Council staff prepare a traffic management plan for the event.

KERRY FOSTER
DIRECTOR
COMMUNITY AND CORPORATE OUTCOMES
SYNOPSIS
This report seeks endorsement of the draft Hanging Rock Concept Master Plan (Attachment) options for public exhibition.

BACKGROUND
Hanging Rock is identified as a regionally significant site in Council’s Recreation and Open Space Strategy 2010. The existing range of recreation facilities, presence of the University of Wollongong and Illawarra Institute of TAFE placement in the Shire’s regional centre provides a strategic opportunity to create an educational, recreational and cultural facilities hub to benefit the Shire.

In 2010, a Sunset Committee including representation from community groups with a relevant interest in the site was established. Under the guidance and leadership of Councillor Pollock, Council has developed a good working relationship with the committee and they have provided valuable input into the process to date.

Significant consultation with the community to define a development direction for the site has also occurred. An initial preliminary site option, schedule of areas and staging was worked up through initial engagement of consultant during 2010-11. However, this process raised a number of questions and opportunities that required further exploration and validation to be addressed if the project was to be progressed.

In March 2012 Council endorsed the engagement of strategic leisure consultant, Montemare Consulting, to undertake independent market research and statistically reliable consultation to inform a feasibility study and the development of concept options for the site. This information when complete will supplement the earlier work to give validity to the direction of Council.

ISSUES
Methodology
The six phase project methodology employed by the consultant, as outlined below, aimed to build on the work completed to date and provide a professional, independent, statistically reliable recommendation on the best way forward for the community and Council.

1. Project Inception
2. Background review
   - Site review and assessment
   - Demographic review
   - Existing facility operational review
   - Case studies
   - Industry trends
3. Market research and consultation
   - Market and customer profiling
4. Development option planning
   - Priority development options identified
   - Functional brief
   - Concept design options
   - Capital cost estimates
   - Stakeholder consultations

5. Business and management planning
   - Management model options
   - 10 year financial projections
   - Business feasibility analysis

6. Final Reporting
   - to be completed following exhibition period

Ongoing stakeholder buy in was a key feature of the approach taken with continuous engagement of the existing Sunset Committee throughout the project. To ensure adequate representation of the community and stakeholders additional representation from peak bodies and associations, arts groups and disability action groups was also sought. In additional Montemare Consulting undertook a statistically and demographically reliable survey to establish market demand, user trends and inform development options.

Stages 1 – 5 of the methodology have been completed, resulting in the development of three concept options as outlined below

1. **Option 1 – Performing Arts Model**
   Recreation including indoor sports & aquatic centre, performing arts theatre, community centre components and education expansion.

2. **Option 2 – Community Arts Hub Model**
   Recreation including indoor sports & aquatic centre, Community arts hub incorporating a black box theatre and flexible arts spaces, community centre components and education expansion.

3. **Option 3 – No Arts Model**
   Recreation including indoor sports & aquatic centre, community centre components, education expansion and no arts components.

These options and study findings to date were workshopped with Councillors and Sunset Committee members on the 5 February 2013. Broader community input is now required via exhibition to determine the community’s preferred way forward.
Exhibition

It is proposed to exhibit the three draft concept options outlined above and shown in attachment 1, along with supporting information on the project methodology, benefits, business models, capital and operating costs through the following avenues for a period of 92 days in March/April:

1. **Councils Website, Online News and Social Media**
2. **Print Media**: through media release and in Council’s noticeboard fortnightly
3. **Static Displays**: In Council’s Customer Service Centre, Moruya and at Council’s libraries in Batemans Bay, Moruya and Narooma.
4. **Listening Booths**: at at least two locations within the defined catchment area tied to community events such as markets or shopping centres.
5. **Sunset Committee involvement**: through development of a short survey/submission form that can be distributed by sunset committee members to aid in extending reach of consultation and feedback

**Strategic Links**

Both Council’s *Situation Analysis Arts and Cultural Infrastructure Report 2010* and Council’s adopted *Recreation and Open Space Strategy 2010* recognise the regional significance of the Hanging Rock site and recommend that further investigation and planning is undertaken to recognise the sites full potential.

Council’s current Recreation and Open Space Strategy 2010 recommends that Council “Undertake feasibility study, appropriate community consultation and prepare Master Plan for the development of Indoor Sports and Aquatic Centre and Regional Tennis Facility at Hanging Rock Recreation Precinct”

**Integrated Planning and Reporting**

This report addresses strategies and actions in Council’s Integrated Planning and Reporting framework as follows:

<table>
<thead>
<tr>
<th>Community Strategic Plan Link</th>
<th>Delivery Plan Link</th>
<th>Operational Plan Link</th>
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<tbody>
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<td><strong>Strategy 1.3</strong> Ensure that recreation and sporting facilities and opportunities cater for the changing needs of the Shires people</td>
<td><strong>Key Initiative 3</strong> Develop and review recreation plans and policies</td>
<td><strong>Action 4.2</strong> Prepare concepts and undertake feasibility study for the further development of Hanging Rock precinct</td>
</tr>
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</table>
CONCLUSION

The Hanging Rock Precinct Master Plan Project has significant positive outcomes for the community as a whole and is supported by existing State and Council plans including the Community Strategic Plan.

