

CUMBERLAND CITY COUNCIL

Extraordinary Council Meeting

*Wednesday, 16 October 2024
at 6:00pm*

Cumberland City Council Chambers
Merrylands Service Centre, 16 Memorial Avenue, Merrylands

Councillor Contact Details

Granville Ward

| | | |
|--------------------|--------------|--------------------------------------|
| Clr Steve Christou | 0419 651 187 | Steve.Christou@cumberland.nsw.gov.au |
| Clr Joseph Rahme | 0418 995 471 | Joseph.Rahme@cumberland.nsw.gov.au |
| Clr Ola Hamed | 0405 070 007 | Ola.Hamed@cumberland.nsw.gov.au |

Greystanes Ward

| | | |
|--------------------------|--------------|---|
| Clr Diane Colman | 0400 279 200 | Diane.Colman@cumberland.nsw.gov.au |
| Clr Eddy Sarkis | 0425 348 000 | Eddy.Sarkis@cumberland.nsw.gov.au |
| Clr Nadima Kafrouni-Saba | 0447 605 158 | Nadima.KafrouniSaba@cumberland.nsw.gov.au |

Regents Park Ward

| | | |
|------------------|--------------|------------------------------------|
| Clr Enver Yasar | 0497 428 929 | Enver.Yasar@cumberland.nsw.gov.au |
| Clr Helen Hughes | 0400 264 534 | Helen.Hughes@cumberland.nsw.gov.au |
| Clr Steve Yang | 0448 836 197 | Steve.Yang@cumberland.nsw.gov.au |

South Granville Ward

| | | |
|------------------|--------------|------------------------------------|
| Clr Paul Garrard | 0414 504 504 | Paul.Garrard@cumberland.nsw.gov.au |
| Clr Ahmed Ouf | 0436 936 553 | Ahmed.Ouf@cumberland.nsw.gov.au |
| Clr Glenn Elmore | 0418 459 527 | Glenn.Elmore@cumberland.nsw.gov.au |

Wentworthville Ward

| | | |
|------------------------|--------------|--|
| Clr Michael Zaiter | 0418 432 797 | Michael.Zaiter@cumberland.nsw.gov.au |
| Clr Suman Saha | 0419 546 950 | Suman.Saha@cumberland.nsw.gov.au |
| Clr Sujan Selventhiran | 0427 104 940 | Sujan.Selventhiran@cumberland.nsw.gov.au |

Statement of Ethical Obligations

Oath or Affirmation of Office

In taking the Oath or Affirmation of Office, each Councillor has made a commitment to undertake the duties of the office of councillor in the best interests of the people of Cumberland and Cumberland City Council and that they will faithfully and impartially carry out the functions, powers, authorities and discretions vested in them under the Local Government Act 1993 or any other Act to the best of their ability and judgment.

Conflicts of Interest

A councillor who has a conflict of interest in any matter with which the council is concerned, and who is present at a meeting of the council when the matter is being considered, must disclose the interest and the nature of the interest to the meeting as soon as practicable. Both the disclosure and the nature of the interest must be recorded in the minutes of the Council meeting where the conflict of interest arises. Councillors should ensure that they are familiar with Parts 4 and 5 of the Code of Conduct in relation to their obligations to declare and manage conflicts of interests.

For information on Council services and facilities please visit www.cumberland.nsw.gov.au

ORDER OF BUSINESS

- 1 Opening Prayer / Acknowledgement of Country / National Anthem**
- 2 Notice of Live Streaming of Council meeting**
- 3 Apologies / Requests for Leave of Absence**
- 4 Declarations of Pecuniary & Non Pecuniary Conflicts of Interest**

- 5 Reports to Council**
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- 6 Confidential Attachments from Open Reports**

Item No: EC10/24-1

COMMENCEMENT OF COUNCIL TERM - COUNCILLOR OATH OF OFFICE

Directorate: Governance and Risk
Responsible Officer: Director Governance and Risk
Community Strategic Plan Goal: *Providing Local Leadership*

SUMMARY

This item of business relates to Councillors undertaking the Oath of Office prior to considering any Council business at the commencement of the Council term.

RECOMMENDATION

That all Councillors undertake the Oath or Affirmation of Office, in accordance with Section 233A of the *Local Government Act 1993*.

REPORT

This item of business relates to Councillors undertaking the Oath or Affirmation of Office prior to considering any Council business at the commencement of the Council term.

Section 233A of the Local Government Act 1993 states the following:

- (1) A councillor must take an oath of office or make an affirmation of office at or before the first meeting of the council after the councillor is elected.
- (2) The oath or affirmation may be taken or made before the general manager of the council, an Australian legal practitioner or a justice of the peace and is to be in the following form—

Oath I [name of councillor] swear that I will undertake the duties of the office of councillor in the best interests of the people of Cumberland Council and the Cumberland Council and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the Local Government Act 1993 or any other Act to the best of my ability and judgment.

Affirmation I [name of councillor] solemnly and sincerely declare and affirm that I will undertake the duties of the office of councillor in the best interests of the people of Cumberland Council and the Cumberland Council and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the Local Government Act 1993 or any other Act to the best of my ability and judgment.

- (3) A councillor who fails, without a reasonable excuse, to take the oath of office or make an affirmation of office in accordance with this section is not entitled to attend a meeting as a councillor (other than the first meeting of the council after the councillor is elected to the office or a meeting at which the councillor takes the oath or makes the affirmation) until the councillor has taken the oath or made the affirmation.

(4) Any absence of a councillor from an ordinary meeting of the council that the councillor is not entitled to attend because of this section is taken to be an absence without prior leave of the council.

(5) Failure to take an oath of office or make an affirmation of office does not affect the validity of anything done by a councillor in the exercise of the councillor's functions.

(6) The general manager must ensure that a record is to be kept of the taking of an oath or the making of an affirmation (whether in the minutes of the council meeting or otherwise).

All Councillors must undertake an Oath or Affirmation of Office before considering any Council business at a Council meeting.

The General Manager will individually ask each Councillor at the meeting to read out their Oath or Affirmation of Office. Councillors will then be invited by the General Manager to sign their Oath or Affirmation of Office Certificate. This will be noted in the Council meeting minutes, along with a copy of all Councillors signed Oath or Affirmation of Office certificate appended.

COMMUNITY ENGAGEMENT

There are no consultation processes for Council associated with this report.

POLICY IMPLICATIONS

There are no policy implications for Council associated with this report.

RISK IMPLICATIONS

Councillors must take an Oath or Affirmation of Office prior to considering any Council business at a meeting.

FINANCIAL IMPLICATIONS

There are no financial implications for Council associated with this report.

CONCLUSION

Council must now proceed to undertake their Oath of Office to ensure they are compliant with the *Local Government Act 1993*.

ATTACHMENTS

1. Councillor Oath/Affirmation [↓](#)

**DOCUMENTS
ASSOCIATED WITH
REPORT EC10/24-1**

**Attachment 1
Councillor Oath/Affirmation**



CUMBERLAND
CITY COUNCIL

Councillor Oath of Office

Oath

I [name of councillor] swear that I will undertake the duties of the office of councillor in the best interests of the people of Cumberland and the Cumberland Council and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the Local Government Act 1993 or any other Act to the best of my ability and judgment.



CUMBERLAND
CITY COUNCIL

Councillor Oath of Office

Affirmation

I [name of councillor] solemnly and sincerely declare and affirm that I will undertake the duties of the office of councillor in the best interests of the people of Cumberland and the Cumberland Council and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the Local Government Act 1993 or any other Act to the best of my ability and judgment.

Item No: EC10/24-2

ELECTION OF MAYOR AND DEPUTY MAYOR

Directorate: Governance and Risk
Responsible Officer: Director Governance and Risk
Community Strategic Plan Goal: *Providing Local Leadership*

SUMMARY

This report outlines the procedures for the election of the Mayor and Deputy Mayor (if determined as required), and recommends that Council conduct an election process to accord with the requirements of the *Local Government Act 1993*.

RECOMMENDATION

That Council:

1. **Endorse the report.**
2. **Determine if a Deputy Mayor will be elected and, determine the term of the Deputy Mayor (if required – cannot exceed the term of the Mayor).**
3. **Determine the method of voting for the Election of the Mayor and Deputy Mayor.**
4. **Elect a Mayor for the ensuing term to no later than midnight 30 September 2026.**
5. **Elect a Deputy Mayor for the ensuing term for the period as determined by Council (if required).**

REPORT

Council is required to conduct a Mayoral election within 3 weeks of the Declaration of Results of the Ordinary Council election, in accordance with Section 290 (1)(a) of the *Local Government Act 1993*.

Deputy Mayors can hold their office for the Mayoral term or a shorter term as specified by the Council's resolution. It should be noted however, that councils are not required to have a Deputy Mayor. Council has since September 2017, had a Deputy Mayor elected.

Effectively, the Mayor elected will hold office until Council conducts a Mayoral election at a Council meeting in September 2026 as required under Section 290 of the *Local Government Act 1993*. The Deputy Mayor will hold office for a period in accordance with Council's resolution, which cannot be longer than the Mayoral term but can be shorter if Council desires.

Nominations

Under the *Local Government Act 1993*, Councillors may be nominated without notice for election as Mayor or Deputy Mayor. The nomination must be in writing by two or more Councillors (one of whom may be the nominee) and is not valid unless the

nominee has indicated consent to the nomination in writing. The nomination forms can be delivered to the Returning Officer any time up to and including the calling of nominations for each election. A copy of the Nomination forms are attached to this report.

Procedures for Mayoral Election

The Mayoral Election will be conducted in accordance with the attached *Office of Local Government – Mayoral Election Procedures* and Schedule 7 of the *Local Government (General) Regulation 2021*. Attachment 1 to this report outlines the Office of Local Government – Mayoral Election Fact Sheet. The General Manager is the nominated Returning Officer for the election of Mayor and Deputy Mayor. The Director Governance and Risk will assist the Returning Officer with the election process.

The Returning Officer will indicate that the election will be conducted in accordance with the Local Government Act and Regulation. Council is to determine the method of voting to be used for the election of Mayor and Deputy Mayor.

If only one Councillor is nominated, that Councillor is duly elected. If more than one Councillor is nominated, Council is to proceed to determine the method of voting via one of the following options:

- Open voting – i.e. by show of hands.
- Ordinary ballot – i.e. a secret ballot (place an “X” against the candidate of their choice);
- Preferential ballot – i.e. place 1, 2, 3 etc. against each candidate;

Open voting is the most transparent method of voting at Council meetings. It allows the community to see and understand the voting that has occurred. It is also the voting method which reflects normal Council voting methods. If Council decided to conduct the election by preferential or ordinary ballot, then the General Manager will conduct the election as outlined in the Regulations and as per the attached Office of Local Government – Mayoral Election Procedures.

Once the Mayor is declared elected by the Returning Officer, the Mayor takes up his or her seat. The Mayor will then ask the General Manager to conduct the election of Deputy Mayor (if required).

The Returning Officer (General Manager) then conducts the voting for Deputy Mayor in the same method as above.

Committee Representation

Following the Mayoral election, in the event of a change in Office, any Committees or external bodies where the Mayor is Council’s representative will be notified accordingly.

Council Meeting Schedule

It is recommended that Council adopt a meeting schedule for the remainder of 2024 and for the calendar year of 2025. This proposed schedule is attached as Attachment 4. It is recommended that Council meet a minimum of 10 times per year, with the recess period being December/January. Council will generally meet on the fourth Wednesday of each month, unless a meeting date clashes with other engagements. Should Council wish to hold additional meetings, these can be scheduled under the Extraordinary Council meeting provisions under Clause 3.2 of the adopted *Code of Meeting Practice*.

COMMUNITY ENGAGEMENT

The result of the election (including the name of the candidate elected as Mayor or Deputy Mayor) is:

- (a) To be declared to the councillors at the council meeting at which the election is held by the returning officer, and
- (b) To be delivered or sent to the Director-General and to the Secretary of the Local Government and Shires Associations of New South Wales.

Council will clearly publicise and communicate the results of the election as required, as well as the schedule of meetings for 2024/25.

POLICY IMPLICATIONS

There are no policy implications for Council associated with this report.

RISK IMPLICATIONS

Council must elect a Mayor at this meeting as scheduled in accordance with the *Local Government Act 1993*. If Council fails to elect a Mayor in accordance with the Act, the Governor may appoint one of the Councillors as Council's Mayor in accordance with Section 290 (2) of the Act.

FINANCIAL IMPLICATIONS

There are no financial implications for Council associated with this report.

CONCLUSION

The Election of the Mayor and Deputy Mayor (if required) must be undertaken in accordance with the *Local Government Act 1993* and the Schedule 7 of the *Local Government (General) Regulation 2021* at this meeting.

ATTACHMENTS

- 1. OLG Fact Sheet - Mayoral Election Process [↓](#)
- 2. Extract - Local Government (General) Regulation 2021 [↓](#)
- 3. Nomination Forms [↓](#)
- 4. Proposed Council Meeting Schedule [↓](#)

**DOCUMENTS
ASSOCIATED WITH
REPORT EC10/24-2**

Attachment 1

**OLG Fact Sheet - Mayoral
Election Process**



Fact Sheet

ELECTION OF MAYOR AND DEPUTY MAYOR BY COUNCILLORS

Summary

Councillors must elect a mayor from among their number every two years unless they have a popularly elected mayor.

Councillors may also elect a deputy mayor. The deputy mayor may be elected for the mayoral term or a shorter term.

The election of the mayor and the deputy mayor must be conducted in accordance with section 394 and Schedule 7 of the *Local Government (General) Regulation 2021* (the Regulation).

The purpose of this document is to assist councils to conduct mayoral and deputy mayoral elections in accordance with these requirements. It includes scripts for key activities to help returning officers exercise their functions. These scripts are provided in the text boxes inserted in the relevant parts of this document.

How can councils use this document?

Electing a mayor is an important activity. It is vital that the process is smooth, open and easy to follow and not rushed or confusing. Where necessary, it may be appropriate to stop and provide clarification for the benefit of councillors, staff or the gallery.

Returning officers can circulate this document prior to the meeting to help councillors understand the election process.

Election of a mayor after an ordinary election of councillors

An election for mayor must be held within three weeks of the declaration of the ordinary election at a meeting of the council.

The returning officer is to be the general manager or a person appointed by the general manager.

As no mayor or deputy mayor will be present at the start of the meeting, the first business of the meeting should be the election of a chairperson to preside at the meeting. Alternatively, the returning officer may assume the chair for the purpose of conducting the election.

Mid-term election of a mayor

A mayor elected by councillors holds office for two years. A mid-term mayoral election must be held in the September two years after the ordinary election of councillors or the first election of a new council following its establishment.

Procedures

Prior to the meeting

Before the council meeting at which the election is to be conducted, the returning officer will give notice of the election to the councillors.

The notice is to set out how a person may be nominated as a candidate for election as chairperson.

As returning officer, I now invite nominations for the position of mayor/deputy mayor for [name of council] for a two year period.

In accordance with the Local Government (General) Regulation 2021, two or more councillors may nominate a councillor (one of whom may be the nominee) for the position of mayor/deputy mayor. Nominations must be in writing and the nominee must consent to their nomination in writing.

A councillor may be nominated without notice for election as mayor or deputy mayor. The nomination is to be made in writing by two or more councillors (one of whom may be the nominee). The nomination is not valid unless the nominee has indicated consent to the nomination in writing.

The returning officer checks the nomination forms and writes the nominees' names on a candidates' sheet.

At the meeting

At the start of the first meeting after an ordinary election, in the absence of a chairperson, the returning officer assumes the chair and announces that the first item of business is to be the election of a mayor.

If a chairperson is present, they announce that the first item of business is the election of the mayor then vacates the chair for the returning officer who will then conduct the election.

The returning officer reads out the names of the nominees and seeks confirmation that the nominee has accepted the nomination.

If only one councillor has been nominated for the position of mayor/deputy mayor, the nominee is elected.

As there is only one nominee for the role of mayor/deputy mayor, I declare that [name of successful candidate] is elected as mayor/deputy mayor for the ensuing two years.

If more than one candidate has been nominated, the council must determine by resolution, the method of voting for the position of mayor/deputy mayor, by way of one of the following methods:

- Open voting – i.e. by show of hands
- Ordinary ballot – i.e. a secret ballot (place an "X" against the candidate of their choice)
- Preferential ballot – i.e. place 1, 2, 3 etc. against each candidate.

The returning officer must ask for a motion to be put to the meeting by one of the councillors on the preferred method of voting for the election of a chairperson. This must then be seconded and voted on by the councillors.

Note: In the event of a tie, if there is a chairperson, they may use their casting vote. If there is a tie and no chairperson, an election for the role of chairperson should be conducted. Then the election for mayor resumes.

Open voting (show of hands)

Open voting is the most transparent method of voting. It is also the least bureaucratic method and reflects normal council voting methods.

The returning officer will advise the meeting of the method of voting and explains the process.

It has been resolved that the method of voting for the position of mayor/deputy mayor will be by show of hands.

Each councillor is entitled to vote for only one candidate in each round of voting.

I will now write each candidate's name on a slip of paper and deposit it in a barrel. The first name out of the barrel will be written first on the tally sheet, with second name out being written second on the tally sheet, etc.

When all candidates' names have been written on the tally sheet, the returning officer announces the names of the candidates and, commencing with the first candidate, states the following:

Would those councillors voting for [name of candidate] please raise your hand.

The returning officer records the number of votes for each successive candidate on the tally sheet and announces the number of votes received for each candidate.

The minute taker records the vote of each councillor.

The returning officer should check with the minute taker that each councillor has voted. If a councillor has not voted it should be confirmed that they are abstaining (an informal vote).