Notwithstanding these benefits, Council and the community face a difficult road ahead. These types of facilities have significant capital and ongoing operational costs, and hard decisions will need to be made in the future if Council and the community wish to proceed with the development of the Hanging Rock precinct.

However in the first instance, the significant consultation, market research and concept development work undertaken to date needs to be canvassed with the broader community to determine a preferred direction to progress to further planning.

RECOMMENDED

THAT Council endorse the draft Hanging Rock Concept Master Plan options as shown in Attachment 1 for public exhibition during March/April 2013 for a period of 42 days.

LINDSAY USHER
DIRECTOR
PLANNING AND SUSTAINABILITY SERVICES

Attach.
O13/23  NATIONAL TELEVISION AND COMPUTER EQUIPMENT RECYCLING SCHEME  E91.2036

SYNOPSIS

To accept a product stewardship agreement and enter into a partnership with co-regulatory providers to set up Designated Collection Facilities at our Waste Management Facilities to accept end of life televisions and computer equipment from the community free of charge for recycling under the National Television and Computer Recycling Scheme.

BACKGROUND

The National Television and Computer Recycling Scheme involve a combination of government regulation and industry action to take responsibility for the collection and recycling of waste televisions, computers, printers and computer products.

Under the scheme, householders and small businesses can drop-off these items for free at designated access points, which may include permanent collection sites, take-back events or through a mail-back option.

Co-regulatory approaches involve a combination of government regulation and industry action, whereby government make regulations that set the outcomes to be met, while industry funds and implements the scheme and has flexibility in determining how those outcomes are achieved.

There are currently two registered co-regulatory providers that provide services that collect and recycle both televisions and computer equipment under the scheme: DHL Supply Chain and Australian & New Zealand Recycling Platform Limited (ANZRP).

Under the regulations, either co-regulatory partner would provide full financial responsibility for the removal and recycling of unwanted televisions and computer equipment disposed of by the public at the agreed location. All televisions and computer equipment received will be collected and recycled by and paid for through a co-regulatory arrangement. The televisions and computer equipment must be accepted from the public and small businesses free of charge under the scheme.

Council commenced accepting televisions and computer products free of charge from 22 December 2012 by enacting the minute from the Ordinary Meeting on the 23 March 2010 Council report G10/24 (Amendment 10/66) that recommended:

1. Council supports the introductory fees to assist with E-Waste recycling and those fees be increased to full cost recovery for the 2011-2012 financial year until the product stewardship scheme is in place and Council bears no cost.
CONSIDERATIONS

Council’s Waste Services staff’s discussions with the co-regulatory providers and Council’s early action to recycle e-waste items and divert them from landfill has enabled early acceptance into the scheme. This will have significant benefits for residents and ratepayers by enabling free drop off and recycling of televisions and computer products. Council will be one of the first inner-regional Councils to be accepted.

From these discussions, one provider will set up at Surf Beach Waste Management Facility and the other at Brou Waste Management Facility. This will mean that Council will need to fund the transport of accepted televisions and computers from Moruya Transfer Station to either site if Council wishes to continue to provide the Transfer Station as a drop off site.

As part of the scheme, the collection points will be required to accept any unwanted computers and televisions from residents or small businesses from within and outside of our shire. Non-scheme items (DVD and video players, stereo, set top boxes, play stations etc) and televisions and computer equipment generated by large businesses are not accepted under the scheme but arrangements can be made with either provider to accept the items fee for service.

Council until 22 December 2012, charged a fee for the acceptance of all e-waste, this fee now only applies to non-scheme items. The current fees require adjusting to $5 (incl GST) to reflect the smaller size and reduced processing cost of the non-scheme items.

DHL Supply Chain utilises two out of the current three providers of e-waste processing that Council currently uses and will provide reimbursement of part of the costs already spent during this year’s Hard Waste Collection at these approved processors.

ANZRP has sub-contracted to Infoactiv who utilise other recyclers than our current recycler and have suggested a 250 tonne cap on material accepted under the scheme although this quantity is not likely to be reached by our Council.

Policy

The National Computer and Television Recycling Scheme is part of the National Waste Policy.

Environmental

Under the scheme the co-regulatory provider must recycle at least 75% of the material collected.

Asset

The co-regulatory partners will provide the storage/shipping container for the transport of televisions and computer equipment under the scheme.

Economic Development Employment Potential

Renewable Recyclers (Richmond PRA), which is one of the recyclers that DHL currently utilise to process the television and computer equipment, is a Wollongong based social enterprise.
NATIONAL TELEVISION AND COMPUTER EQUIPMENT RECYCLING SCHEME  E91.2036

Staff

From July-December 2012, 18 shipping containers (20 foot) have been filled with e-waste by staff and sent away for recycling. Each container averaged 5.2 tonnes of material and several hundred items. Recycling of e-waste only began in 2010 and has increased significantly from this time. In addition, the requirement under the scheme for our collection point (Surf Beach Waste Management Facility) to be utilised by surrounding shire’s residents may increase the amount of televisions and computer equipment entering and requiring handling at the collection site. During the first year this will need to be monitored as the scheme is yet to be rolled out to our neighbouring shires.

Strategic Links

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<tr>
<td>Strategy 6.3</td>
<td>Ongoing Operations 3</td>
<td>Action 3.1</td>
</tr>
<tr>
<td>Reduce, Reuse and Recover Waste</td>
<td>Provide waste management facilities</td>
<td>Operate the landfills at Surf Beach and Brou</td>
</tr>
</tbody>
</table>

Financial

Currently the cost to transport and recycle e-waste, excluding staff costs for packing containers, is $800-$950/tonne on average.

CONCLUSION

Becoming designated collection point(s) for the National Television and Computer Recycling Scheme will ensure ongoing diversion from landfill and provides easy access for residents and small businesses to drop off facilities.

RECOMMENDED

THAT Council:

1. Delegates authority to the General Manager to negotiate with and enter into a Product Stewardship Agreement with DHL Supply Chain and/or Australian & New Zealand Recycling Platform Limited to become Designated Collection Facilities at Surf Beach and Brou Waste Management Facilities.

2. Continue to accept televisions and computer equipment free of charge at all Waste Management Facilities from residents and small businesses.

3. Continue to recycle and introduce a $5 (incl GST) per item fee for non-scheme items at all Waste Management Facilities.

LINDSAY USHER
DIRECTOR
PLANNING & SUSTAINABILITY SERVICES
O13/24 DEVELOPMENT APPLICATION NO: 699/12– NAROOMA
RETROSPECTIVE CHANGE OF USE

Applicant: Lars Axel
Land: Lot 884 DP 726754, Lease 205517 Riverside Drive, Narooma
Area: 1,925sqm
Setbacks: Not applicable
Height: Not applicable
Zone: Unzoned and 6a1 – Public Open Space
Current Use: Commercial (Unapproved caretakers facility and approved Chandlery, Workshop and Marina)
Proposed Use: Commercial use with ancillary caretakers facility
Description: Part Change of Use – Caretakers Accommodation Facility
Permitted in Zone: Yes, with the consent of Council
DA Registered: 14 June 2012
Reason to F&S: Development is a departure from accepted policy.
Recommendation: APPROVAL

SYNOPSIS

The applicant seeks approval to change the use of part of a boat shed structure from a previously approved restaurant to a caretaker’s accommodation facility which is ancillary to the remainder of the boat shed, being a chandlery and workshop. The boat shed is located above the waters of Wagonga Inlet and has a floor level of 1.32 metres AHD.

This change of use involves the conversion of the restaurant dining room, kitchen and bathroom facilities to a caretaker’s accommodation facility comprising one bedroom, kitchen, living/dining room and bathroom facilities. This proposed use is considered to fall within the meaning of a dwelling-house development required for the management of the chandlery and workshop, and is a permitted land use within the zone.

During the exhibition period no submissions were received.

The subject site is flood affected and therefore assessed under the NSW Floodplain Development Manual and Council’s Interim Sea Level Rise Adaptation Policy.

The report recommends approval of the application subject to conditions of consent.
O13/24 DEVELOPMENT APPLICATION NO: 699/12– NAROOMA
RETROSPECTIVE CHANGE OF USE  90.1649.D

BACKGROUND


August 2000 (DA1136/00): Development consent granted for alterations and additions to restaurant.

August 2008 (DA126/06): A development application was lodged and later withdrawn for a dwelling and boat shed. The reason for the withdrawal was the failure of the applicant to be able to secure the owner’s consent.

POLICY

The proposed development has been assessed against the matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979 and the following relevant legislation, planning instruments and policies.

State Environmental Planning Policy (SEPP) 71 – Coastal Protection

The subject site is identified as a Sensitive Coastal Location as it is within 100 metres of the mean high water mark.