Two candidates

If there are only two candidates for the position of mayor/deputy mayor and the voting is higher for one candidate than another (number of formal votes recorded on the tally sheet), the returning officer then announces the result.

[Name of candidate] has the higher number of formal votes and as a result I declare that [name of candidate] is elected as mayor/deputy mayor for the ensuing two years.

In the event of a **tied vote**, the returning officer will advise the meeting of the following process.

In accordance with section 12 of Schedule 7 of the Local Government (General) Regulation 2021, I will now write the

names of the candidates on similar slips of paper, fold them and place them in the barrel. Please note that the candidate whose name is drawn out will be declared as mayor/deputy mayor.

It is appropriate to show the meeting the names and the barrel. Councillors may inspect but not touch the items.

The returning officer places the names of the candidates into the barrel and requests a staff member to shake the barrel.

The returning officer then draws a name out of the barrel and shows the meeting.

I declare that [name of candidate] is elected as mayor/deputy mayor for the ensuing two years.

The returning officer then draws out the remaining name and reads it for completeness. The second name should be shown to the meeting.

Three or more candidates

If there are three or more candidates, the candidate with the lowest number of votes for the position of mayor/deputy mayor is excluded.

[Name of candidate], having the lowest number of votes, is excluded.

The voting continues as above until there are only two candidates remaining (see voting for **two candidates** above).

In the event that the **lowest number of votes are tied**, the returning officer advises the meeting of the following process:

In accordance with section 12 of Schedule 7 of the Local Government (General) Regulation 2021, I will now write the names of the candidates on similar slips of paper, fold them and place them in the barrel. Please note that the candidate whose name is drawn out will be excluded.

It is appropriate to show the meeting the names and the barrel. Councillors may inspect but not touch the items.

The returning officer places the names of the candidates into the barrel and requests a staff member to shake the barrel.

The returning officer then draws a name out of the barrel and shows it to the meeting.

I declare that [name of candidate] is excluded.

The returning officer then draws out the remaining name and reads it for completeness. The second name should be shown to the meeting.

Ordinary ballot – (secret ballot)

The returning officer advises the meeting of the method of voting and explains the process.

It has been resolved that the method for voting for the position of mayor/deputy mayor will be by ordinary ballot, in other words by placing an "X" against the candidate of the councillor's choice.

The returning officer announces the names of the candidates for mayor/deputy mayor and writes each name on a slip of paper and deposits it in a barrel.

The returning officer requests that a staff member shakes the barrel and advises that the order in which the names will appear on the ballot paper will be determined by a draw out of the barrel, i.e. first name out of the barrel is written first on the ballot papers and so on.

It will be necessary to have a number of blank papers as this process may require more than one round of voting.

The returning officer writes the names on one set of the ballot papers and initials the front of each ballot paper.

A staff member distributes the ballot papers and collects them into the ballot box when completed and gives it to the returning officer who counts the votes and records them on the tally sheet.

The returning officer announces the results.

[Name of candidate], having the lowest number of votes, is excluded.

In the event that the **lowest number of votes are tied**, the returning officer advises the meeting of the following process:

In accordance with section 12 of Schedule 7 of the Local Government (General) Regulation 2021, I will now write the names of the candidates on similar slips of paper, fold them and place them in the barrel. Please note that the candidate whose name is drawn out will be excluded.

It is appropriate to show the meeting the names and the barrel. Councillors may inspect but not touch the items.

The returning officer places the names of the candidates into the barrel and requests a staff member to shake the barrel.

The returning officer then draws a name out of the barrel and shows it to the meeting.

I declare that [name of candidate] is excluded.

The returning officer then draws out the remaining name and reads it for completeness. The second name should be shown to the meeting.

The returning officer writes the names of the remaining candidates on a further set of the ballot papers and initials the front of each ballot paper.

The staff member distributes ballot papers listing the remaining candidates and collects them into the ballot box when completed and gives it to the returning officer who again counts the votes and records them on the tally sheet and announces the results.

The process continues until two candidates remain, where a final vote takes place.

[Name of candidate] has the higher number of votes and I declare that [name of candidate] is elected as mayor/deputy mayor for the ensuing two years.

In the event of a **tied vote** between the two remaining candidates, the returning officer makes the following statement and announces the process.

The votes are tied between [name of candidate 1] and [name of candidate 2] having received [number] votes each, and, in accordance with section 12 of Schedule 7 of the Local Government (General) Regulation 2021, I will now write the names of the candidates on similar slips of paper, fold them and place them in the barrel.

Please note that the candidate whose name is drawn out will be declared as mayor/deputy mayor.

It is appropriate to show the meeting the names and the barrel. Councillors may inspect but not touch the items.

The returning officer places the names of the candidates into the barrel and requests that a staff member shakes the barrel.

The returning officer then draws a name out of the barrel and shows the meeting.

I declare that [name of candidate] is elected as mayor/deputy mayor for the ensuing two years.

The returning officer then draws out the remaining name and reads it for completeness. The second name should be shown to the meeting.

Preferential ballot

The returning officer explains the process.

It has been resolved that the method for voting for the position of mayor/deputy mayor will be by preferential ballot, i.e. placing 1, 2 and so on against the candidate of the councillor's choice in order of preference for all candidates.

The returning officer announces the names of the candidates for mayor/deputy mayor and writes each candidate's name on a slip of paper and deposits it in a barrel.

The returning officer requests that a staff member shakes the barrel and advises that the order in which the names will appear on the ballot paper will be determined by a draw out of the barrel, i.e. first name out of the barrel is written first on the ballot papers and so on.

The returning officer writes the names on the ballot papers and initials the front of each ballot paper. This method of voting requires only one set of ballot papers.

A staff member distributes the ballot papers and collects them when completed and gives them to the returning officer who counts the first preference votes and records them on the tally sheet.

If a candidate has an absolute majority of first preference votes (more than half), the returning officer declares the outcome.

[Name of candidate], having an absolute majority of first preference votes, is elected as mayor/deputy mayor for the ensuing two years.

If no candidate has the absolute majority of first preference votes, the returning officer excludes the candidate with the lowest number of first preference votes.

[Name of candidate], having the lowest number of first preference votes, is excluded.

The preferences from the excluded candidate are distributed. This process continues until one candidate has received an absolute majority of votes, at which time the returning officer announces the result.

[Name of candidate], having an absolute majority of votes, is elected as mayor/deputy mayor for the ensuing two years.

In the event of a **tied vote** where there are only two candidates remaining in the election, the returning officer explains the process.

The votes are tied between [name of candidate 1] and [name of candidate 2] having received [number] votes each, and, in accordance with section 12 of Schedule 7 of the Local Government (General) Regulation 2021, I will now write the names of the candidates on similar slips of paper, fold them and place them in the barrel. Please note that the candidate whose name is drawn out will be declared as mayor/deputy mayor.

It is appropriate to show the meeting the names and the barrel. Councillors may inspect but not touch the items.

The returning officer places the names of the candidates into the barrel and requests a staff member to shake the barrel. The returning officer then draws a name out of the barrel and shows the meeting.

I declare that [name of candidate] is elected as mayor/deputy mayor for the ensuing two years.

The returning officer then draws out the remaining name and reads it for completeness. The second name should be shown to the meeting.

In the event that the **lowest number of votes are tied** and where there are three or more candidates remaining in the election, the returning officer advises the meeting of the process.

In accordance with section 12 of Schedule 7 of the Local Government (General) Regulation 2021, I will now write the names of the candidates on similar slips of paper, fold them and place them in the barrel. Please note that the candidate whose name is drawn out will be excluded and their preferences distributed.

It is appropriate to show the meeting the names and the barrel. Councillors may inspect but not touch the items.

The returning officer places the names of the candidates into the barrel and requests that a staff member shakes the barrel.

The returning officer then draws a name out of the barrel and shows the meeting.

I declare that [name of candidate] is excluded and any votes cast for them will be distributed by preference.

The returning officer then draws out the remaining name and reads it for completeness. The second name should be shown to the meeting.

Schedule 7 - Election of Mayor by Councillors

Part 1 Preliminary

1 Returning officer

The general manager (or a person appointed by the general manager) is the returning officer.

2 Nomination

- (1) A councillor may be nominated without notice for election as mayor or deputy mayor
- (2) The nomination is to be made in writing by 2 or more councillors (one of whom may be the nominee). The nomination is not valid unless the nominee has indicated consent to the nomination in writing.
- (3) The nomination is to be delivered or sent to the returning officer.
- (4) The returning officer is to announce the names of the nominees at the council meeting at which the election is to be held.

3 Election

- (1) If only one councillor is nominated, that councillor is elected.
- (2) If more than one councillor is nominated, the council is to resolve whether the election is to proceed by preferential ballot, by ordinary ballot or by open voting.
- (3) The election is to be held at the council meeting at which the council resolves on the method of voting.
- (4) In this section:
ballot has its normal meaning of secret ballot.
open voting means voting by a show of hands or similar means.

Part 2 Ordinary ballot or open voting

4 Application of Part

This Part applies if the election proceeds by ordinary ballot or by open voting.

5 Marking of ballot-papers

- (1) If the election proceeds by ordinary ballot, the returning officer is to decide the manner in which votes are to be marked on the ballot-papers.
- (2) The formality of a ballot-paper under this Part must be determined in accordance with section 345 of this Regulation as if it were a ballot-paper referred to in that section.
- (3) An informal ballot-paper must be rejected at the count.

6 Count—2 candidates

- (1) If there are only 2 candidates, the candidate with the higher number of votes is elected.
- (2) If there are only 2 candidates and they are tied, the one elected is to be chosen by lot.

7 Count—3 or more candidates

- (1) If there are 3 or more candidates, the one with the lowest number of votes is to be excluded.
- (2) If 3 or more candidates then remain, a further vote is to be taken of those candidates and the one with the lowest number of votes from that further vote is to be excluded.
- (3) If, after that, 3 or more candidates still remain, the procedure set out in subsection (2) is to be repeated until only 2 candidates remain.
- (4) A further vote is to be taken of the 2 remaining candidates.
- (5) Section 6 of this Schedule then applies to the determination of the election as if the 2 remaining candidates had been the only candidates.
- (6) If at any stage during a count under subsection (1) or (2), 2 or more candidates are tied on the lowest number of votes, the one excluded is to be chosen by lot.

Part 3 Preferential ballot

8 Application of Part

This Part applies if the election proceeds by preferential ballot.

9 Ballot-papers and voting

- (1) The ballot-papers are to contain the names of all the candidates. The Councillors are to mark their votes by placing the numbers “1”, “2” and so on against the various names so as to indicate the order of their preference for all the candidates.
- (2) The formality of a ballot-paper under this Part is to be determined in accordance with section 345 of this Regulation as if it were a ballot-paper referred to in that section.
- (3) An informal ballot-paper must be rejected at the count.

10 Count

- (1) If a candidate has an absolute majority of first preference votes, that candidate is elected.
- (2) If not, the candidate with the lowest number of first preference votes is excluded and the votes on the unexhausted ballot-papers counted to him or her are transferred to the candidates with second preferences on those ballot-papers.
- (3) A candidate who then has an absolute majority of votes is elected, but, if no candidate then has an absolute majority of votes, the process of excluding the candidate who has the lowest number of votes and counting each of his or her unexhausted ballot-papers to the candidates remaining in the election next in order of the voter’s preference is repeated until one candidate has received an absolute majority of votes. The latter is elected.
- (4) In this section, “**absolute majority**”, in relation to votes, means a number that is more than one-half of the number of unexhausted formal ballot-papers.

11 Tied candidates

- (1) If, on any count of votes, there are 2 candidates in, or remaining in, the election and the numbers of votes cast for the 2 candidates are equal—the candidate whose name is first chosen by lot is taken to have received an absolute majority of votes and is therefore taken to be elected.
- (2) If, on any count of votes, there are 3 or more candidates in, or remaining in, the election and the numbers of votes cast for 2 or more candidates are equal and those candidates are the ones with the lowest number of votes on the count of the votes—the candidate whose name is first chosen by lot is taken to have the lowest number of votes and is therefore excluded.

Part 4 General

12 Choosing by lot

To choose a candidate by lot, the names of the candidates who have equal numbers of votes are written on similar slips of paper by the returning officer, the slips are folded by the returning officer so as to prevent the names being seen, the slips are mixed and one is drawn at random by the returning officer and the candidate whose name is on the drawn slip is chosen.

13 Result

The result of the election (including the name of the candidate elected as mayor or deputy mayor) is:

- a) to be declared to the councillors at the council meeting at which the election is held by the returning officer, and
- b) to be delivered or sent to the Secretary and to the Chief Executive of Local Government NSW.

**DOCUMENTS
ASSOCIATED WITH
REPORT EC10/24-2**

Attachment 2

**Extract - Local Government
(General) Regulation 2021**

Local Government (General) Regulation 2021

Schedule 7 Election of mayor by councillors

(Section 394)

Part 1 Preliminary

1 Returning officer

The general manager (or a person appointed by the general manager) is the returning officer.

2 Nomination

- (1) A councillor may be nominated without notice for election as mayor or deputy mayor.
- (2) The nomination is to be made in writing by 2 or more councillors (one of whom may be the nominee). The nomination is not valid unless the nominee has indicated consent to the nomination in writing.
- (3) The nomination is to be delivered or sent to the returning officer.
- (4) The returning officer is to announce the names of the nominees at the council meeting at which the election is to be held.

3 Election

- (1) If only one councillor is nominated, that councillor is elected.
- (2) If more than one councillor is nominated, the council is to resolve whether the election is to proceed by preferential ballot, by ordinary ballot or by open voting.
- (3) The election is to be held at the council meeting at which the council resolves on the method of voting.
- (4) In this section—

ballot has its normal meaning of secret ballot.

open voting means voting by a show of hands or similar means.

Part 2 Ordinary ballot or open voting

4 Application of Part

This Part applies if the election proceeds by ordinary ballot or by open voting.

5 Marking of ballot-papers

- (1) If the election proceeds by ordinary ballot, the returning officer is to decide the manner in which votes are to be marked on the ballot-papers.

(2) The formality of a ballot-paper under this Part must be determined in accordance with section 345 of this Regulation as if it were a ballot-paper referred to in that section.

(3) An informal ballot-paper must be rejected at the count.

6 Count—2 candidates

(1) If there are only 2 candidates, the candidate with the higher number of votes is elected.

(2) If there are only 2 candidates and they are tied, the one elected is to be chosen by lot.

7 Count—3 or more candidates

(1) If there are 3 or more candidates, the one with the lowest number of votes is to be excluded.

(2) If 3 or more candidates then remain, a further vote is to be taken of those candidates and the one with the lowest number of votes from that further vote is to be excluded.

(3) If, after that, 3 or more candidates still remain, the procedure set out in subsection (2) is to be repeated until only 2 candidates remain.

(4) A further vote is to be taken of the 2 remaining candidates.

(5) Section 6 of this Schedule then applies to the determination of the election as if the 2 remaining candidates had been the only candidates.

(6) If at any stage during a count under subsection (1) or (2), 2 or more candidates are tied on the lowest number of votes, the one excluded is to be chosen by lot.

Part 3 Preferential ballot

8 Application of Part

This Part applies if the election proceeds by preferential ballot.

9 Ballot-papers and voting

(1) The ballot-papers are to contain the names of all the candidates. The councillors are to mark their votes by placing the numbers “1”, “2” and so on against the various names so as to indicate the order of their preference for all the candidates.

(2) The formality of a ballot-paper under this Part is to be determined in accordance with section 345 of this Regulation as if it were a ballot-paper referred to in that section.

(3) An informal ballot-paper must be rejected at the count.

10 Count

(1) If a candidate has an absolute majority of first preference votes, that candidate is elected.

(2) If not, the candidate with the lowest number of first preference votes is excluded and the votes on the unexhausted ballot-papers counted to him or her are transferred to the candidates with second preferences on those ballot-papers.

(3) A candidate who then has an absolute majority of votes is elected, but, if no candidate then has an absolute majority of votes, the process of excluding the candidate who has the lowest number of votes and counting each of his or her unexhausted ballot-papers to the candidates remaining in the election next in order of the voter’s preference is repeated until one candidate has received an absolute majority of votes. The latter is elected.

(4) In this section, *absolute majority*, in relation to votes, means a number that is more than one-half of the number of unexhausted formal ballot-papers.

11 Tied candidates

- (1) If, on any count of votes, there are 2 candidates in, or remaining in, the election and the numbers of votes cast for the 2 candidates are equal—the candidate whose name is first chosen by lot is taken to have received an absolute majority of votes and is therefore taken to be elected.
- (2) If, on any count of votes, there are 3 or more candidates in, or remaining in, the election and the numbers of votes cast for 2 or more candidates are equal and those candidates are the ones with the lowest number of votes on the count of the votes—the candidate whose name is first chosen by lot is taken to have the lowest number of votes and is therefore excluded.

Part 4 General

12 Choosing by lot

To choose a candidate by lot, the names of the candidates who have equal numbers of votes are written on similar slips of paper by the returning officer, the slips are folded by the returning officer so as to prevent the names being seen, the slips are mixed and one is drawn at random by the returning officer and the candidate whose name is on the drawn slip is chosen.

13 Result

The result of the election (including the name of the candidate elected as mayor or deputy mayor) is—

- (a) to be declared to the councillors at the council meeting at which the election is held by the returning officer, and
- (b) to be delivered or sent to the Secretary and the Chief Executive Officer of Local Government NSW.

**DOCUMENTS
ASSOCIATED WITH
REPORT EC10/24-2**

**Attachment 3
Nomination Forms**



ELECTION OF MAYOR

ORDINARY COUNCIL MEETING
16 October 2024

NOMINATION PAPER

We hereby nominate Councillor

as a candidate for election of *MAYOR* for the ensuing Mayoral Term.