The proposed development is consistent with the aims of the SEPP and satisfies the relevant matters for consideration under Clause 8. The most relevant matter for consideration is ‘the suitability of development given its type, location and design and its relationship with the surrounding area’. The proposed caretaker’s facility is contained within the existing building which is in keeping with the bulk and scale of the surrounding built form. The proposal is therefore deemed to be of minimal impact and satisfies the requirements of SEPP 71.

Eurobodalla Urban Local Environmental Plan 1999 (ULEP)

The development application was lodged on 15 June 2012 prior to the gazettal of the Eurobodalla Local Environmental Plan 2012. The development application must therefore be determined under the Urban Eurobodalla Local Environmental Plan 1999 (ULEP 1999) pursuant to the savings provisions in Clause 1.8A of the Eurobodalla Local Environmental Plan 2012.

The majority of the subject land is unzoned with a small portion identified as zone 6a1 – Public Open Space.

Under clause 53(4) of the ULEP 1999, Council must not grant consent for development on unzoned land that would be prohibited in a zone adjoining the land. Dwelling-houses required for the management of the reserve or facilities on the reserve are permitted with consent in 6a1 zoned land under clause 44(2). Therefore this proposal is considered to be consistent with the aims and objectives of the ULEP 1999.
Note: Clause 45 states that consent must not be granted for development on Community Land if it is inconsistent with an adopted Plan of Management for that land. There is no Plan of Management pertaining to the land therefore clause 45 does not apply.

Land Use Status
The proposal for a caretaker’s facility is supportable on the basis that it is ancillary to the existing commercial use (chandlery/workshop & marina) which must be the dominant/primary use of the site.

The Department of Planning and Infrastructure recently published draft guidelines on how to characterise development. The ‘considerations for characterisation’ identified in this draft document have been used in assessing the validity of the proposed ‘ancillary’ use and is outlined in the following table:

<table>
<thead>
<tr>
<th>CONSIDERATIONS FOR CHARACTERISTICS</th>
<th>COMMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>• What is the amount of land to be used for a certain component, relative to the amount of land proposed to be used for other purposes?</td>
<td>The caretaker’s residence exceeds the floor area of the chandlery, workshop and marina, however it is utilising the existing floor space previously used as a restaurant. The caretaker’s facility is comparable to what is fundamentally considered to be the minimum elements of a functional caretaker’s facility (eg 1 bedroom, living/dining, kitchen and bathroom).</td>
</tr>
<tr>
<td>• Evidence of a purpose that is inconsistent with the dominant purpose is likely to undermine a claim that a component is ancillary</td>
<td>The primary purpose for the proposed caretaker’s facility is to increase security to the chandlery, workshop and marina, and thus reduce the risk and exposure to damage. The longevity of the proposed caretaker’s facility is reliant upon the dominant use of the land. Therefore the caretaker’s facility is considered to be ancillary to the chandlery, workshop and marina operating on site and would only be occupied by the owner/manager of the business. Should the business cease to trade or operate, the caretaker’s facility would be conditioned to be vacated until such time as another approved commercial business commences operation to which the caretaker’s residence is ancillary.</td>
</tr>
<tr>
<td>• If the component is temporary, it is more likely to be ancillary; if it is regular (that is, will constitute an ongoing use for a long period of time), it is likely to be an independent use.</td>
<td></td>
</tr>
<tr>
<td>• If the component goes beyond what is reasonably required in the circumstances for the development to implement the dominant purpose, it is likely to be an independent use(regardless of whether it has ancillary qualities).</td>
<td></td>
</tr>
<tr>
<td>• Related components of a development are likely to have an ancillary relationship,</td>
<td>Not considered relevant to the proposed application.</td>
</tr>
</tbody>
</table>
CONSIDERATIONS FOR CHARACTERISTICS | COMMENT
--- | ---
*although this is not necessarily determinative of such a relationship.* | 

- **Physical proximity of the component to the rest of the development is likely to be evidence of an ancillary relationship, although again not necessarily determinative.**

The caretaker’s facility is within the existing building under the same roof line as the chandlery and workshop. This provides a greater means of security and is evidence of an ancillary relationship.

In considering the above, the ‘ancillary’ use is deemed to be well founded.

**Eurobodalla Interim Sea Level Rise Adaption Policy**

The site is identified as flood prone and subject to potential sea level rise therefore this assessment needs to consider whether compliance with Part 11 of this Policy relating to Planning Controls is required.

The development is different to a standard residential development due to the ancillary nature of the caretaker’s facility to the chandlery and workshop. There is no change to the primary existing use of the site upon which the ancillary caretaker’s facility is directly dependent, therefore compliance with Part 11 is not required.

However, to manage the risk by coastal hazards and sea level rise, compliance with Part 10.1 Planned Retreat is appropriate.

The boat shed has a floor level of 1.32 metres AHD, therefore the trigger is proposed to be set at 1.32 metres AHD. Council’s ‘retreat’ requirement will form part of the approval to outline the actions required to be undertaken when inundation occurs four or more times in any twelve (12) month period.
The flooding and ocean inundation mapping for Narooma in accordance with Council Policy, the adopted flood level for the 1 in100 year storm event is 2.2m AHD. As the floor level of the building is 1.32m AHD the building will be inundated during flood events. Council has considered the risk, taking into consideration that it is an existing building, the nature of the use and it not being a permanent residence.

Council does not currently have a Floodplain Risk Management Plan in place for the subject locality. Appendix J Floodplain Risk Management Options identifies three ways of managing flood risk to reduce flood losses and these have been considered below:

1. **Property Modification**: by modifying existing properties (for example, house raising) and/or by imposing controls on property and infrastructure development;
   
   Section J2.1.2 (d) floors levels identifies that the common practice is to set a minimum floor level, particularly for habitable rooms in residential buildings. Altering the minimum floor level or imposing property modification measures to the subject development is considered unreasonable given the development is utilising an existing building, no construction is proposed and the use is proposed to be ancillary to the primary purpose of the land.

2. **Response Modification**: by modifying the response of the population at risk to better cope with a flood event (for example improving community flood readiness); and
   
   To address the flood risk issue, the applicant was required to submit of a Flood Evacuation Plan. A State Emergency Service FloodSafe Plan was prepared and submitted by the applicant and the implementation of this plan is proposed to form part of the approval.

3. **Flood Modification**: by modifying the behaviour of the flood itself (for example construction of a levee to exclude floodwaters from an area).
   
   This is not considered relevant given the nature of the development and the extent to which such a modification would be environmentally and economically unsustainable.

**Parking and Access Code**

It is considered that the site has adequate provision for vehicular access and parking. Although a caretaker’s facility is not specifically defined in the Code, a dwelling house is required to provide two spaces. Development Application No: 1136/00 (alterations and additions to restaurant) proposed to utilise eight existing car spaces (approved plan no. 00/1136, dated 25/08/00) for the restaurant.

The proposed caretaker’s facility given its use will be conditionally linked to the operation of the chandlery and workshop. This is considered to result in significantly reduced parking demand to a restaurant, therefore the existing provision of access and parking is considered to be satisfactory.
ENVIRONMENTAL

No removal of vegetation or disturbance to the sea bed is proposed nor will be necessary to accommodate the development.

CONSULTATION

The application was notified for a period of fourteen days in accordance with Council’s Advertisement and Notification Code and no submissions were received during this period.

CONCLUSION

The application for change of use from a restaurant to a caretaker’s facility ancillary to the existing chandlery, workshop and marina, has been assessed and apart from the departure from Council’s Sea Level Rise Adaptation Policy and flood management requirements, it is considered to be consistent with the remaining relevant planning instruments and policies that apply to the subject site.

The approval of this proposal is likely to add to the viability of the existing chandlery, workshop and marina. Conditions can be applied to link the occupation of the caretaker’s facility with the operation of the existing chandlery, workshop and marina to manage flood and sea level risks.

RECOMMENDED

THAT Development Application No 699/12 for existing commercial use with ancillary caretaker’s facility on Lot 884 DP 726754 Lease 205517 Riverside Drive, Narooma dated 14 June 2012 as shown on Plan Number 12/699 and described in details accompanying the application be APPROVED under Section 80(1) of the Environmental Planning and Assessment Act, 1979 subject to the conditions set out below. These conditions have been applied to this consent for the following reasons:

- ensure that the proposed development:
  - achieves the objectives of the Environmental Planning and Assessment Act, 1979;
  - complies with the provisions of all relevant Environmental Planning Instruments;
  - is consistent with the aims and objectives of Council’s Development Control Plans, Codes and Policies.

- To ensure the protection of the amenity and character of land adjoining, and in the locality of the proposed development.

- To minimise any potential adverse environmental, social or economic impacts of the proposed development.

- To ensure the development does not conflict with the public interest.

GENERAL CONDITIONS
1. This development must be carried out in accordance with the plans stamped and numbered 12/699 and supporting specifications and documentation, or as modified by these conditions or as noted in red by Council on the approved plans. All building work must be carried out in accordance with the requirements of the Building Code of Australia.

**Note:** Any alteration to the plans and/or documentation may require the lodgement of an application to modify the consent under s96 of the Environmental Planning and Assessment Act (EPA Act) 1979, or a fresh development application. Your Principal Certifying Authority should be consulted prior to any works contrary to this consent being carried out.