Signature:.....

Signature:.....

I hereby consent to the nomination for Election of Mayor.

Signature:.....

NOTE:

A nomination is invalid unless signed by the Councillor being nominated.



ELECTION OF DEPUTY MAYOR

ORDINARY COUNCIL MEETING
16 October 2024

NOMINATION PAPER

We hereby nominate Councillor

as a candidate for election of *DEPUTY MAYOR* for the ensuing Term.

Signature:.....

Signature:.....

I hereby consent to the nomination for Election of Deputy Mayor.

Signature:.....

NOTE:

A nomination is invalid unless signed by the Councillor being nominated.

DOCUMENTS
ASSOCIATED WITH
REPORT EC10/24-2

Attachment 4
Proposed Council Meeting
Schedule

Proposed Council Meeting Schedule 2024/2025*Meetings to commence at 6pm*

| Date |
|--|
| Wednesday, 13 th November 2024 |
| Wednesday, 26 th February 2025 |
| Wednesday, 26 th March 2025 |
| Wednesday, 30 th April 2025 |
| Wednesday, 28 th May 2025 |
| Wednesday, 18 th June 2025 |
| Wednesday, 30 th July 2025 |
| Wednesday, 27 th August 2025 |
| Wednesday, 24 th September 2025 |
| Wednesday, 29 th October 2025 |
| Wednesday, 19 th November 2025 |

Item No: EC10/24-3

DECISION ON COUNCIL OPT IN FOR COUNTBACK ELECTIONS

Directorate: Governance and Risk
Responsible Officer: Director Governance and Risk
Community Strategic Plan Goal: *Providing Local Leadership*

SUMMARY

This report presents to Council for determination the ability to determine any vacancy in office in the first 18 months of this Council term by way of countback, in accordance with Section 291A of the *Local Government Act 1993*.

RECOMMENDATION

That pursuant to Section 291A(1)(b) of the *Local Government Act 1993* (the Act), Cumberland Council declares that casual vacancies occurring in the office of a councillor within 18 months after the last ordinary election of councillors for the Council on 14 September 2024 are to be filled by a countback of votes cast at that election for the office in accordance with Section 291A of the Act and directs the General Manager to notify the NSW Electoral Commission of the Council's decision within 7 days of the decision.

REPORT

Council has the option of using a countback of votes cast at the last ordinary election to fill casual vacancies occurring in the offices of councillors in the first 18 months after the election.

This allows councils who opt in to use a countback to fill vacancies at a significantly lower cost than the cost of holding a by-election. To exercise the option of using a countback to fill casual vacancies occurring in the first 18 months following the election, councils must resolve, at their first meeting after the election, to use a countback to fill casual vacancies. If councils do not resolve this at the first meeting after the election, they will be required to fill casual vacancies through a by-election.

Where councils resolve to fill casual vacancies using a countback in the first 18 months of their terms, the general manager is required under the *Local Government (General) Regulation 2021* (the Regulation) to notify the election manager of the council's ordinary election of the council's resolution within 7 days of the resolution. Councils election manager is the NSW Electoral Commissioner.

Countbacks are not available to fill casual vacancies in the office of a councillor where:

- The councillor who vacated office was elected at an election using the optional preferential voting system (i.e. elections where only one civic office is required to be filled such as the election of popularly elected mayors), or
- The councillor was elected at an uncontested election. A by-election must be used to fill these vacancies.

A countback election is used to elect a Councillor to fill a single vacancy, where the vacating councillor was elected under the proportional representation method (i.e. where two or more candidates were elected at a local government ordinary election). If there are multiple vacancies, a separate countback election is held for each vacancy.

The Returning Officer contacts all unelected candidates from the local government ordinary election who may still qualify to be elected to the office of councillor. Where the candidate is interested, they must submit a formal application to the returning officer.

All candidates who submit and do not withdraw their application, become eligible candidates. Given Council's 2024 ordinary election was conducted by the NSW Electoral Commission, the Returning Officer must be appointed by the NSW Electoral Commission.

Section 291A of the *Local Government Act 1993* outlines the legal framework for Council and it states:

Countback to be held instead of by-election in certain circumstances

291A Countback to be held instead of by-election in certain circumstances

(1) This section applies to a casual vacancy in the office of a councillor if--

(a) the casual vacancy occurs within 18 months after the date of the last ordinary election of the councillors for the area, and

(b) the council has at its first meeting following that ordinary election of councillors, by resolution, declared that any such casual vacancy is to be filled by a countback of votes cast at the last election for that office.

(2) This section does not apply to a casual vacancy in the office of a councillor if the councillor who vacated office was elected--

(a) in an election using the optional preferential voting system (including the election of a mayor elected by the electors of an area), or

Note: See section 285 (Voting system for election of councillors).

(b) in an election without a poll being required to be held.

Note: See section 311 (Uncontested elections).

(3) A casual vacancy to which this section applies is to be filled by a countback election conducted in accordance with the regulations.

(4) A countback election to fill a casual vacancy to which this section applies must be conducted--

(a) if the election at which the person whose departure created the casual vacancy was elected was administered by the Electoral Commissioner--by a returning officer appointed by the Electoral Commissioner, or

(b) if the election at which the person whose departure created the casual vacancy was elected was administered by a returning officer appointed by an electoral services provider engaged by the council--by a returning officer appointed by the electoral services provider.

(5) If a countback election fails or the returning officer is otherwise unable to fill the casual vacancy by a countback election--

- (a) the returning officer must notify the general manager of the council concerned, and*
- (b) a by-election in accordance with this Part must be held to fill the casual vacancy.*
- (5A) If an electoral services provider engaged by the council is unable to appoint a returning officer for the purposes of subsection (4)(b), a by-election in accordance with this Part must be held to fill the casual vacancy.*
- (6) This section does not apply to a casual vacancy in the office of a councillor if the vacancy occurs before the day prescribed for the purposes of this section by the regulations.*

Importantly, Council can still opt to conduct a by-election even if it resolves to utilise the Countback method at its first Council meeting in the event of a vacancy within 18 months of the declaration of results. Council could do this via rescinding its earlier resolution to utilise countback. Council cannot, however, utilise the countback method where it has not resolved to do so at its first meeting of the Council term or utilise the countback method again once it has rescinded its resolution if made at the first Council meeting of the term.

The recommended resolution has been taken from the Office of Local Government – Council Post Election Guide.

Countback Timeline

The timeline for a countback election is:

1. The Electoral Commissioner is notified of a casual vacancy, within seven days of it occurring.
2. A returning officer is appointed within 14 days of the notification of the vacancy.
3. Casual vacancy notices are issued 2 to 14 days from the appointment of the returning officer.
4. Where a candidate is interested, they must submit a formal application to the returning officer. The application period closes after 10 days of the notices being issued.
5. The countback is conducted within 14 days of the vacancy notices being issued.
6. It may take up to a month for the results to be declared.

A countback election must be completed within 49 days, and applications for candidates to participate is open for 10 days.

If there are no eligible candidates, an attendance by-election must be held. If there is only one eligible candidate, that candidate is elected. If there are multiple eligible candidates, a countback election is conducted. In a countback election, the returning officer:

- uses preference data from ballot papers from the previous local government ordinary election

- uses the same proportional representation method used in the original election
- effectively re-runs the election making the vacating councillor ineligible and distributing each of their ballot papers to the next preference on the ballot paper
- if a non-eligible candidate would be elected, the election is re-run with that candidate's ballot papers also distributed to their next preference on the ballot paper
- re-runs the countback until an eligible candidate is elected.

Eligible candidates and the council are then notified of the result.

If a casual vacancy occurs in office within 18 months of an ordinary election date, then Council can apply to the Minister to seek to dispense the requirement of a by-election in accordance with S.294 of the *Local Government Act 1993*.

It is now recommended that Council determine whether or not it will opt in to the use of countback for the 18 months post the 14 September 2024 election.

COMMUNITY ENGAGEMENT

There are no consultation processes for Council associated with this report.

POLICY IMPLICATIONS

There are no policy implications for Council associated with this report.

RISK IMPLICATIONS

There are no risk implications for Council associated with this report.

FINANCIAL IMPLICATIONS

The cost of a by-election in one ward can be upwards of \$300,000 – \$350,000 in cost. This cost can be alleviated by Council utilising the countback method. A small cost is associated with the appointment and payment of a Returning Officer to conduct the count back process, estimated by staff at approximately 5% of the by-election cost.

CONCLUSION

It is now recommended that Council proceed to determine this matter.

ATTACHMENTS

1. Extract - OLG 2024 Post-election Guide [↓](#)
2. Extract - Local Government (General) Regulation 2021 [↓](#)

**DOCUMENTS
ASSOCIATED WITH
REPORT EC10/24-3**

Attachment 1

**Extract - OLG 2024 Post-election
Guide**

Department of Planning, Housing and Infrastructure



Post-election guide

for councils, county councils
and joint organisations

August 2024

olg.nsw.gov.au



Oaths or affirmations of office must be taken or made by each councillor at or before the first meeting of the council after being elected.

The oath or affirmation may be taken or made before the general manager of the council, an Australian legal practitioner, or a justice of the peace.

Councillors need to be physically present before the general manager, legal practitioner or justice of the peace when taking their oath or making their affirmation of office.

Councils will need to make arrangements for the oath or affirmation to be taken or made by each councillor at the first meeting.

Councillors should be made aware of this requirement prior to the first meeting.

An oath or affirmation should be taken or made by each councillor as the first item of business for the first meeting.

The general manager must ensure that a record is kept of the taking of the oath or making of the affirmation.

This can be done by way of a signed statement containing the oath or affirmation or by recording the taking of the oath or making of the affirmation by each councillor in the minutes of the council meeting.

If a councillor is not able to attend the first council meeting, they may take the oath or affirmation of office at another location in front of the general manager.

As noted above, the oath or affirmation of office may also be taken before an Australian legal practitioner or a justice of the peace.

The taking of the oath or making an affirmation of office outside a council meeting must be publicly recorded by the council.

Where an oath or affirmation is taken or made outside a council meeting, a council staff member should also be present to ensure that an accurate record can be kept by the council.

A councillor who fails, without a reasonable excuse, to take the oath or make an affirmation of office, will not be entitled to attend council meetings until they do so and will be taken to be absent without leave.

If a councillor is absent without leave for three consecutive ordinary council meetings their office is automatically declared vacant and a by-election or countback must be held.

These requirements also apply to members and chairpersons of county councils.

Decision on using countbacks to fill casual vacancies

Councils have the option of using a countback of votes cast at the last ordinary election to fill casual vacancies occurring in the offices of councillors in the first 18 months after the election.

This will allow councils to use a countback to fill vacancies at a lower cost than the cost of holding a by-election.

To exercise the option of using a countback to fill casual vacancies occurring in the first 18 months following the election, councils must resolve, at their first meeting after the election, to use a countback to fill casual vacancies.

If councils do not resolve this at the first meeting after the election, they will be required to fill casual vacancies through a by-election.

It is recommended that councils use the following resolution to exercise the option to use a countback to fill casual vacancies:

“Pursuant to section 291A(1)(b) of the *Local Government Act 1993* (the Act) **[name of council]** declares that casual vacancies occurring in the office of a councillor within 18 months after the last ordinary election of councillors for the Council on **[insert date of election]** are to be filled by a countback of votes cast at that election for the office in accordance with section 291A of the Act and directs the general manager to notify **[insert name of election manager]** of the Council’s decision within 7 days of the decision.”

Where a council resolves³ to fill casual vacancies using a countback in the first 18 months of its term, the general manager is required under the [Local Government \(General\) Regulation 2021](#)⁴ (the Regulation) to notify the election manager of its ordinary election of its resolution within 7 days of the resolution⁵.

For all councils other than Fairfield and Liverpool City Councils, the election manager is the NSW Electoral Commissioner.

Countbacks are not available to fill casual vacancies in the office of a councillor where:

- the councillor who vacated office was elected at an election using the optional preferential voting system (i.e. elections where only one civic office is required to be filled such as the election of popularly elected mayors), or
- the councillor was elected at an uncontested election.

A by-election must be used to fill these vacancies.

Mayoral elections

Under the Act⁶, the civic offices of mayors elected by councillors expire on the day of the council’s ordinary election.

Except for those councils coming out of administration, councils that elect mayors must hold a mayoral election at a council meeting within 3 weeks of the declaration of the ordinary election⁷.

For the councils coming out of administration that elect mayors, a mayoral election must be held within 14 days of the declaration of the ordinary election⁸.

Councillors may also elect a deputy mayor.

The deputy mayor may be elected for the mayoral term or a shorter term.

The election of the mayor and the deputy mayor must be conducted in accordance with Schedule 7 of the Regulation.

Schedule 7 prescribes three methods of election of mayors:

- open ballot (e.g. a show of hands)
- ordinary ballot, or
- preferential ballot.

³ section 291A(1)(b) of the Act

⁴ <https://legislation.nsw.gov.au/view/html/inforce/current/sl-2021-0460>

⁵ section 393C(3) of the Regulation

⁶ sections 234(5) and 233(2)(b) of the Act

⁷ section 290(1)(a) of the Act

⁸ section 290(1)(d) of the Act

**DOCUMENTS
ASSOCIATED WITH
REPORT EC10/24-3**

Attachment 2

**Extract - Local Government
(General) Regulation 2021**

Local Government (General) Regulation 2021

Schedule 9A Countback elections

(Section 393C(1))

Part 1 Preliminary

1 Definitions

In this Schedule—

ballot-paper includes a vote record.

close of applications—see section 3(3) of this Schedule.

eligible candidate, in a countback election, means a person who has been declared by the returning officer under section 4(a) of this Schedule to have duly applied to be a candidate in the countback election.

non-participating candidate means a person who was a candidate at the original election and is neither an eligible candidate nor a previously elected councillor.

original election, in relation to a vacancy, means the ordinary election of councillors in respect of which the vacancy has occurred at which the vacating councillor was elected or in a case where the vacating councillor was elected under this Schedule, the councillor who was the predecessor (whether immediate, intermediate, or original) of that councillor, was elected.

previously elected councillor means a person who—

- (a) was elected as a councillor at the original election, or
- (b) was declared elected as a councillor under this Schedule after the original election.

returning officer means the person conducting the countback election in accordance with section 291A(4) of the Act.

vacating councillor means the person whose departure created the casual vacancy (even if that person never became a councillor).

Note—

If a candidate who is nominated for election to a civic office in respect of a ward or area dies after the day when the poll at a contested election closes, but before the declaration of the election, the candidate is a “vacating councillor” even if that person never became a councillor by operation of section 233(2)(a) of the Act.

2 Notice of casual vacancy

Note—

Section 285 of this Regulation requires the general manager of a council of the area to give notice of a casual vacancy to the Electoral Commissioner within 7 days of its occurrence.

- (1A) After a casual vacancy occurs that is to be filled by a countback election, the general manager of the council concerned must, in relation to an election administered by an electoral services provider, give notice of the vacancy to the electoral services provider within 7 days.
- (1) After a casual vacancy occurs that is to be filled by a countback election, the electoral services provider concerned (in relation to an election administered by an electoral services provider) or the Electoral Commissioner (in relation to an election administered by the Electoral Commissioner) must—
- (a) give notice of the vacancy to the returning officer who conducted the election at which the person whose departure created the casual vacancy was elected or, if it is not possible for the returning officer to conduct the countback election, the substitute returning officer at that earlier election, or
 - (b) if not possible for that returning officer or that substitute returning officer to conduct the countback election, appoint a returning officer in accordance with the Act.
- (2) The notice under subsection (1) must be given or appointment made—
- (a) in relation to an election administered by an electoral services provider—within 14 days of the electoral services provider being notified of the casual vacancy under subsection (1A), or
 - (b) in relation to an election administered by the Electoral Commissioner—within 14 days of the Electoral Commissioner being notified of the casual vacancy under section 285 of this Regulation.
- (3) Within 14 days of being given notice or being appointed, the returning officer who is to conduct the countback election must—
- (a) arrange for the publication of a notice of the casual vacancy as follows—
 - (i) in relation to an election administered by an electoral services provider—on both the council’s website and the electoral services provider’s website,
 - (ii) in relation to an election administered by the Electoral Commissioner—on the websites of the Electoral Commission and the relevant council, and
 - (b) give notice in accordance with this section to each person (at the person’s last known address or by email to an email address specified by the person for the giving of notice of this kind) who, in the opinion of the returning officer, may be entitled to make an application under this Schedule in relation to the vacancy.
- (4) The notice under subsection (3) must—
- (a) declare that a casual vacancy in the office of a specified councillor exists that is to be filled by a countback election, and
 - (b) advise that a person may apply to be a candidate in accordance with this Schedule, and
 - (c) specify the date and time that applications close, and
 - (d) specify the date, time and place for the conduct of the countback election, and
 - (e) advise that an eligible candidate is entitled to appoint scrutineers for the countback election, and
 - (f) give the contact details of the returning officer.
- (5) The date for the conduct of the countback election must be the date which in the opinion of the returning officer is the earliest practicable date to conduct the countback election, but is—
- (a) at least 14 days after the date of the publication of the notice of the relevant council’s website, and
 - (b) not more than 49 days after the date of the casual vacancy occurring.

3 Candidates for casual vacancy

- (1) A person may apply to be a candidate in the countback election if the person—
 - (a) was a candidate at the original election, and
 - (b) did not withdraw the person's nomination from, and was not elected at, that election, and
 - (c) is still eligible to be elected as a councillor at the close of applications.
- (1A) A person elected to the office of councillor or mayor at the original election, or at a countback election under this Schedule, who subsequently vacates the office by resignation or disqualification may not apply to be a candidate in a subsequent countback election.
- (2) An application under this section is to be made in the way approved by the election manager and must contain—
 - (a) a statement by the applicant that he or she consents to be a councillor if elected, and
 - (b) a declaration that the applicant is still eligible to become a councillor.
- (3) An application must be lodged with the returning officer before noon on the 10th day after the day on which public notice of the vacancy was given under this Schedule (the *close of applications*).
- (4) An applicant may withdraw his or her application by giving the returning officer written notice of withdrawal in the way approved by the election manager before applications close.
- (5) An application or a withdrawal of an application under this section may be made by electronic means approved by the election manager.

4 Publication of candidates' details

If one or more persons have applied to be a candidate in accordance with this Schedule, the returning officer must, as soon as practicable after the close of applications—

- (a) publicly produce all the applications and declare each person who has duly applied to be a candidate (the *eligible candidates*), and
- (b) arrange for a notice containing particulars relating to each candidate to be published on the website of the relevant council.

5 Determination of candidate to fill casual vacancy

- (1) If there is only one eligible candidate in relation to a casual vacancy, the returning officer must declare the candidate elected.
- (2) If there are no candidates in relation to a casual vacancy—
 - (a) the returning officer is to declare that there are no candidates and inform the general manager of the relevant council accordingly, and
 - (b) the countback election fails.

Note—

Section 291A(5)(b) of the Act provides that if a countback election fails a by-election must be held to fill the casual vacancy.

- (3) If there is more than one eligible candidate in relation to a casual vacancy, a countback election must be conducted in accordance with Part 2.

6 Filling of multiple casual vacancies

- (1) If there is more than one casual vacancy to be filled at any time, the casual vacancy that occurred first is to be filled first.

- (2) If, in the opinion of the returning officer, it is impossible to determine which vacancy occurred first, the vacating councillor who was elected first (either at the same election or in point of time) is deemed to have left office before the other vacating councillor or councillors.
- (3) If it is still not possible to determine which vacancy occurred first despite subsection (2), the returning officer must determine which casual vacancy is to be filled first by an approved method of random selection (including by electronic means).
- (5) The returning officer may comply with section 5 of this Schedule in respect of a casual vacancy even while the returning officer or another returning officer is complying with that section in respect of another casual vacancy.

Part 2 Countback procedures

7 Casual vacancy to be filled by recount

- (1) The countback election is to be conducted by a recount of the votes on the ballot-papers used in the counting of votes at the original election and the result is to be ascertained in accordance with Schedule 5.
- (2) On the recount under subsection (1) a preference indicated on a ballot-paper for a previously elected councillor whose seat has become vacant is to be disregarded and the ballot-paper is to be treated as if the numeral indicating any subsequent preference had been altered accordingly.
- (3) If on the recount under subsection (1) a non-participating candidate is elected that election has no effect and the returning officer is to terminate that recount and repeat the procedure of recounting the votes on the ballot-papers until an eligible candidate is elected.
- (4) On a recount under subsection (3) a preference indicated on a ballot-paper for—
 - (a) a previously elected councillor whose seat has become vacant, or
 - (b) a non-participating candidate who has been elected on the recount under subsection (1) or on a previous recount under subsection (3),is to be disregarded and the ballot-paper is to be treated as if the numeral indicating any subsequent preference had been altered accordingly.
- (4A) If, on any recount under this Schedule, more than one candidate would be elected, the following applies instead—
 - (a) only one candidate is taken to be elected, being the candidate who has the highest number of votes,
 - (b) if 2 or more candidates have an equal number of votes—
 - (i) if the number of votes at the last count or transfer was unequal—the candidate who had the highest number of votes at the last count or transfer at which the candidates had an unequal number of votes is taken to be elected, or
 - (ii) otherwise—the elected candidate is to be determined by a method of random selection, including by electronic means, approved by the election manager.
- (5) A recount under this Schedule does not affect the election of a previously elected councillor and where a previously elected councillor is elected or excluded during a recount that election or exclusion has effect for the purposes of the continuation of the recount and for those purposes only.
- (6) If no recount under subsection (1) or (3) results in the election of an eligible candidate—
 - (a) the returning officer is to declare that the countback election has failed, and
 - (b) inform the general manager of the relevant council accordingly.

Note—

Section 291A(5)(b) of the Act provides that if a countback election fails a by-election must be held to fill the casual vacancy.

8 Declaration of result

- (1) As soon as possible after the conclusion of the countback election, the returning officer must—
 - (a) inform the persons present of the result, and
 - (b) immediately notify the election manager of the result, and
 - (c) inform the participating eligible candidates (in person, in writing, by facsimile, by telephone, by email, by text message or in any other way) as soon as practicable after the result is ascertained—
 - (i) of the result of the countback, and
 - (ii) when the returning officer's declaration under this section will be available for inspection at the office of the relevant council, and
 - (iii) that the information contained in a notice under subsection (5) is to be published on the election manager's website for at least one month.

Note—

Section 353 (Recount) of this Regulation does not apply to a countback election.

- (2) The election manager is to approve of the returning officer's declaring of the countback election in writing as soon as practicable after the notification of the result.
- (3) The declaration is to be signed by the returning officer and is to state the number of votes recorded for each candidate and the names of the candidate declared elected.
- (4) After the election is declared—
 - (a) the election manager must deliver or send a copy of the written declaration to—
 - (i) the Secretary, and
 - (ii) the Chief Executive Officer of Local Government NSW, and
 - (iii) the relevant general manager, and
 - (iv) for an election administered by an electoral services provider—the Electoral Commissioner, and
 - (b) the general manager of the council must display the written declaration in a conspicuous position at the office of the relevant council.
- (5) The election manager must cause the information in the declaration to be published on the election manager's website for at least one month.

10 Application of other provisions

- (1) The following provisions of this Regulation apply to a countback election with all necessary modifications—
 - (a) section 337 (Scrutineers),
 - (a1) section 346 (Persons present at scrutiny and count),
 - (b) section 365 (Obstruction of election officials),
 - (c) section 368 (Persons present in polling place),
 - (d) section 369 (Misconduct by scrutineers),
 - (e) section 370 (Misconduct at polling place or pre-poll voting office).

Note—

Section 329 (Can the holder of a civic office be dismissed?) of the Act applies to a person holding civic office who has been elected at a countback election.

- (2) For the avoidance of doubt, sections 353 (Recount), 354 (Who pays for the recount?) and 355 (Result of recount) of this Regulation do not apply to a countback election.

Part 3 Miscellaneous

11 Costs

Expenses incurred by the election manager in connection with a countback election are to be met by the council.

12 (Repealed)

Item No: EC10/24-4

COUNCILLOR REPRESENTATION ON MAIN COMMITTEES AND KEY EXTERNAL BODIES

Directorate: Governance and Risk
Responsible Officer: Director Governance and Risk
Community Strategic Plan Goal: *Providing Local Leadership*

SUMMARY

This report recommends that Council determine its representation on Council's main Committees and key external bodies, to ensure continuity of Council's core operations in the immediate.

RECOMMENDATION

That Council nominate Councillor representation for its existing main statutory/Councillor advisory Committees and External Bodies as follows:

- **Audit, Risk and Improvement Committee (One Councillor – the Mayor cannot be nominated)**
- **Local Traffic Committee (One Councillor as Chairperson and one Alternate Councillor)**
- **Property Committee (Four Councillors in addition to the Mayor)**
- **Parramatta Park Community Trustee Board – (One member as a community representative – formerly the Mayor)**
- **Sydney Central City Planning Panel – (Two members, and two alternate members)**
- **Western Sydney Region Organisation of Councils (WSROC) Board (Two Councillors and Two Alternate Councillors as Directors on the Board)**

REPORT

This report recommends that Council determine its representation on Council's main Committees and external bodies where Council is officially represented for the Council term, to ensure continuity of Council's core operations.

A full report detailing the operations of all community advisory and Section 355 Local Government Act Committees, as well as appointments on other external bodies, will be provided at a future Council meeting for Council's determination, given these advisory Committees are all to be reviewed at the commencement of the Council term.

The objective of each Committee/representation on external bodies is noted below:

Audit, Risk and Improvement Committee provides independent assurance to Council by monitoring, reviewing and providing advice about Council's Financial performance and audit, governance processes, compliance, risk management and control frameworks, external accountability obligations and overall performance. The

ARIC is a statutory Committee, required under the *Local Government Act 1993*. In accordance with recent changes to the Office of Local Government's Audit and Risk Management Framework, One Councillor is appointed to the ARIC, in a non-voting capacity.

Cumberland Local Traffic Committee makes recommendations, and provides advice to Council on the technical aspects of proposals to regulate traffic on local roads within the Cumberland Local Government Area (LGA) prior to Council exercising its delegated authority. In making its recommendations and providing its advice the Committee is to consider only the technical merits of a proposal and ensure that the proposal meets current technical guidelines. Council is to nominate one Councillor as Chairperson who typically Chairs the Traffic Committee, and another as an alternate member. The Committee typically also has representatives from the NSW Police, Roads and Maritime Services, and the State MP's Office.

Cumberland Property Committee was formed to advise Council on the strategic use and disposal of Council owned land, operational and community land and matters related to Council properties and future land acquisitions by the Council. There are 5 Councillors on the Committee, one of which is the Mayor. The Committee also has one independent Property Specialist in an advisory role.

Parramatta Park Community Trustee Board has been established to provide advice and recommendations to the Greater Sydney Parklands Trust (GSPT) in relation to Parramatta Park. The role of the board is to provide advice, input and recommendations to planning, processes and policies that may impact future amenity and public access to the parklands as well as the ongoing management of the parklands. Council has one community representative on the board, along with City of Parramatta Council who also has one representative. For Cumberland, this was formerly, the Mayor.

Sydney Central City Planning Panel is an independent body that strengthens decision making on regionally significant development applications and other planning matters including certain planning proposals and Aboriginal land planning. Determinations made by the Planning Panels are not subject to the direction of the Minister for Planning. Council is to nominate two Council members on this Panel, and two alternate members.

Western Sydney Region Organisation of Councils (WSROC) Board represents the councils and communities of Greater Western Sydney, as well as developing resource sharing and other co-operative projects between member councils. WSROC also manages a number of projects, which are either funded jointly by its members or from external sources. Council is to nominate two Councillors as Director nominations to the board, and two alternate Councillor members.

Following this report being determined, Council's Director Governance and Risk will be in touch with relevant Councillors in relation to the requirements associated with any new appointments resolved by Council. The relevant boards and Committees will also be notified of any changes to Council's appointments.

COMMUNITY ENGAGEMENT

There are no community engagement implications for Council outlined in this report. The relevant boards and Committees will also be notified of any changes to Council's appointments.

POLICY IMPLICATIONS

This report has been prepared in accordance with the attached Terms of Reference and Constitution/Operational Procedure documents.

RISK IMPLICATIONS

There are risk implications associated with this report if Council proceeds into the future with lapsed representation on Committees, particularly where Councillors have not been re-elected.

FINANCIAL IMPLICATIONS

There are no financial implications for Council associated with this report.

CONCLUSION

This report seeks Council's determination on Councillor representation on main statutory Committees and external bodies, to ensure continuity of business. It is now recommended that Council determine its appointments.

ATTACHMENTS

1. ARIC Terms of Reference [↓](#)
2. Cumberland Local Traffic Committee Terms of Reference [↓](#)
3. Cumberland Property Committee Terms of Reference [↓](#)
4. Parramatta Park Community Trustee Board Terms of Reference [↓](#)
5. WSROC Constitution [↓](#)
6. Sydney District & Regional Planning Panels Operational Procedures [↓](#)

**DOCUMENTS
ASSOCIATED WITH
REPORT EC10/24-4**

**Attachment 1
ARIC Terms of Reference**

CUMBERLAND
CITY COUNCIL

ARIC Charter

Terms of Reference

AUTHORISATION & VERSION CONTROL

| | |
|------------------------|----------------------------|
| TOR Number | TOR-016 |
| Guideline Owner | Director Governance & Risk |
| Date Approved | 19 June 2024 |
| Version No | 2 |
| Document ID | 10907391 |
| Review Date | June 2028 |

1. Introduction

Council has established an Audit, Risk and Improvement Committee (**ARIC**) in compliance with:

1. s428A of the [Local Government Act 1993](#);
2. [Local Government \(General\) Regulation 2021](#) as amended by the *Local Government (General) Amendment (Audit, Risk and Improvement Committees) Regulation 2023*.
3. [Guidelines for Risk Management and Internal Audit for Local Government in NSW](#)

2. Definitions

Words beginning with a capital letter and all abbreviations used throughout this document have the meaning ascribed to them in **Schedule 3** of this document.

3. Terms of Reference

Section 216K of the Regulation requires Council to adopt Terms of Reference (**TOR**) for its ARIC. The adoption of the TOR must be by resolution of Council.

Council must consider the model TOR approved by the OLG before adopting its own TOR. Once adopted, the ARIC must exercise its functions in accordance with the adopted TOR.

These TOR are consistent with the model TOR approved by the OLG. They set out the ARIC's objectives, authority, composition and tenure, roles and responsibilities, reporting and administrative arrangements.

4. Objective

The objective of Council's ARIC is to provide independent assurance to Council by monitoring, reviewing and providing advice about Council's governance processes, compliance, risk management and control frameworks, external accountability obligations and overall performance.

5. Independence

Council's ARIC must be independent to ensure it has no real or perceived bias or conflicts of interest that may interfere with its ability to act independently, and to provide Council with robust, objective and unbiased advice and assurance.

The Act and Regulation also prescribe the following requirements in relation to ARIC:

1. to have an advisory and assurance role only;
2. not to exercise any administrative functions, delegated financial responsibilities or any management functions of Council;
3. to provide independent advice to Council that is informed by Council's internal audit and risk management activities, information and advice provided by staff, relevant external bodies and subject matter experts;

4. to always ensure it maintains a direct reporting line to and from Council's internal audit function; and
5. to act as a mechanism for internal audit to report to the Governing Body and the GM on matters affecting the performance of the internal audit function.

6. Authority

For the purpose of exercising the responsibilities prescribed by the Act, Regulation and Guidelines, Council authorises the ARIC to do the following:

| Action | Source of Authority |
|---|-------------------------------|
| Access any information it needs from Council. | s216L Regulation |
| Use any Council resources it needs. | s216L Regulation |
| Have direct and unrestricted access to the GM and senior management of Council. | s216L Regulation & Guidelines |
| Seek the GM's permission to meet with any other Council staff member or contractor. | Guidelines |
| Discuss any matters with the external auditor or other external parties. | Guidelines |
| Request the attendance of any employee at ARIC meetings. | Guidelines |
| Obtain external legal or other professional advice in line with Councils' procurement policies. | Guidelines |

All ARIC members should also note the following:

6. The ARIC must first obtain the GM's or delegate's permission prior to obtaining external legal or other professional advice.
7. Only ARIC minutes will be published on Council's website. All other information and documentation pertaining to the ARIC will remain confidential and will not be made publicly available.
8. The ARIC may only release Council confidential information and documentation to external parties that are assisting the ARIC to fulfil its responsibilities with the approval of the GM or delegate, except where such information and documentation is being provided to an external investigative or oversight agency for the purpose of informing that agency of a matter that may warrant its attention.

7. Composition and Tenure

7.1 Composition

In accordance with s216C of the Regulations, the ARIC must comprise the following:

1. one (1) independent Chairperson;
2. at least two (2) Independent Members who have voting rights; and
3. one (1) non-voting Councillor Member, who must not be the Mayor of the Council.

The Governing Body must appoint the Chairperson, Independent Members and Councillor Member.

A register of Council's ARIC Members is included in **Schedule 1** of this document.

All ARIC Members must meet the independence and eligibility criteria prescribed by s216D, s216E and s216F of the Regulation.

Members of the ARIC must possess and maintain a broad range of skills, knowledge and experience relevant to the operations, governance and financial management of Council, the environment in which Council operates, and the contribution that the ARIC makes to Council.

At least one (1) Member of the ARIC must have accounting or related financial management experience with an understanding of accounting and auditing standards in a local government environment. All Members should have sufficient understanding of Council's financial reporting responsibilities to be able to contribute to the ARIC's consideration of Council's annual financial statements.

7.2 Tenure

The tenure of Members is prescribed under s216G of the Regulation.

1. Members may be appointed for a term of no more than four (4) years.
2. Eligible Members may be reappointed for a further term however the total period of continuous membership must not exceed eight (8) years in a ten (10) year period. This includes any term as the Chairperson.
3. Except as otherwise exempted by the OLG, all Independent Members who have served an eight (8) year term (either as a Member or as Chairperson) must have a two (2) year break from serving on the ARIC before being eligible for reappointment.

To preserve the ARIC's knowledge of Council, ideally, no more than one (1) Member should retire from the ARIC because of rotation in any single year.

7.3 Appointment and Induction

The terms and conditions of each Member's appointment to the ARIC must be set out in a letter of appointment signed by the Mayor.

The Chairperson must provide new Members with a thorough induction to ensure they understand:

1. the role and responsibilities of the ARIC;
2. their role as a Member of the ARIC;
3. the business, operations, culture, risks and controls of Council; and
4. the expectations of Council about their responsibilities and performance.

The Members will receive relevant information and briefings on their appointment to assist them to meet their responsibilities. Senior staff within Council may provide this information.

The Mayor, GM or delegate and existing Chairperson (where appropriate) will induct the new Chairperson.

7.4 Reappointment

Prior to approving the reappointment or extension of term for any Member, the Governing Body must undertake an assessment of that Member's performance.

Reappointment of any Member must also be subject to that person still meeting the independence and eligibility requirements prescribed by the Regulation.