Where there is an inconsistency between the documents lodged with this application and the following conditions, the conditions shall prevail to the extent of that inconsistency. [2.05]

2. The caretaker’s facility is approved as ancillary to the existing chandlery and workshop operating on site and shall only be occupied by the owner/manager of the business. Should the business cease to trade or operate, the caretaker’s facility shall be vacated.

3. **Coastal Inundation – Managed Retreat**
   In accordance with Council’s Sea Level Rise Adaption Policy the subject land is located in an area defined as a high risk precinct and will trigger a retreat response at some time in the future.

   a) The trigger to implement the managed retreat will be taken as when high tides affect the impermanence of the land form and ability to maintain access to the property.

   The trigger for this development is:

   - Inundation by a high tide at RL 1.32 metres AHD more than four times in any twelve (12) month period.

   The development and all associated structures must be removed and the land form returned to its predevelopment state and suitably reinstated to the satisfaction of Council.

   b) **Restriction on Title**
      A covenant is to be attached to the land title that will require that the caretaker’s residence use ceases and any works associated with this use be removed from the site when affected by coastal processes.

      Documentary evidence is to be provided to the Principal Certifying Authority and Council that a restriction as-to-user, pursuant to the provisions of Section 88E of the Conveyancing Act, 1919, has been placed on the title to the land, the subject of this consent, stating:
“The use of the land as a caretaker’s residence permitted by the development consent must cease if at any time the coastal inundation by a high tide of 1.32 metres AHD four (4) times in any twelve (12) month period. The works used in connection with the development must be removed immediately to an approved location by the applicant. In this restriction coastal inundation means water levels of 1.32 metres AHD are recorded on high tides more than four times in any twelve (12) month period.”

**OCCUPATION CERTIFICATE REQUIRED**

4. Within three (3) months of the date of issue of this consent, an Occupation Certificate is required to be obtained.

5. **S88E Restriction - Sea Level Rise Adaption**
   Prior to the issue of any Occupation Certificate the Council is to be provided with documentation that confirms that the Sea Level Rise Adaption requirement (refer Condition 3) has been registered as a restriction on the land title under Section 88E of the *Conveyancing Act 1919*.

6. Evidence of implementation of the FloodSafe Plan will be necessary within three (3) months of the date of issue of this consent.

7. **Fire Safety Certificate**
   A Fire Safety Certificate shall be furnished to the Principal Certifying Authority for all the “Essential Fire or Other Safety Measures” forming part of this approval prior to issue of an Occupation Certificate. A copy of the Fire Safety certificate must be submitted to Council by the Principal Certifying Authority with the Occupation Certificate.

**ADVISORY NOTES**

8. **Ocean Location**
   Council is of the opinion that the land is located within a corrosive environment, ie. it is located within 1km from breaking surf, within 100m of salt water not subject to breaking surf or heavy industrial areas. Materials used in construction may require a higher level of corrosion protection in accordance with relevant Australian Standards and the Building Code of Australia.[10.06]

9. **PCA Compliance**
   This Development Application has been subject to a merit based assessment. The plans lodged and approved have not been assessed against the provisions of the Building Code of Australia (BCA). It is your responsibility to ensure the plans lodged with any Construction Certificate application show full compliance to all provisions of the BCA.
10. **Flooding Liability**
The land may be subject to flooding and the development has been assessed using best available information concerning the likelihood of flooding at the date of determination. If the land is flooded Council will not, pursuant to Section 733 of the Local Government Act 1993, incur any liability in respect of the granting of this consent. [7.10]

11. **Classification of building**
The building to which this consent relates to is classified as a Class 4. Note: This statement is required pursuant to Clause 100(1)(g) of the Environmental Planning and Assessment Regulation 2000 where there is a change of use and no Construction Certificate required.

12. **Sea Level Rise Liability**
This land may be subject to sea level rise and this development has been assessed using the best available information regarding the likelihood of inundation and/or coastal erosion at the date of determination. The infrastructure in this locality (such as sewer, water, stormwater and roads) may also be subject to sea level rise. At the granting of consent there is no commitment or intention by Council to improve or maintain infrastructure should this be impacted by sea level rise in the future.

If the land is impacted by sea level rise in the future, Council will not, pursuant to Section 733 of the Local Government Act 1993, incur any liability in respect of the granting of this consent. [7.13]

LINDSAY USHER
DIRECTOR
PLANNING AND SUSTAINABILITY SERVICES
O13/25  TENDER – CONSTRUCT AND INSTALL HEATING, VENTILATION AND AIR CONDITIONING AT MORUYA ADMINISTRATION CENTRE  E11.5391

SYNOPSIS

1. To provide Council with a status report on the calling for tenders for the Installation of the Heating, Ventilation and Air Conditioning (HVAC) at Eurobodalla Shire Council’s Moruya Administration Centre.

2. To recommend that Council cease to proceed with this request for tender or any subsequent process and issue a revised, amended and updated Request for Tender for the Installation of the Heating, Ventilation and Air Conditioning at Eurobodalla Shire Council’s Moruya Administration Centre, with separate portions for mechanical, electrical and structural components of the works.

BACKGROUND

Council contracted Exergy Energy Consultants to undertake energy efficiency audits of five of Council’s highest energy using facilities to review their energy use and the potential to improve the carbon footprint of these sites. The Moruya Administration Centre was specifically highlighted in the recommendations with a focus on the poor condition of the mechanical plant HVAC system, and the need for a comprehensive strategic review of the existing systems.

As a result of these recommendations, Northrop Engineers completed a comprehensive review of the HVAC systems and provided three replacement/renewal options to Council, with a recommendation of replacement of all HVAC plant with a chilled water system.

Tenders were advertised with a closure date of Tuesday 6 March 2012. Three tenders were received including an alternative, non-conforming tender.

A report was presented to Council and Council subsequently resolved on 22 May 2012 (Minute No 12/128) as follows:

That the tender from Climatech ACT Pty Ltd to Construct and Install Heating, Ventilation and Air Conditioning at Moruya Administration Centre, be accepted.

Whilst the tender received was marked as a complying tender, subsequent communications with the contractor have identified significant omissions of structural components from their priced tender.

It should be noted that no contract was entered into between Council and the contractor.

Due to the variation from the original tender, it was warranted to seek legal advice.
O13/25  TENDER – CONSTRUCT AND INSTALL HEATING, VENTILATION AND AIR CONDITIONING AT MORUYA ADMINISTRATION CENTRE  E11.5391

ISSUES

Legal Advice

A legal opinion was sought as to the best way forward for Council and a copy of this is attached as a Confidential attachment for Councillors.

An excerpt of the advice from Council’s Solicitors on the way for Council to now proceed is as follows:

Council:

a. cease to proceed with the process outlined in clause 11 of that Request for Tender and any subsequent process;
b. not send any letter of acceptance to any of the tenderers, despite the resolution made by Council on 22 May 2012 (Minute No 12/128);
c. not enter into any contracts with any of the tenderers despite the resolution made by Council on 22 May 2012 (Minute No 12/128);
d. advise all tenderers that Council has decided not to proceed with any contract subject to that Request for Tender.

Council issue a revised, amended and updated Request for Tender for the Installation of the Heating, Ventilation and Air Conditioning at Eurobodalla Shire Council’s Administration Centre, with separate portions for mechanical, electrical and structural components of the works.

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<td>Organisation Support</td>
<td>Action 9.1</td>
</tr>
<tr>
<td>Develop a clean energy future</td>
<td>ESC Admin Building – replacement air handling system and building additions</td>
<td>Replace Council administration building air handling system</td>
</tr>
</tbody>
</table>

Financial

The original tender price received was within the budget allocated for this project. However, there is a likelihood that the retendered project will require an increase in funds which will be implemented over the 2012/2013 and 2013/2014 financial years.

It is estimated that following the upgrade of the HVAC, savings achieved from the running costs of the plant will be in the range of $22,000 per annum, based on the baseline of the existing system and electricity contract rates.
O13/25 TENDER – CONSTRUCT AND INSTALL HEATING, VENTILATION AND AIR CONDITIONING AT MORUYA ADMINISTRATION CENTRE

Environmental

The upgrade of the HVAC system at the Moruya Administration Centre is a priority element identified in Council’s Greenhouse Action Plan to reduce energy and Council’s operational carbon footprint. Design estimates of the new HVAC system provided by the engineers indicate a long term reduction in operating costs, and a saving of approximately 139,800kWhr of electricity or 148,000kgs of carbon dioxide over the existing system.

Asset

Energy efficiency audits highlighted the poor performance of the existing HVAC system of Council’s Administration Centre and the poor condition of the ageing mechanical plant within the building.

Subsequent assessments confirmed the original concerns that the majority of the plant which was installed in 1980, has either exceeded its useful life or has less than five years of life remaining.

The ongoing cost of operations and maintenance of the HVAC will be reduced upon installation of the new system. Maintenance programs will be implemented to ensure the longevity of its effective life is realised.

CONCLUSION

To ensure transparency in procurement, fairness and equality for all tenderers involved, it has been deemed appropriate to issue a revised, amended and updated Request for Tender for the Installation of the Heating, Ventilation and Air Conditioning at Eurobodalla Shire Council’s Administration Centre to allow a wider range of contractors to partake in the tender process.