8. Role

Section 428A of the Act requires the ARIC to review and provide independent advice to Council regarding the following aspects of Council's operations:

1. compliance;
2. risk management;
3. fraud control;
4. financial management;
5. governance;
6. implementation of the strategic plan, delivery program and strategies;
7. service reviews;
8. collection of performance measurement data by Council; and
9. internal audit.

The ARIC must also provide information to Council for the purpose of improving the performance of Council's functions.

The ARIC's specific audit, risk and improvement responsibilities under section 428A of the Act are outlined in **Schedule 2** of this document.

The ARIC will act as a forum for consideration of Council's internal audit function and oversee its planning, monitoring and reporting to ensure it operates effectively.

The ARIC has no power to direct any external audit or the way it is planned and undertaken but will act as a forum for the consideration of external audit findings.

The ARIC is directly responsible and accountable to the Governing Body for the exercise of its responsibilities. In carrying out its responsibilities, the ARIC must at all times recognise that primary responsibility for management of Council rests with the Governing Body and the GM.

The responsibilities of the ARIC may be revised or expanded in consultation with, or as requested by, the Governing Body from time to time.

9. Responsibilities of Members

9.1 Independent Members

The Chairperson and Independent Members are expected to understand and observe the requirements of the Guidelines.

All Independent Members are also expected to:

1. make themselves available as required to attend and participate in meetings;
2. contribute the time and effort needed to review and understand information provided to it;
3. have sufficient understanding of Council's financial reporting responsibilities and be able to contribute to ARIC's consideration of the annual financial statements;
4. apply good analytical skills, objectivity and judgement;
5. act in the best interests of Council;
6. have the personal courage to raise and deal with tough issues, express opinions frankly, ask questions that go to the fundamental core of the issue and pursue independent lines of inquiry;
7. maintain effective working relationships with Council;
8. know the business, culture and values of Council and take the time to understand changes that affect how Council operates and its risks;
9. understand the role of ARIC and the expectations of Council;
10. be a good communicator and build effective relationships with Council and other ARIC Members; and
11. take a professional approach to their responsibilities.

In addition to the above, the Chairperson must:

1. have strong leadership qualities;
2. lead effective meetings (including planning and setting agendas, ensuring Members are adequately informed of matters to be considered prior to meetings and allow sufficient discussion during the meeting, focus deliberations on the most important issues, seek input from advisers, Non-voting Observers (as appropriate) to maximise deliberations, and summarise outcomes and actions);
3. oversee Council's internal audit function;

4. be able to recommend the appointment of ARIC Members to the Governing Body;
5. arrange for Members to maintain an up-to-date knowledge of Council and its activities (regulatory and financial); and
6. know the strengths and weaknesses of the ARIC and individual Members and how this may affect opinions of the ARIC.

9.2. Councillor Member

To preserve the independence of the ARIC, the Councillor Member is a non-voting Member. Their role is to:

1. relay to the ARIC any concerns the Governing Body may have regarding Council and issues being considered by the ARIC;
2. provide insights into local issues and the strategic priorities of Council that would add value to the ARIC's consideration of agenda items;
3. advise the Governing Body (as necessary) of the work of the ARIC and any issues arising from it; and
4. assist the Governing Body to review the performance of the ARIC.

Issues or information the Councillor Member raises with or provides to the ARIC must relate to the matters listed in **Schedule 2** and to issues being considered by ARIC.

The Councillor Member must conduct themselves in a non-partisan and professional manner. They must not engage in any conduct that seeks to politicise the activities of the ARIC or the internal audit function or that could be seen to do so.

If the Councillor Member engages in such conduct or in any other conduct that may bring the ARIC and its work into disrepute, the Chairperson may recommend to the Governing Body that the Councillor Member be removed from membership of the ARIC. Where the Governing Body does not agree to the Chairperson's recommendation, Council must give reasons for its decision in writing to the Chairperson.

10. Conduct

All Members are required to comply with Council's [Code of Conduct](#).

Complaints alleging breaches of Council's *Code of Conduct* by an Independent Member must be dealt with in accordance with the [Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW](#).

The GM must consult with the Governing Body before taking any disciplinary action against an Independent Member in response to a breach of Council's *Code of Conduct*.

11. Conflicts of interest

As required under Council's [Code of Conduct](#), all Members must provide written declarations to Council stating that they do not have any conflicts of interest (pecuniary or non-pecuniary) that would preclude them from being Members of the ARIC.

Non-voting Observers must also declare any pecuniary or non-pecuniary conflicts of interest they may have in a matter being considered at the meeting.

At the start of each meeting or as soon as they become aware of the conflict of interest, all conflicts of interest must be appropriately managed in relation to any matters being dealt with by the ARIC.

Where a Member or observer declares a pecuniary or a significant non-pecuniary conflict of interest, they must remove themselves from ARIC deliberations on the issue.

Declarations of conflicts of interest and the actions taken to manage them must be recorded in the minutes of ARIC meetings.

12. Non-voting Observers

For the purposes of Council's [Code of Conduct](#), Independent Members are 'Designated Persons' and must also complete and submit returns of their interests.

13. Standards

Where applicable, ARIC Members must conduct their work in accordance with the following standards:

1. [International Standards for the Professional Practice of Internal Auditing](#) issued by the Institute of Internal Auditors; and
2. Current Australian Risk Management Standard (ISO 31000:2018).

14. Work Plans

The work of the ARIC must be thoroughly planned and executed to ensure that all Council activities and functions are reviewed and assured by ARIC.

ARIC must develop two (2) work plans, as follows:

Strategic Work Plan

The ARIC must develop a strategic work plan in consultation with the Governing Body, GM, Internal Audit Coordinator and senior managers (where appropriate) every four (4) years to ensure that the matters listed in **Schedule 2** are reviewed by the ARIC and considered by the internal audit function when developing their risk-based program of internal audits.

When adopting a strategic work plan, the Governing Body must be careful not to direct the ARIC's work over the Term.

The strategic work plan:

1. must be adopted by the Governing Body at the start of each Term;
2. must be reviewed at least annually to ensure it remains appropriate;
3. at a minimum, should document the following:
 - a. the goals and expected outcomes of ARIC for the Term;

- b. key organisational issues and risk faced by Council and how ARIC will review these; and
- c. key performance indicators to measure progress across the Term.

The strategic work plan should be sufficiently flexible to accommodate the need for additional audits on emerging risks, from time to time.

The ARIC may, in consultation with the Governing Body, vary the strategic work plan at any time to address new or emerging risks. The Governing Body may also, by resolution, request the ARIC to approve a variation to a strategic work plan, however. a decision to make any variation must be made by the ARIC.

Annual Work Plan

The ARIC must also develop an annual work plan in consultation with the Governing Body, GM, Internal Audit Coordinator and senior managers (where appropriate), to guide its work, and the work of the internal audit function over the forward year.

The annual work plan:

1. must be consistent with the requirements of the [International Professional Practices Framework](#);
2. identify the internal audits with will be carried out during the year;
3. identify key goals, objective and scope of proposed audits;
4. identify resources needed for each audit; and
5. identify key performance indicators to measure annual progress.

The annual work plan should be sufficiently flexible to accommodate the need for additional audits on emerging risks, from time to time.

The ARIC may, in consultation with the Governing Body, vary the annual work plan at any time to address new or emerging risks. The Governing Body may also, by resolution, request the ARIC to approve a variation to the annual work plan, however. a decision to make any variation must be made by the ARIC.

When considering whether to vary either work plan, the ARIC must consider the impact of the variation on the internal audit function's existing workload and the completion of pre-existing priorities and activities identified under each work plan.

15. Administrative Arrangements

15.1 Meetings

Frequency

Section 216J of the Regulations requires the ARIC to meet at least once in each quarter, including a special meeting to review Council's financial statements.

The Chairperson must decide the frequency and timing of the meetings and plan them in advance to ensure the availability of all Members and Non-Voting Observers.

The ARIC may hold additional meetings in the following circumstances:

1. when significant unexpected issues arise; or
2. if the Chairperson is asked to hold an additional meeting by a Member or the GM; or
3. if the Governing Body resolves to request that the ARIC holds an additional meeting. In this circumstance, the Chairperson can decide whether the additional meeting is required.

Manner and Quorum

ARIC meetings can be held in person, by telephone or videoconference.

Proxies are not permitted to attend meetings on behalf of Members who are unable to attend.

A quorum will consist of a majority of Independent Members.

Where the vote is tied, the Chairperson has the casting vote.

Agenda and Minutes

The Chairperson will decide the agenda for each meeting.

Each meeting must be minuted to preserve a record of the issues considered and the actions and decisions taken by the ARIC.

Attendance of Non-voting Observers

The Mayor, GM and the Internal Audit Coordinator should attend ARIC meetings as Non-voting Observers.

The NSW Auditor-General (as Council's external auditor), or their representative, must be invited to each ARIC meeting as an independent Non-voting Observer.

The Chairperson can also request Council's Executives, any Councillors, any employee/contractor of Council and any subject matter expert to attend ARIC meetings. When requested, these persons must attend the meetings and must, as far as is practicable, provide any information requested.

Non-voting Observers can be excluded from a meeting by the Chairperson at any time.

Closed Meetings

The ARIC can hold closed meetings whenever it needs to discuss confidential or sensitive issues with only voting Members of the ARIC present.

The ARIC must meet privately at least once each year (and at any other time thereafter) with the Internal Audit Coordinator and/or external auditor without the GM present.

15.2 Dispute Resolution

ARIC Members and Council's management staff should maintain an effective working relationship and seek to resolve any differences they may have in an amicable and professional way by discussion and negotiation.

In the event of a disagreement between the ARIC and the GM or other senior managers, the dispute must be resolved by the Governing Body.

Unresolved disputes regarding compliance with statutory or other requirements must be referred to the OLG in writing.

15.3 Secretariat

The GM must nominate a staff member to provide secretariat support to the ARIC.

The secretariat will ensure the agenda for each meeting and supporting papers are circulated after approval from the Chairperson at least one (1) week before the meeting and ensure that minutes of meetings are prepared and maintained.

Minutes must be approved by the Chairperson and circulated within three (3) weeks of the meeting to each ARIC Member.

15.4 Remuneration of Members

In accordance with s216I of the Regulation, Council may pay remuneration to the Chairperson and Independent Members of the ARIC.

The Guidelines state that councils are obliged to make superannuation guarantee contributions on behalf of the Chairperson and Independent Members of the ARIC where they are remunerated. In accordance with s12(1) and s12(3) of the *Superannuation Guarantee (Administration) Act 1992* (Cth) (**SGA Act**), Independent Members are 'employees' for the purpose of receiving superannuation contributions. In accordance with the SGA Act (as amended from time to time), Council will make superannuation contributions to remunerated ARIC members.

15.5 Resignation and Dismissal of Members

Where the Chairperson or an Independent Member is unable to complete their term or does not intend to seek reappointment after the expiry of their term, they must give at least three (3) months' notice to the Chairperson (in the case of a Member) and the Governing Body (in the case of the Chairperson) prior to their resignation to allow Council to ensure a smooth transition to a new Independent Member or Chairperson.

Section 216H of the Regulation allows the Governing Body to terminate by resolution, the appointment of the Chairperson or an Independent Member, at any time before the expiry of their term where that person has:

1. breached Council's *Code of Conduct*;
2. performed unsatisfactorily or not to expectations;
3. declared, or is found to be in, a position of a conflict of interest which is unresolvable;
4. been declared bankrupt;
5. experienced an adverse change in business status;

6. been charged with a serious criminal offence;
7. been proven to be in serious breach of their obligations under any legislation; or
8. experienced an adverse change in capacity or capability.

The termination of an Independent Member or the Chairperson must be reported to the OLG within twenty-eight (28 days) after removal of the person (s216H Regulation).

The position of a Councillor Member can be terminated at any time by resolution of Council.

16. Review Arrangements

At least once every council term, the Governing Body must review or arrange for an external review of the effectiveness of the ARIC.

These terms of reference must be reviewed annually by the ARIC and once each Term by the Governing Body. Any substantive changes must be approved by the Governing Body.

17. Further Information

Director of Governance & Risk – charlie.ayoub@cumberland.nsw.gov.au

Audit, Risk and Improvement Committee – Terms of Reference

Review Page

Reviewed by:

Chairperson of ARIC

**Council in accordance with Council
Resolution** _____

Signature

Signature

Name

Name

Date

Date

Schedule 1
Register of ARIC Members

| Date Appointed | Name | Position | Date Ceased |
|----------------|---------------------|----------------------------------|-------------|
| 19 June 2024 | Mr. Mark Sercombe | Independent Chairperson (voting) | |
| 19 June 2024 | Ms. Rhonda Wheatley | Independent Member (voting) | |
| 19 June 2024 | Dr. Jason Young | Independent Member (voting) | |
| 19 June 2024 | Clr. Michael Zaiter | Councillor Member (non-voting) | |

Schedule 2

Specific Audit, Risk and Compliance Responsibilities

1. Audit

1.1 Internal Audit (s428A(2) Act)

Council must have an internal audit function to provide an independent unbiased assessment of Council's operations, risk, and control activities.

Section 216O of the Regulations requires Council to adopt, by resolution, an internal audit charter setting out how Council will exercise its internal audit functions.

Under section 216M, 216P and 216R of the Regulations, ARIC must exercise functional oversight of Council's internal audit function by undertaking the following:

1. oversee the internal audit activities carried out in relation to Council;
2. review the performance and efficacy of the activities over each period of four (4) years;
3. prepare a report on the review that may include recommendations; and
4. give a copy of the report to the Governing Body.

Additionally, ARIC's role in relation to the internal audit requirement includes the following:

1. provide overall strategic oversight of internal audit activities;
2. act as a forum for communication between the Governing Body, GM, senior management, the internal audit function and external audit;
3. coordinate, as far as is practicable, the work programs of internal audit and other assurance and review functions; and
4. Review and advise Council in relation to the following:
 - a. whether Council is providing the resources necessary to successfully deliver the internal audit function;
 - b. whether Council is complying with internal audit requirements, including conformance with the *International Professional Practices Framework*;
 - c. whether Council's internal audit charter is appropriate and whether the internal audit policies and procedures, and audit and risk methodologies used by Council are suitable;
 - d. the strategic four (4) year work plan and annual work plan of internal audits to be undertaken by Council's internal audit function;
 - e. whether Council's internal audit activities are effective, including the performance of the internal audit coordinator and the internal audit function generally;
 - f. the findings and recommendations of internal audits conducted, and corrective actions needed to address issues raised;

- g. the implementation by Council of any corrective actions (referred to in (f) above);
- h. the appointment of the internal audit coordinator (s216P Regulations) function and any external providers; and
- i. whether the internal audit function is structured appropriately and has sufficient skills and expertise to meet its responsibilities.

1.2 External Audit (s428A(2) Act)

ARIC's role in relation to the external audit requirement includes the following:

1. act as a forum for communication between the Governing Body, GM, senior management, the internal audit function and external audit;
2. coordinate as far as is practicable, the work programs of internal audit and external audit;
3. provide input and feedback on the financial statement and performance audit coverage proposed by external audit and provide feedback on the audit services provided;
4. review all external plans and reports in respect of planned or completed audits and monitor Council's implementation of audit recommendations; and
5. provide advice to the Governing Body and/or GM on action taken on significant issues raised in relevant external audit reports and better practice guides.

2. Risk

Section 216S of the Regulations requires Council to adopt and implement a system for managing risk. ARIC must monitor and review the implementation of the system, and report to Council on the operation and efficacy of the system.

Additionally, ARIC has the following roles in relation to risk:

2.1 Compliance (s428A(2)(a) Act)

ARIC's role in relation to compliance is to review and advise Council of the adequacy and effectiveness of Council's compliance framework, including:

1. whether Council has appropriately considered legal and compliance risks as part of Council's risk management framework;
2. how Council manages its compliance with applicable laws, regulations, policies, procedures, codes, and contractual arrangements; and
3. whether appropriate processes are in place to assess compliance.

2.2 Risk management (s428A(2)(b) Act)

Risk Management Framework

ARIC's role in relation to risk management is to review and advise Council in relation to the following:

1. whether Council's has in place a current and appropriate risk management framework that is consistent with the Australian Risk Management Standard;
2. whether Council is providing the resources necessary to successfully implement its risk management framework;
3. whether Council's risk management framework is adequate and effective for identifying and managing the risks Council faces, including those associated with individual projects, programs and other activities;
4. whether risk management integrated across all levels of Council and across all processes, operations, services, decision-making functions and reporting;
5. the adequacy of risk reports and documentation, for example, Council's risk register and risk profile;
6. whether a sound approach has been followed in developing risk management plans for major projects or undertakings;
7. whether appropriate policies and procedures are in place for the management and exercise of delegations;
8. whether Council has taken steps to embed a culture which is committed to ethical and lawful behaviour;
9. whether there is a positive risk culture within Council and strong leadership that supports effective risk management;
10. the adequacy of staff training and induction in risk management;
11. how Council's risk management approach impacts on Council's insurance arrangements;
12. the effectiveness of Council's management of its assets; and
13. the effectiveness of business continuity arrangements, including business continuity plans, disaster recovery plans and the periodic testing of these plans.

Internal Control Framework

ARIC's role in relation to internal controls is to review and advise Council whether:

1. Council's approach to maintaining an effective internal audit framework, including over external parties such as contractors and advisors, is sound and effective;
2. Council has in place relevant policies and procedures and that these are periodically reviewed and updated;
3. appropriate policies and procedures are in place for the management and exercise of delegations;

4. staff are informed of their responsibilities and processes and procedures to implement controls are complied with;
5. Council's monitoring and review of controls is sufficient; and
6. internal and external audit recommendations to correct internal control weaknesses are implemented appropriately.