RECOMMENDED

THAT:

1. Council, in accordance with the rights reserved to Council in the Request for Tenders for the Installation of the Heating, Ventilation and Air Conditioning at Eurobodalla Shire Council’s Moruya Administration Centre, cease to proceed with the process outlined in this request for tender or any subsequent process.

2. Council:
   a. cease to proceed with the process outlined in clause 11 of that Request for Tender and any subsequent process;
   b. not send any letter of acceptance to any of the tenderers, despite the resolution made by Council on 22 May 2012 (Minute No 12/128);
   c. not enter into any contracts with any of the tenderers despite the resolution made by Council on 22 May 2012 (Minute No 12/128);
   d. advise all tenderers that Council has decided not to proceed with any contract subject to that Request for Tender.
3. Council issue a revised, amended and updated Request for Tender for the Installation of the Heating, Ventilation and Air Conditioning at Eurobodalla Shire Council’s Administration Centre, with separate portions for mechanical, electrical and structural components of the works.

WARREN SHARPE
DIRECTOR
INFRASTRUCTURE SERVICES

Crs.
O13/26  RELOCATION OF UNDERGROUND STREET LIGHTING, LOW VOLTAGE AND HIGH VOLTAGE ELECTRICAL CABLES AT VESPER STREET  E12. 6359.P

SYNOPSIS

To advise Council of tenders received for the asset relocation of underground street lighting, low voltage and high voltage electrical cables at Vesper Street Batemans Bay and recommend the appointment of the preferred tenderer.

This report contains a confidential attachment for Councillors’ information only pursuant to Section 10A (2) of the Local Government Act 1993.

BACKGROUND

Council advertised a tender for the relocation of underground street lighting, low voltage and high voltage electrical cables at Vesper Street Batemans Bay between 11 December 2012 and 22 January 2013. The tender involved the relocation of existing overhead high voltage and low voltage cables and street lighting to allow for the construction of the Vesper Street Service Lane. The construction of the service lane is being managed by Council on behalf of local landowners.

Two tenders were received by tender closing date 22 January 2013.

CONSIDERATIONS

Tenders

Tenders were received from:

- South East Power Lines and Electrical Services Pty Ltd
- Poles and Underground Pty Ltd

The tender documents permitted tenderers to submit a non-conforming tender provided they submitted a conforming tender. This was done to permit tenderers to submit alternate proposals that would still deliver high quality outcomes for the community. No alternative tenders were received.

The tenders have been assessed based on price and on the basis of their being accredited with Essential Energy as Level 1 Service Providers.

The tender considered to offer the best value option is shown in the confidential attachment to this report and will be recommended for adoption.

Environmental

A Review of Environmental Factors has been completed by Council, which addresses the likely impacts of the project on the environment and determines appropriate actions to mitigate impacts on the environment e.g. erosion and sediment control measures.
Prior to commencement of work, the contractor must submit a Construction Environmental Management Plan detailing how the environment will be managed through the construction process.

**Asset**
The relocation of underground street lighting, low voltage and high voltage electrical cables at Vesper Street Batemans Bay forms part of the construction of the Vesper Street Service Lane. The electricity assets become the property and maintenance responsibility of Essential Energy once works are completed.

**Social Impact**
The relocation of underground street lighting, low voltage and high voltage electrical cables at Vesper Street Batemans Bay will improve the visual appeal of this location and will have minimal impact on the community during the construction phase.

**Economic Development Employment Potential**
The Vesper Street project will stimulate economic development through the provision of local resources. The project will be constructed by a contractor and supervised and managed by Council.

**Financial**
Funding for the construction of relocation of underground street lighting, low voltage and high voltage electrical cables at Vesper Street Batemans Bay is provided in full by local landowners through a Deed of Agreement.

**Strategic Links**

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<tr>
<td>7.1 Help our local economy grow</td>
<td>4. Support initiatives to increase employment opportunities in the Shire</td>
<td>6. Provide and maintain a safe and reliable roads and transport network</td>
</tr>
</tbody>
</table>

**CONCLUSION**
The relocation of underground street lighting, low voltage and high voltage electrical cables at Vesper Street Batemans Bay forms part of the construction of the Vesper Street Service Lane.

The tender considered to offer the best value option for this project has been assessed and is shown in the confidential attachment to this report and will be recommended for adoption.
O13/26  RELOCATION OF UNDERGROUND STREET LIGHTING, LOW VOLTAGE AND HIGH VOLTAGE ELECTRICAL CABLES AT VESPER STREET

RECOMMENDED

THAT the tender ranked 1 in the confidential attachment to this report, Relocation of Underground Street Lighting, Low Voltage and High Voltage Electrical Cables at Vesper Street Batemans Bay be accepted.

WARREN SHARPE
DIRECTOR
INFRASTRUCTURE SERVICES

Clrs