2.3 Fraud Controls (s428A(2)(c) Act)

ARIC's role in relation to fraud and corruption is to review and advise Council of the adequacy and effectiveness of Council's fraud and corruption prevention framework and activities, including whether Council has appropriate processes and systems in place to capture and effectively investigate fraud-related information.

2.4 Financial Management (s428A(2)(d) Act)

ARIC's role in relation to financial management is to review and advise Council as follows:

1. whether Council is complying with accounting standards and external accountability requirements;
2. the appropriateness of Council's accounting policies and disclosures;
3. the implications for Council of the findings of external audits and performance audits and Council's responses and implementation of recommendations;
4. whether Council's financial statement preparation procedures and timelines are sound;
5. the accuracy of Council's annual financial statements prior to external audit, including:
 - a. management compliance/representations;
 - b. significant accounting and reporting issues;
 - c. the methods used by Council to account for significant or unusual transactions and areas of significant estimates or judgements; and
 - d. appropriate management signoff on the statements;
6. whether effective processes are in place to ensure financial information included in Council's annual report is consistent with signed financial statements;
7. whether Council's financial management processes are adequate;
8. the adequacy of cash management policies and procedures;
9. whether there are adequate controls over financial processes, for example:
 - a. appropriate authorisation and approval of payments and transactions;
 - b. adequate segregation of duties;
 - c. timely reconciliation of accounts and balances; and
 - d. review of unusual and high value purchases;

10. whether policies and procedures for management review and consideration of the financial position and performance of Council are adequate; and
11. whether Council's grants and tied funding policies and procedures are sound.

2.5 Governance (s248A(2)(e) Act)

ARIC's role in relation to governance is to review and advise Council regarding its governance framework, including Council's:

1. decision-making processes;
2. implementation of governance policies and procedures;
3. reporting lines and accountability;
4. assignment of key roles and responsibilities;
5. committee structure;
6. management oversight responsibilities;
7. human resources and performance management activities;
8. reporting and communication activities;
9. information and communications technology governance; and
10. management and governance of the use of data, information and knowledge.

3. Improvement

3.1 Strategic Planning (s428A(2)(f) Act)

ARIC's role in relation to strategic planning is to review and advise Council as follows:

1. the adequacy and effectiveness of Council's integrated, planning and reporting (IP&R) processes;
2. whether appropriate reporting and monitoring mechanisms are in place to measure progress against objectives; and
3. whether Council is successfully implementing and achieving its IP&R objectives and strategies.

3.2 Service Reviews and Business Improvement (s428A(2)(g) and s428A(3) Act)

ARIC's role in relation to service reviews and business improvement is as follows:

1. to act as a forum for communication and monitoring of any audits conducted by external bodies and the implementation of corrective actions (for example, NSW government agencies, Commonwealth government agencies, insurance bodies); and
2. to advise the GM and Council:
 - a. whether Council has robust systems to set objectives and goals to determine and deliver appropriate levels of service to the community and business performance;
 - b. whether appropriate reporting and monitoring mechanisms are in place to measure service delivery to the community and overall performance; and
 - c. how Council can improve its service delivery and Council's performance of its business and functions generally.

3.3 Performance Data and Measurement (s428A(2)(h) Act)

ARIC's role in relation to performance data and measurement is to review and advise Council:

1. whether Council has a robust system to determine appropriate performance indicators to measure the achievement of its strategic objectives;
2. whether the performance indicators Council uses are effective; and
3. the adequacy of performance data collection and reporting.

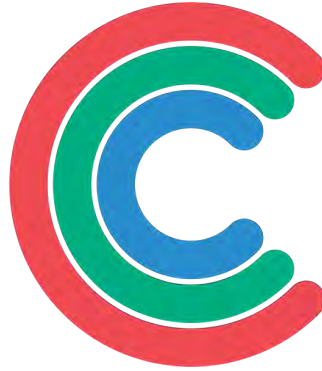
Schedule 3 Definitions

| Term | Definition |
|----------------------------|---|
| Act | <i>Local Government Act 1993.</i> |
| ARIC | Audit, Risk and Improvement Committee. |
| Chairperson | the chairperson of ARIC appointed by the Governing Body. |
| Council | Cumberland City Council. |
| Councillor | an elected member of the Cumberland local government area. |
| Councillor Member | the Councillor member of ARIC appointed by the Governing Body. |
| Designated Person | has the same meaning given to it in Council's Code of Conduct. |
| Executives | includes Council's chief finance officer, chief risk officer and executive management staff. |
| GM | the General Manager of Council. |
| Governing Body | the elected Councillors for the given council term. |
| Guidelines | <i>Guidelines for Risk Management and Internal Audit for Local Government in NSW</i> published by the OLG in November 2023. |
| Independent Member | an independent member of ARIC appointed by the Governing Body, including the Chairperson. |
| Member | includes an Independent Member, Councillor Member and Chairperson. |
| Non-voting Observer | any person invited to attend an ARIC meeting who is not a formally appointed Member. |
| OLG | Office of Local Government. |
| Regulations | <i>Local Government (General) Regulation 2021.</i> |
| Term | A council term of four (4) years. |

**DOCUMENTS
ASSOCIATED WITH
REPORT EC10/24-4**

Attachment 2

**Cumberland Local Traffic
Committee Terms of Reference**

CUMBERLAND
CITY COUNCIL

Terms of Reference

Local Traffic Committee

AUTHORISATION & VERSION CONTROL

| | |
|------------------------------------|---------------------------------|
| Terms of Reference (TOR) No | TOR-015 |
| TOR Owner | Director Environment & Planning |
| Date Adopted | 20 May 2020 |
| Version No | 1.0 |
| ECM Number | 9350272 |
| Review Date | 16 October 2024 |

1. Aim of the Committee

The aim of the Cumberland City Council Local Traffic Committee (referred as Cumberland Traffic Committee – CTC) is to improve traffic planning, management and coordination in Cumberland by being responsive to local needs and issues.

2. Purpose of the Committee

The CTC is a technical review committee. The purpose of the CTC is to make recommendations, and provide advice to Council on the technical aspects of proposals to regulate traffic on local roads within the Cumberland Local Government Area (LGA) prior to Council exercising its delegated authority. In making its recommendations and providing its advice the CTC is to consider only the technical merits of a proposal and ensure that the proposal meets current technical guidelines.

3. Committee Delegation

The CTC can make recommendations and provide advice to Council on only the following traffic related matters:

- The installation of traffic control devices – such as signs, markings, structures or other devices to direct or warn traffic on a road or road related area.
- The installation of regulatory parking – including truck zones, loading zones, taxi stands, bus zones and mobility parking spaces.
- The implementation of road closures, local area traffic management schemes and residential preferential parking schemes.

The CTC can also make recommendations and provide advice to Council in relation to any road related matter in the Cumberland City Council Local Government Area.

4. Voting Members

The CTC is made up of the following voting members:

- One representative of Council
- One representative of the NSW Police
- One representative of the RMS
- The State Members of Parliament (MP) or their nominees

Where a Council's LGA is represented by more than one MP, or covered by more than one NSW Police Area Command (PAC), MPs or Police officers representing the relevant electorate or PAC are entitled to be voting members of the Traffic Committee. However, the MPs or their representative and Police officers may only vote on issues which effect their electorate or PAC. An organisation which is a voting member may choose to send more than one representative. However, that organisation is still limited to one vote only.

5. Council's Voting Representative

Council's voting representative on the CTC may be the Mayor, a Councillor, or an employee of Council. Council's voting representative may only be appointed by resolution of Council. Council must also appoint an alternate to attend CTC meetings in the absence of Council's voting representative. An alternate has the same voting entitlement as Council's voting representative.

6. Advisors

Council, in consultation with the voting members of the CTC, may decide to invite advisors (non-voting) to CTC meetings. These may consist of Councillors, Council officers and representatives from government agencies and other organisations.

7. Part 1 – Delegated Authority to Council Delegate

All items defined within Part 1, are delegated to Council's General Manager or nominee for approval, subject to the technical concurrence of the Traffic Committee;

1. All regulatory signs contained in RMS document "Regulatory Signs"
 - a) Movement series such as STOP, GIVE WAY etc.
 - b) Direction series such as One Way, Keep Left / Keep Right, No Entry / Left Turn / Right Turn etc.
 - c) Pedestrian Series.
 - d) Parking Series such as Period Parking or User limitation, No Parking, No Stopping, Bus / Mail / Taxi / Loading / Truck / Works Zone etc.
2. Pavement markings such as centre lines / edge lines / lane lines and transverse lines.
3. Signs and Line marking Plans for traffic facilities such as roundabouts / intersection treatments and Local Area Traffic Management schemes previously notified and approved by Council.
4. Temporary road closures related to events organised by Council.

8. Part 2 - Items Requiring Council Approval:

All items defined within Part 2 require formal Council approval. These are;

1. Traffic facilities such as roundabouts, traffic islands, speed humps / raised thresholds, median islands, and intersection treatments etc. involving Capital works expenditure.
2. All permanent road closures.
3. All temporary full road closures for events / activities not organised by Council.

9. Reporting to Council

The minutes of the Traffic Committee meeting will be reported to Council in the month following the meeting.

10. Meetings of the Committee

The CTC does not operate under the provisions of the Local Government Act. The CTC operates under delegation from the RMS, and in accordance with the provisions prescribed by the RMS in the Guide. However, Council may determine the conduct, frequency and format of CTC meetings. Meetings of the CTC are conducted informally without strict adherence to the rules of debate and other procedural requirements. Within the limits of this provision the conduct at meetings will be determined by the Chairperson who is Council's representative.

Any request related to traffic which requires consideration by the traffic committee will be assessed in Council's Works and Infrastructure Division and reported to the CTC. All matters that require traffic committee consideration will be included in the agenda for the traffic committee meeting and electronically sent to all members every month.

11. Meeting Formats

CTC meetings are organised in two formats recognised by the RMS; namely 'face to face' or electronic meetings. 'Face to Face' meetings are held at Council offices at 9:30am on the first Wednesday of the following months:

- February
- April
- June
- August
- November

Electronic meetings of the CTC can be organised when required if agenda items require consideration. The Agenda's for all meetings will be emailed to the members of the traffic committee and Councillors. All the matters that require discussion at a meeting are presented at a 'face to face' meeting.

12. Special Meetings

Special 'face to face' meetings of the CTC may be held outside the normal meeting schedule when deemed necessary for the conduct of any business. Special meetings may be called by the Council with the concurrence of all CTC voting members.

13. Chairperson

Meetings of the CTC must be chaired by Council's voting representative. However, if Council's voting representative is absent, the meeting will be chaired by the Council's alternate representative.

DOCUMENTS
ASSOCIATED WITH
REPORT EC10/24-4

Attachment 3
Cumberland Property Committee
Terms of Reference

CUMBERLAND
CITY COUNCIL

Terms of Reference

Cumberland Property Committee

AUTHORISATION & VERSION CONTROL

| | |
|------------------------------------|----------------------------|
| Terms of Reference (TOR) No | TOR-001 |
| TOR Owner | Director Governance & Risk |
| Date Adopted | 5 October 2022 |
| Version No | 1.0 |
| ECM Number | 9743750 |
| Review Date | October 2024 |

1. Purpose

The Cumberland Property Committee is a Committee of Cumberland Council and is constituted under the Local Government Act 1993. The Committee is purely advisory and may not commit Council resources.

The Cumberland Property Committee is formed to advise Council on the strategic use and disposal of Council owned land, operational and community land and matters related to Council properties and future land acquisitions by the Council.

2. Tenure of Committee

The Cumberland Property Committee is established for the term of 2 years from the appointment of members unless disbanded earlier by Council resolution.

3. Objective

To advise:

- On the management of Council owned land/properties to achieve best outcome.
- On acquisitions of land/properties by the Council for the benefit of the community
- On disposal of Council owned land/properties

4. Role

The role of the Cumberland Property Committee is to:

- Provide coordinated approach to deal with Council property matters including redevelopment or disposal of Council properties/Council facilities.
- Provide guidance to deal with lease and licences on Council properties
- Provide guidance to acquire properties to fulfil the Council delivery Program
- Guide the development of Council's approved plans and their relationship to property development matters and leases.

5. Membership

Membership of the Cumberland Property Committee will consist of:

Voting Members:

- Mayor
- Four (4) Elected Members

Non-Voting Members:

- General Manager
- Director Governance & Risk
- Manager Special Projects
- Independent property specialist member as determined by the committee
- Any other Council officers as determined by the committee.

6. Notification of Vacancies

The Property Committee is to notify the Council promptly of any vacancy occurring in its membership that affects the capacity of the Property Committee to function. The Property Committee is to submit a report to Council, within 28 days, to nominate another elected member.

7. Chairperson

The Mayor will be the chairperson or their Nominated Voting Member will chair the Property Committee. In his/her absence, the Committee may elect another elected member as the Chairperson.

8. Quorum

The quorum for a meeting of the Property Committee will be three (3) of the elected members. If a quorum is not present within fifteen minutes after the appointed starting time, the meeting will be adjourned to a time fixed by the Chairperson.

Where there is no quorum, the members present can hold an informal meeting to discuss matters. However, any recommendations made by the Committee are not recognised until a meeting, where a quorum is present, is held.

9. Times and Places for Meetings

The Property Committee will meet once in two months at dates and times as determined by the Committee (with the exception of the first meeting of a new Committee term). An extraordinary meeting may be called where circumstances warrant.

Meetings will normally be held at either the Auburn Service Centre at 1 Susan Street Auburn, or the Merrylands Service Centre at 16 Memorial Avenue, Merrylands.

10. Meeting Procedures

Committee Members are expected to attend all Property Committee meetings where possible. If a member is unable to attend, an apology is to be provided to the meeting convener prior to the meeting.

The Property Committee is required to follow Council's adopted Code of Meeting Practice. The Committee should ensure that any proposed actions or resolutions are clear.

11. Decision Making

Wherever possible, the Property Committee should seek to achieve a consensus on decisions/recommendation or actions.

Where a matter is voted on, each voting member of the Property Committee is entitled to one vote.

Where a vote is tied the Chairperson may exercise a casting vote.

Voting can be conducted in two ways, either verbally or by show of hands (or in special circumstances in another appropriate way as agreed by the committee members).

12. Conflict of Interest

Property Committee members must declare any conflicts of interest at the start of each meeting or before discussion of a relevant agenda item or topic. This includes potential conflicts or a perception of conflict. Details of any conflicts of interest are to be appropriately minuted. Where members or invitees at Property Committee meetings are deemed to have a real or perceived conflict of interest, the member is precluded from Committee deliberations on the issue.

13. Administration of the Committee

The Committee will be convened by the General Manager.

A Property specialist member/advisor to Council will also attend meetings and provide expert advice to the Committee.

Council staff will provide the following administrative support to the Property Committee, as required:

- Notification of times of meetings and the meeting agenda and provide confirmation of meeting venue.
- Preparation and distribution of minutes.
- Background reports and other information as required.
- Reports to Council.
- Any other correspondence to Committee members
- Catering for meetings.

14. Minutes

Minutes of the Property Committee meeting are to be endorsed by the Chairperson prior to being circulated to the Property Committee and submitted to the next available Ordinary Meeting of the Council as appropriate.

The minutes will contain:

- Description of the meeting, date, time and venue at which the meeting was held.
- A list of persons present and any apologies.
- Notation of the adoption of minutes from the previous meeting.
- Whether there was business arising from the minutes.
- Notation of reports, correspondence and recommendations.
- Items of general business.
- Time meeting closed, date and venue of next meeting.

Minutes of each Committee Meeting will be reported to Council and the report is to highlight any recommendation arising from the Meeting that the Committee considers to be of sufficient importance to bring to the attention of Council. The minutes of all Committee meetings become public documents on reporting to Council.

15. Reports

It may be appropriate for Committee member/s to follow up on matters arising from the previous meetings. Where this takes place, such member/s will be required to take appropriate notes and report back to the Committee on the matter.

A Council officer will prepare reports, as requested by the Property Committee or as otherwise considered appropriate, for the consideration of the Committee.

16. Agenda and Meeting Notification

Agenda items are to be submitted to the Convener of the Committee at least 21 days prior to the next scheduled meeting date.

Members should describe nominated agenda items in sufficient detail to help members to understand the issues before them.

Urgent / late items not on the agenda are to be dealt with and determined in the appropriate manner in accordance with Council's adopted Code of Meeting Practice or equivalent document.

Notification of meetings will be given to Committee Members by the Convener at least one week in advance, specifying the time and venue, together with a copy of the agenda and any reports.

17. Expenses of Committee Members

Council will not generally authorise payment or provide remuneration to Property Committee members (apart from the External Independent property specialist)

18. Insurance

Members of the Property Committee are covered by Council's public liability and professional indemnity insurance.

19. Media Contact

Members of the Committee may not speak to the media on behalf of the Committee or Council without prior approval from the General Manager and liaison with Council's Public Relations Officer in accordance with Council Media Policy.

20. Changing the Terms of Reference

The following procedure will apply where a Property Committee member seeks to amend these Terms of Reference:

- The Property Committee must consider and vote on any proposed changes to the Terms of Reference
- Any proposed change is to be approved by Council.
- Any changes will be advised to Property Committee members.
- Any requests from Council management to amend the Terms of Reference are to be made through the General Manager for submission to Council.

21. Standard Operating Procedures

All other procedures are to be in accordance with Council's Manual for Standard Operating Procedures and Code of Meeting Practice.

DOCUMENTS
ASSOCIATED WITH
REPORT EC10/24-4

Attachment 4

Parramatta Park Community
Trustee Board Terms of
Reference



Terms of Reference

Community trustee board for
Parramatta Park

November 2022

Greater Sydney Parklands

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About these Terms of Reference

The community trustee board Terms of Reference identify the membership, responsibilities, authority and operations of the Parramatta Park community trustee board as part of Greater Sydney Parklands and Transport for NSW (the Department).

Community trustee board for Parramatta Park

Purpose of the community trustee board

The community trustee board has been established to provide advice and recommendations to the Greater Sydney Parklands Trust (GSPT) in relation to the Greater Sydney Parklands Trust lands.

The role of the board is to provide advice, input and recommendations to planning, processes and policies that may impact future amenity and public access to the parklands as well as the ongoing management of the parklands.

In performing this role, the community trustee board will:

- Provide informed strategic advice to the GSPT Board on matters relating to Parramatta Park
- Advise, share information and facilitate partnerships that assist Greater Sydney Parklands to develop its plans and increase community connections
- Advocate on behalf of and promote understanding of the needs of and issues affecting the local community, ensuring inclusion and equity of access for community members
- Contribute local knowledge on relevant issues, emerging trends, opportunities and community needs.

Establishment

The community trustee board for Parramatta Park has been established by legislation under the Act.

The community trustee board will be established by 1 January 2023, with a view to the first meeting being held in early 2023.

Responsibilities of the community trustee board

In accordance with section 39 of the Act, the community trustee board for Parramatta Park has the following responsibilities:

- Provide advice and assistance to the Greater Sydney Parklands Trust in the development and review of the plan of management for Parramatta Park and approve the plan of management for the parkland
- Provide advice to the Greater Sydney Parklands Trust about proposed new or modified services and facilities for Parramatta Park, including priorities for investment
- Stay informed about current visitor and local community issues relating to the parkland and provide advice to the GSPT Board about the issues
- Be a consultative body for the Greater Sydney Parklands Trust and the Parramatta Park Trust for Parramatta Park in relation to –
 - the development and review of the plan of management for the parkland
 - matters of local relevance to the parkland, including the protection and use of Parramatta Park and the business, leasing and other activities carried out on, or to be carried out on the parkland, and
- Any other function given to community trustee boards by the Greater Sydney Parklands Trust under this Act or another Act.

Responsibilities of the community trustee board Chair

The Chair of the community trustee board for Parramatta Park will be a board member appointed to the role by the Minister. Applicants seeking to be considered as a community trustee board Chair will be asked to indicate their interest and expertise when nominating. The Chair will be the key point of contact between the community trustee board and Greater Sydney Parklands.

The community trustee board Chair is expected to:

- Personally chair all community trustee board meetings
- Ensure that all matters dealt with by the community trustee board are consistent with the purpose of the community trustee board
- Be independent and impartial with respect to all community trustee board members
- Create an atmosphere of open and constructive participation within the community trustee board
- Actively work with community trustee board members to try and resolve any disputes that may arise during conduct of board activities
- Ensure confidential matters handled by the community trustee board are kept confidential, in accordance with the Code of Conduct
- Liaise with Greater Sydney Parklands to develop the agenda and key discussion items for meetings
- Advise Greater Sydney Parklands as soon as possible of any potential or actual conflict of interest that may affect their ability to fulfil their role as Chair
- Ensure community trustee board members comply with the Code of Conduct, notify any member who does not comply with the Code and refer any matters of concern to Greater Sydney Parklands through the Secretariat Officer
- Oversee the community trustee board's annual self-review and report any concerns to Greater Sydney Parklands through the Secretariat Officer
- Review and approve summary reports from community trustee board meetings for publication on the relevant Greater Sydney Parklands webpage within seven days of the meeting
- Liaise with GSP staff as required to assist the board to exercise its functions including to arrange their attendance at community trustee board meetings to provide information and respond to queries from members
- If there is an information access application relating to the community trustee board, liaise with the agency and/or Department's GIPA Unit and the board about the appropriate response.

Compliance obligations of the board

The following instruments give rise to obligations with which the community trustee board for Parramatta Park must comply:

- *Greater Sydney Parklands Trust Act 2022*
- Greater Sydney Parklands' Consultation and Engagement Framework.

The following activities and actions will be undertaken to ensure compliance obligations are met:

- Four meetings of the community trustee board will be held each year
- Summary reports will be produced as part of each meeting.

To provide reasonable assurance to the Minister that compliance obligations are met, the GSPT Board will provide annual reports:

- An attestation statement will be co-signed by the Chair of the GSPT Board and Chair of the community trustee board.

Community trustee board membership

The community trustee board for Parramatta Park shall be comprised of the following positions:

- Two members nominated by the relevant local councils (i.e. Cumberland City Council and City of Parramatta Council) as community representatives
- Up to six other members appointed by the Minister on the advice of the Greater Sydney Parklands Trust.

Membership criteria:

- The person has sound knowledge of Parramatta Park including the activities carried out in the parkland
- The person is able to communicate effectively with local residents, local community groups and other persons who use the parkland
- The overall membership of the board will be reflective of the broad range of views and interests of the community and persons who use Parramatta Park, and must have regard to the need for the board to:
 - be representative of diversity including, for example, in relation to gender, age and cultural background
 - include representation for local First Nations peoples, and
 - include a representative who has experience or skills in heritage or heritage management.

Appointment of members

Members are selected by a panel following an Expression of Interest process and appointed by the Minister, in accordance with the approved Consultation and Engagement Framework, on the recommendation of the Greater Sydney Parklands Trust. The Minister appoints the Chair to the community trustee board for Parramatta Park, noting that the Chair must have the demonstrated skills and experience to fulfil their role which includes running meetings, communicating effectively and providing recommendations. Further details of the role and function of the Chair are provided in the accompanying Code of Conduct.

The Minister may reappoint the Chair and members of the community trustee board for Parramatta Park to serve one additional term only.

Terms of appointment

How long is membership for?

A community trustee board member holds office for a period not exceeding five years. Members will be appointed for two years in the first instance.

Members are eligible (if otherwise qualified) for re-appointment. However, a member cannot hold office for more than two consecutive terms.

Terms of individual members may be staggered to support board continuity and knowledge exchange.

What happens when new members are appointed?

Once appointed, members will be provided with appropriate documentation as part of a process of onboarding and induction. Each member must acknowledge in writing their acceptance of these documents and declare any conflicts of interest before commencing as a board member.

Resignations/terminations

The Minister may, on the recommendation of the Chair of the Greater Sydney Parklands Trust, remove a member from office at any time. A member may be removed prior to the expiry of their term if:

- The member cannot commit adequate time to their role
- There has been a disagreement with other members that cannot be resolved
- There is a conflict of interest that cannot be mitigated
- The member no longer meets the membership criteria
- The member has failed to attend an adequate number of meetings without providing an apology or valid reason (i.e. is absent from three consecutive meetings of the board)
- The member breached the community trustee board's Code of Conduct.

In the case of a termination, Greater Sydney Parklands will notify the relevant member of their intention and allow for the member to respond before a decision is made.

Meeting arrangements

Support during meetings

All records, including the agenda, outcomes and any reports or recommendations, will be prepared and kept by the officer responsible for secretariat support.

The secretariat will coordinate with Greater Sydney Parklands and the Chair of the community trustee board as appropriate to draft and prepare the agenda for each board meeting. Agendas will be circulated to members one week prior to the meeting.

The secretariat support must also coordinate with the Chair of the board to ensure that the summary report of the meeting is promptly finalised, signed by the Chair, and distributed to members for confirmation as soon as is practicable after each meeting.

The summary report of the previous meeting should also be tabled at the next board meeting for approval.

Meeting frequency

The community trustee board for Parramatta Park will meet at least four times per year.

A notice of each meeting confirming the date, time, venue and agenda will be sent to each member of the community trustee board as soon as practicable prior to the meeting date. Meeting dates for the full calendar year are set in advance to enable members to schedule meetings.

Board meetings may be held in a range of formats, including online using the relevant technology as agreed to by majority of members of the community trustee board, in order to provide flexibility and accessibility for members.

Business outside of meetings

The community trustee board for Parramatta Park may, for urgent issues, consider a matter out-of-session by the circulation of papers among all the members. The resolution is to be approved in writing by a majority of members.

Matters decided by a community trustee board out-of-session must be noted by the board at the next formal meeting and be recorded in the summary report of that meeting.

Attendees

The community trustee board for Parramatta Park may grant permission for non-member attendees to be present on the recommendation of the GSPT Board.

NSW Government MPs are welcomed and encouraged to attend meetings; however, they are not eligible to propose motions or vote on recommendations.

Quorum

The quorum for a meeting of the board requires the following conditions to be met:

- Although not a decision-making body, a quorum is required for recommendations
- The quorum for a meeting of the community trustee board is a majority of its members.

Publication of decisions

The confirmed summary report of the meeting will be made publicly available. The summary report, including actions and recommendations, will be published on Greater Sydney Parklands' or the relevant parkland webpage within seven days of each meeting, referred to the GSPT Board and circulated to members.

If Greater Sydney Parklands provides secretariat support and holds documents of the community trustee board, those documents may be subject to an information access application under the Government Information (Public Access) Act 2009 (GIPA Act). If there is an information access application relating to the board, the agency and/or Department's GIPA Unit will liaise with the board about the appropriate response.

Please note that the Department is the decision maker in relation to GIPA applications made to it for documents it holds even though those documents that relate to the work of the community trustee board.

Conduct of members

The community trustee board will abide by the board Code of Conduct.

Conflicts of interest

Conflicts of interest must be disclosed and dealt with by the community trustee board for Parramatta Park in a transparent way and in accordance with Departmental policy.

A conflict of interest arises in relation to a person's duties as a member of the community trustee board, if for example:

- The member has interests which could improperly influence the performance of his or her responsibilities as a board member
- There is the potential for a board member to personally benefit or provide benefits to associates from access to non-public information, or the results of non-public discussions, or decision-making processes.

Communication with the media and third parties

Views that are publicly expressed by a community trustee board member may be perceived or construed by the broader community as those of the community trustee board for Parramatta Park, Greater Sydney Parklands and/or the Department. Community trustee board members may speak to the media about their own views but must not purport to represent Greater Sydney Parklands.

Any requests from the media to a community trustee board member or Chair should be forwarded to Greater Sydney Parklands' Director Community, Engagement and Partnerships who will liaise with the Chair regarding the media request.

General correspondence and enquiries should be made through the Secretariat Officer.

Submissions to the community trustee board for Parramatta Park must be addressed to the Chair.

The Chief Executive is the designated media spokesperson for Greater Sydney Parklands.

Remuneration and allowances

Remuneration and out of pocket expenses

In line with the Act, positions on the community trustee board for Parramatta Park are voluntary and not remunerated.

The Chair and members of community trustee board for Parramatta Park are not entitled to out of pocket expenses.

Review

Periodic reporting on performance

Unless otherwise provided for by the establishing legislation, the community trustee board for Parramatta Park will conduct an annual evaluation of its performance and self-evaluate its level of effectiveness. The evaluation framework will be prepared by the Secretariat and endorsed by the members. The evaluation report should identify:

- How the board or committee is delivering on its objectives including a summary of key activities undertaken during the period
- Meetings held during the period and attendance
- Current membership and any changes that have occurred during the period
- Risk management strategies
- Results of any reviews undertaken, and
- Ratification of the terms of reference and any subsequent amendments.



Board review

Formal reviews are generally undertaken every five years. Greater Sydney Parklands must review the approved Consultation and Engagement Framework at least every five years, under the Act. An evaluation and review of the community trustee board's performance may be considered as part of this review.

A formal review of a community trustee board and its members may consider whether:

- The board is fulfilling its functions and objectives, its successes and the outcomes of its work in respect of its Terms of Reference and the legislation
- Delivery through the board is the most cost-effective approach
- The board has an appropriate number of members for the functions being performed
- Members have the appropriate mix of skills, experience, and diversity, and/or
- Individual members are fulfilling their responsibilities.

Review of Terms of Reference

The Greater Sydney Parklands Trust Board will review the Terms of Reference annually to ensure they remain consistent with the community trustee board's objectives and responsibilities.

Agreement

These terms of reference are agreed by the community trustee board for Parramatta Park as at
/ / [Insert Date] and remain in force until otherwise amended, replaced or voided.

Chair [Insert Name]:

Signature:

Date: / /



**DOCUMENTS
ASSOCIATED WITH
REPORT EC10/24-4**

**Attachment 5
WSROC Constitution**



Company Limited by Guarantee

CONSTITUTION

WESTERN SYDNEY REGIONAL ORGANISATION OF COUNCILS LIMITED

ABN 16 053 399 983

Amendments adopted by WSROC Ltd on 26th August 1999
Amendments adopted by WSROC Ltd 12th October 2001
Amendments adopted by WSROC Ltd 28th August 2003
Amendments adopted by WSROC Ltd on 14th October 2004
Amendments adopted by WSROC Ltd on 16th June 2005
Amendments adopted by WSROC Ltd on 15th October 2009
Amendments adopted by WSROC Ltd on 14th October 2010
Amendments adopted by WSROC Ltd on 16th June 2016
Amendments adopted by WSROC Ltd on 18th August 2016
Amendments adopted by WSROC Ltd on 21st September 2017
Amendments adopted by WSROC Ltd on 23rd August 2018
Amendments adopted by WSROC Ltd on 27th August 2020
Amendments adopted by WSROC Ltd on 19th August 2021
Amendments adopted by WSROC Ltd on 24th March 2022
Amendments adopted by WSROC Ltd on 25th August 2022

Suite 201, Level 2, 85 Flushcombe Road, Blacktown NSW 2148
(PO Box 63, Blacktown NSW 2148)
Telephone: (02) 9761 4333
Email: info@wsroc.com.au Web: www.wsroc.com.au

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CONFORMED COPY OF CONSTITUTION

WESTERN SYDNEY REGIONAL ORGANISATION OF COUNCILS LIMITED

A company limited by guarantee and incorporated under the provisions of the Corporations Law of New South Wales

This conformed copy includes resolutions amending the Constitution on 26th August 1999, 12th October 2001, 28th August 2003, 14th October 2004, 16th June 2005, 15th October 2009, 14th October 2010, 16th June 2016, 18th August 2016, 21st September 2017, 23rd August 2018, 27th August 2020, 19th August 2021 and 24th March 2022.

1. NAME

The name of the Company is “Western Sydney Regional Organisation of Councils Limited”.

2. REGISTERED OFFICE

The Registered Office of the Organisation will be situated at Blacktown in the State of New South Wales.

3. INTERPRETATION

3.1 Definitions

In this Constitution:

“**Associate**” means a person registered as an associate Member of the Organisation in the Register of Associates;

“**President**” “**Vice-President – Central City**” “**Vice-President – Western City**” “**Secretary**” and “**Treasurer**” mean those respective officers of the Organisation appointed from time to time as provided by this Constitution;

“**Board**” means the board of the Organisation constituted as provided in this Constitution. Reference to the Board includes a reference to any duly appointed Committee of the Board or person or persons authorised by Board resolution exercising any of the powers of the Board which have been duly delegated;

“**Committee**” means a Committee created pursuant to clause 16.1;

“**Constitution**” means the Constitution of the Organisation as amended from time to time;

“**Director**” has the same meaning as set out in Section 9 of the law from time to time;

“**Greater Western Sydney**” is defined as all of those Local Government Areas that constitute the Western and Central Cities of the Greater Cities Commission Six City Sydney Metropolis.

“**Law**” means the *Corporations Law* and the *Corporations Act, 2001 (Cth)*;

“**Local Government Body**” means a Council of a city, shire, municipality or local government area;

“**Member**” means a person registered as a Member of the Organisation in the Register of Members;

“**Organisation**” means Western Sydney Regional Organisation of Councils Limited;

“**Register of Associates**” means the register of Associates kept by the Organisation pursuant to this Constitution;

“**Register of Members**” means the register of Members kept by the Organisation pursuant to the Law;

“**Registered Office**” means the Registered Office for the time being of the Organisation;

“**Seal**” means the common seal of the Organisation.

3.2 Interpretation

In this Constitution, unless the contrary intention appears:

- (a) words importing any gender include all other genders;
- (b) words importing persons include bodies corporate and unincorporated associations;
- (c) words importing the singular include the plural and vice versa;
- (d) a reference to a statute (or to a provision of a statute) means the statute or provision as modified or amended and in operation for the time being or any statute or provision enacted in lieu thereof and includes any regulation or rule for the time being in force under the statute or provision; and
- (e) the replaceable rules set out in the Law are deemed incorporated in this Constitution except to the extent that they conflict with an express provision of this Constitution.

4. OBJECTS

The objects of the Organisation shall be:

- (a) to consider the needs of the Local Government areas and of the people of Greater Western Sydney, and where appropriate specific to Western and Central Cities, and to make known those needs to the Commonwealth and New South Wales Governments and to the wider community;
- (b) to submit to the Commonwealth and New South Wales Governments requests for financial assistance, policy changes and additional resources for the Western Region of Sydney and Members;
- (c) to strengthen the role of Local Government in regional affairs, particularly where the Western Region of Sydney may be affected by Commonwealth or New South Wales Government policy;
- (d) to foster co-operation between Members in addressing problems and projects of joint interest;
- (e) to advance the interests of Greater Western Sydney;
- (f) to assist Members to carry out their duties, functions and powers under the Local Government Act 1993 and any other statute making provision for duties, functions or powers of the Members; and
- (g) otherwise in accordance with Section 124 of the Law and in accordance with its Strategic Plan as adopted from time to time.

5. NO PROFITS FOR MEMBERS

- 5.1** The income and property of the Organisation shall be applied solely towards the promotion of the objects of the Organisation as set forth in this Constitution and no portion of them shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise, to the Members.
- 5.2** Nothing in this clause shall prevent the payment in good faith of remuneration to any officers or servants of the Organisation or to any Member in return for any services actually rendered to the Organisation or for goods supplied in the ordinary and usual course of business, nor prevent the payment of interest (at a rate not exceeding any rate which may at any time be fixed for the purpose of this paragraph by the Constitution) on money borrowed from any Member or reasonable and proper rent for premises demised or let by any Member. No remuneration or other benefit in money or money's worth shall be paid or given by the Organisation to any member of the Board except reimbursement of out-of-pocket expenses or interest on money lent (as provided above) or rent for premises or equipment let to the Organisation.

6. LIABILITY OF MEMBERS

- 6.1** The liability of the Members is limited.
- 6.2** Every Member undertakes to contribute to the assets of the Organisation in the event of the Organisation being wound up or dissolved during the time that it is a Member or within one year afterwards for payment of the debts and liabilities of the Organisation contracted before the time at which it ceases to be a Member and of the costs, charges and expenses of winding up or dissolving the Organisation and for the adjustment of the rights of the contributories among themselves such amount as may be required, not exceeding ten dollars (\$10.00).

7. SURPLUS ASSETS ON WINDING UP OR DISSOLUTION

If upon the winding-up or dissolution of the Organisation there remains, after satisfaction of all its debts and liabilities, any property whatsoever, the same shall be paid to or distributed among the Members.

8. MEMBERSHIP

8.1 Members

The members of the Organisation shall be divided into Tier 1 Members, Tier 2 Members and Associate Members.

8.2 Tier 1 Members

8.2.1 Tier 1 Members are member Councils with 40,000 residents or above and are full fee paying Councils.

The Tier 1 Members shall be the Councils of:

- a) Blacktown City
- b) Blue Mountains City
- c) Hawkesbury City
- d) Cumberland City
- e) Liverpool City

f) such other bodies which may be admitted to membership of the Organisation,

being persons for the time being who are registered as Members of the Organisation in the Register of Members and who have not ceased to be Members for any reason.

8.3 Tier 2 Members

8.3.1 Tier 2 Members are member Councils that have less than 40,000 residents with a base membership fee set at 50% of the full base membership fee plus GST.

The Tier 2 Members shall be the Councils of:

a) Nil

being persons for the time being who are registered as Members of the Organisation in the Register of Members and who have not ceased to be Members for any reason.

8.4 Associate Members

The Associates shall be such persons who may be admitted to associate membership of the Organisation being persons for the time being who are registered as Associates of the Organisation in the Register of Associates and who have not ceased to be Associates for any reason.

Associate members shall have observer status with no voting rights.

Associate membership is open to all councils and has a fixed subscription fee set at 20% of the full Membership fee per annum plus GST.

On acceptance by the Organisation, associate members can become full members by paying, on a pro-rata basis, the balance of the membership fee plus GST.

The Associate Members shall be the Councils of:

b) NIL

being persons for the time being who are registered as Associate Members of the Organisation in the Register of Associate Members and who have not ceased to be Associate Members for any reason.

8.5 Admission to Membership

8.5.1 Applicants for membership and associate membership shall sign and forward to the Organisation an application in the form of/or to the effect following:

[Name of Applicant] desires to become a Tier 1 Member/Tier 2 Member/Associate Member of the Western Sydney Regional Organisation of Councils Limited and agrees to be bound by this Constitution of the Organisation and authorises the entry of its name on the Register of Members/Register of Associates.

8.5.2 The Secretary shall place applications for membership and associate membership before the first meeting of the Board after the application for membership or associate membership has been received.

8.5.3 The Board's decision shall be final and conclusive as to whether any person shall be admitted as a Member or Associate.

- 8.5.4 The Board shall in no case be required to give any reasons for the acceptance or rejection of any application for membership or associate membership of the Organisation.
- 8.5.5 The name of every person admitted to membership or associate membership of the Organisation shall be forthwith entered in the Register of Members or the Register of Associates, as the case may be, together with the date of its admission and its street, postal and email addresses; telephone and facsimile numbers and, in the case of Members, the names and addresses of their Directors.
- 8.5.6 The Secretary shall promptly give notice to applicants for admission to membership or associate membership of the Organisation of their admission to membership or associate membership of the Organisation or the rejection of their application.

8.6 Change of Address

Any Member or Associate which changes its street or postal or email address or telephone or email address shall immediately give notice of the change in writing to the Organisation and such new address and numbers shall be promptly recorded in the Register of Members or the Register of Associates, as the case may be.

8.7 Cessation of Membership and Associate Membership

- 8.7.1 A Member shall cease to be a Member of the Organisation and an Associate shall cease to be an Associate Member of the Organisation:

- (a) on the expiration of 6 months following the date on which the Member or Associate gives written notice to the Organisation of its intention to resign its membership or associate membership of the Organisation; or
- (b) if its annual or other membership or associate membership fees remain unpaid for 1 calendar month after the date of any default notice sent to it pursuant to clause 9.3,

and its name shall be forthwith removed from the Register of Members or Register of Associates, as the case may be, and the date of removal recorded in that Register.

- 8.7.2 Nothing in clause 8.6.1 shall in any way diminish the liability of the Member under this Constitution.

- 8.7.3 If a Member ceases to be a Member or an Associate ceases to be an Associate for any reason, the Board may notify this fact to any persons to whom a list of Members or a list of Associates has been supplied by the Organisation with the request that the list of Members or the list of Associates be amended accordingly.

8.8 Dismissal of Member

- (a) Where the elected Councillors of a Member are all dismissed by the Governor pursuant to the Local Government Act 1993 and one or more administrators of the Council is appointed by the Governor pursuant to that Act, then the administrator or administrators so appointed shall be entitled to represent the Member at any General Meeting of the organisation.
- (b) In the event that any such administrator or administrators are so appointed by the Governor, then notwithstanding clause 12.3(a), the administrator or administrators may appoint up to two Directors of the Organisation, such Directors must be appointed from persons being an administrator of the Member, the General

Manager of the Member or a staff Director, Group Manager or equivalent thereof of the Member. Any such appointment or change to that appointment shall be in writing under the signature of an administrator of the Member.

9. MEMBERSHIP AND ASSOCIATE MEMBERSHIP FEES

9.1 Annual Fees

The Board shall from time to time determine the annual fees of the Members and the annual fees of the Associates, which fees shall be Payable in each financial year on or before 1 August or, where the member becomes a Member or the Associate becomes an Associate after 1 August in a year, within 28 days of admission to membership or associate membership, and, in each subsequent year, on or before 1 August.

9.2 Other Fees

The Board may from time to time determine other fees which shall or may be payable by Members or Associates and the date by which they are to be paid.

9.3 Default in Payment of Fees

If the fees referred to in clause 9.1 or any compulsory fees determined in accordance with clause 9.2 remain unpaid for 2 calendar months after the due date for payment the Secretary shall issue a default notice to that Member or Associate stating that unless the Member or Associate pays such fees within 1 calendar month following the date of the default notice the Member or Associate shall cease to be a Member or Associate of the Company. The Board may in its absolute discretion on payment of all arrears re-admit any Member or Associate whose membership or associate membership ceases in this way.

10. GENERAL MEETINGS

10.1 Annual General Meeting

An Annual General Meeting of the Organisation shall be held at least once in every calendar year and otherwise in accordance with the provisions of section 250N of the Law.

10.2 Meetings

10.2.1 All general meetings, other than Annual General Meetings, shall be called General Meetings.

10.2.2 The President may convene a General Meeting. A General Meeting shall be convened by the Secretary on receipt of the requisition of 3 or more Directors.

10.2.3 Subject to the provisions of the Law relating to special resolutions and agreements for shorter notice, at least 21 days' notice (exclusive of the day of the meeting) shall be given to such persons as are entitled to receive such notices from the Organisation. The notice shall specify the place, the date and the hour of the meeting and, in the case of special business, the general nature of that business.

10.3 Special Business

For the purpose of clause 10.2.3 all business to be transacted at a General Meeting other than an Annual General Meeting shall be special business. All business that is to be transacted at an Annual General Meeting shall be special business with the exception of the

consideration of the accounts, balance sheets, the report of the Board and auditors and any appointment of auditors.

11. PROCEEDINGS AT GENERAL MEETINGS

11.1 Representatives

A Member may be represented at general meetings by:

- (a) if no proxy or authorised representative has been appointed, its Directors;
- (b) a proxy appointed in accordance with this Constitution; or
- (c) an authorised representative appointed in accordance with the Law.

11.2 Quorum

11.2.1 No business shall be transacted at any general meeting unless a quorum of Directors or other persons appointed in accordance with clause 11.1 is present.

11.2.2 A quorum shall be constituted by a simple majority of the total number of Members. A Member is deemed to be present at any general meeting if at least one of its nominated Directors is present at the meeting.

11.3 Failure to Achieve a Quorum

11.3.1 If within half an hour from the time appointed for the meeting a quorum is not present:

- (a) the meeting, if convened upon the requisition of Directors, shall be dissolved; and
- (b) in any other case, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Board may determine.

11.3.2 If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week at the same time and place, and if at that adjourned meeting a quorum is not present within half an hour of such time it shall be further adjourned to such other day and at such other time and place as the Directors may determine, and if at the further adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present (being not less than two (2)) shall be a quorum. If there are less than two (2) members present, then the meeting is dissolved.

11.4 Chair

11.4.1 The President shall preside as the chair at every general meeting of the Organisation. If the President is absent or unwilling to act, the Vice-President Central City or Vice-President Western City (or if he or she is absent or unwilling to act, the Treasurer) shall be the chair. In the event that none of the President, the Vice-President Central City, the Vice-President Western City and Treasurer are present or willing to act then the members, by their Directors, proxies or authorised representatives present shall appoint one of the Directors, proxies or authorised representatives present to be the chair of the meeting.

11.4.2 The Chair shall be responsible for the general conduct of the meeting and may make rulings and in addition to any general power to adjourn may adjourn the meeting without putting a question to the vote if such action is required to ensure the orderly conduct of the meeting.

11.5 Adjournments

11.5.1 The chair may, with the consent of any meeting at which a quorum is present (and shall if so, directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

11.5.2 When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

11.5.3 Subject to clause 11.5.2 it shall not be necessary to give any notice of an adjournment or the business to be transacted at an adjourned meeting.

11.6 Voting at General Meetings

11.6.1 Each Tier 1 Member shall have a maximum of two (2) votes; each Tier 2 Member shall have a maximum of one (1) vote at general meetings.

11.6.2 At any general meeting a resolution put to the vote of the meeting shall be decided by the Members by their Directors, proxies or authorised representatives present on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:

- (a) by the chair; or
- (b) by Members entitled to at least 10% of the total voting rights of all Members having the right to vote at the meeting.

11.6.3 Unless a poll is so demanded a declaration by the chair that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

11.6.4 The demand for a poll may be withdrawn.

11.6.5 If a poll is duly demanded it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chair directs and the result of the poll shall be the resolution of the meeting at which the poll was demanded. A poll demanded on the appointment of a chair or on a question of adjournment shall be taken forthwith.

11.6.6 In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.

11.6.7 On a show of hands every Director present representing a Member in accordance with clause 11.1(a) shall have one (1) vote.

11.6.8 On a poll every Director present representing a Member in accordance with clause 11.1(a) shall have one (1) vote.

11.6.9 No Member is entitled to vote at any general meeting if its fees are in arrears at the commencement of the meeting.

11.6.10 No Associate Member shall be entitled to vote in any general meeting of the Organisation on any matter whatsoever.

11.7 Attendance at General Meetings

Any Associate being an individual or any person holding elected office in or being an employee of a Member or Associate may attend and speak at any general meeting of the Organisation.

11.8 Proxies

11.8.1 A Member may vote by proxy, by its authorised representative or, in the event that no proxy or authorised representative has been appointed, by its Directors.

11.8.2 The instrument appointing a proxy shall be in writing and either:

- (a) by a resolution of the Member;
- (b) under the hand of the General Manager;
- (c) under the hand of a delegate of the General Manager which delegation must be in writing and signed by the General Manager of the Member.

11.8.3 The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

11.8.4 A Member shall be entitled to instruct his or her proxy in favour of or against any proposed resolutions. Unless otherwise instructed the proxy may vote as he or she thinks fit.

11.8.5 The instrument appointing a proxy shall be substantiated in the form set out below.

WESTERN SYDNEY REGIONAL ORGANISATION OF COUNCILS LIMITED

[Insert name of Member] of [Insert address of Member] being a Member of Western Sydney Regional Organisation of Councils Limited hereby appoints [Insert name of proxy] of [Insert address of proxy] as its proxy to vote on its behalf at the *Annual / *General Meeting of the Organisation, to be held on [Insert date] and at any adjournment thereof.

The proxy is hereby authorised to vote *in favour / *against/ *as he or she thinks fit in respect of the following resolutions:

Signed [date]

(*Delete as appropriate).

11.8.6 The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the Registered Office, or at such other place as is specified for that purpose in the notice convening the meeting, before the commencement of the meeting or adjourned meeting at which the person named in the instrument proposes to vote and in default the instrument of proxy shall not be treated as valid.

A legible facsimile transmission copy of any such instrument will be accepted as if it was the original instrument.

- 11.8.7 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the revocation of the instrument or of the authority under which the instrument was executed, if no intimation in writing of such revocation has been received by the Organisation at the Registered Office before the commencement of the meeting or adjourned meeting at which the instrument is used.

12. BOARD

- 12.1 The Board shall consist of 2 Directors nominated by a Tier 1 Member, and 1 Director nominated by a Tier 2 Member.
- 12.2 The continuing Directors may act notwithstanding any vacancy but if the number of Directors falls below three (3) the Board shall not, except for the purpose of convening a general meeting, act as long as the number is below that minimum number.
- 12.3 Subject to clause 12.5, a Director:
- (a) must be nominated by a Member in writing under the signature of the General Manager of the Member;
 - (b) must be a councillor of a Member;
 - (c) is appointed until the beginning of the first meeting of the Board held after a Council election of the Member nominating the Director.
- 12.4 A Tier 1 Member shall not be represented on the Board by more than two (2) Directors, and Tier 2 Member shall not be represented on the Board by more than one (1) Director, at any time.
- 12.5 The office of Director shall be vacated if the Director:
- (a) ceases to be a Director on the Board by virtue of the Law;
 - (b) by notice in writing to the Organisation resigns his or her office;
 - (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
 - (d) absents himself or herself from three (3) consecutive Board meetings without leave of absence from the Board and the Board resolves that his or her office be vacated;
 - (e) becomes prohibited from being a Director on the Board by reason of any order made under the Law;
 - (f) is the Director of a Member which ceases to exist;
 - (g) is the Director of a Member which is dismissed by the State Government and replaced by one or more administrators;
 - (h) ceases to be a councillor of a Member; or
 - (i) has his or her appointment as Director withdrawn in writing under the signature of the General Manager of the Member whom he or she represents and that Member appoints a new Director in his or her stead.
- 12.6 The office of President, Vice-President Central City, Vice-President Western City and Treasurer respectively shall not be vacated if those Directors cease to be councillors of a Member because of the holding of local government elections. Those Directors shall

continue to hold office until such time as the Members they represent re-appoint them as Directors or appoint new Directors to take their place in accordance with clause 12.3.

- 12.7 Directors shall not be paid any fees by the Organisation for their services as such. The Organisation may in its discretion reimburse to any Director out of the funds of the Organisation any outlay or expense properly incurred by him or her on behalf of or at the request of the Organisation.

12A Alternate Directors

12A.1 A Member may, subject to this clause, appoint either: -

- (a) a Director of the Organisation (whether or not appointed by the Member making the appointment of the alternate Director); or
- (b) a councillor (within the meaning of the Local Government Act, 1993) of the Member making the appointment, who is not otherwise a Director of the Organisation;

to be an alternate Director to exercise some or all of the powers of a specified Director appointed by that Member for a specified period.

12A.2 A member may only appoint as an alternate Director a person who is an eligible person pursuant to clause 12A.1(b) if the specified Director in place of whom the person is to be appointed has been granted by the Member leave of absence from meetings of the Member's council (or committees of that council) for a period including the period of the proposed appointment.

12A.3 The appointing Member may terminate the alternate Director's appointment at any time.

12A.4 Appointment of an alternate Director, or the termination of that appointment, must be in writing under the signature of the General Manager of the Member. A copy must be given to the Organisation.

12A.5 The instrument appointing an alternate Director shall be substantially in the form set out below.

WESTERN SYDNEY REGIONAL ORGANISATION OF COUNCILS LIMITED

[Insert name of Member] of [Insert address of Member] being a Member of Western Sydney Regional Organisation of Councils Limited hereby appoints [Insert name of proposed alternate director] ("the Nominee") to be an alternate director of the Organisation in the place of [Insert name of current director] for the period from [insert date] to [insert date] (both dates inclusive), and to exercise [all the following] powers which [Insert name of current director] may exercise as a director of the Organisation.

[If only limited powers are authorised, list here the powers which may be exercised:]

On behalf of [Name of Member] I certify that the Nominee is:

- (a) a director of the Organisation; or
- (b) a councillor of [Name of Member] who is not otherwise a director of the Organisation and that the director in place of whom the Nominee is appointed has been granted leave of absence from meetings of the Council (or committees of the council) for a period including the period of this appointment. [*indicate which*].

Dated: [Date]

Signed:

- 12A.6 An alternate Director may attend and vote at a meeting of the Board if the specified Director, in place of whom the alternate Director is appointed, is not present at that meeting. When an alternate Director exercises, during the period in which the alternate Director is appointed, the powers permitted to him by the Member making the appointment, the exercise of those powers is just as effective as if the powers were exercised by a Director of the Organisation. If the alternate Director is otherwise a Director of the Organisation, then that person may vote as an alternate Director in addition to his or her own deliberative vote as a Director. For the purpose of forming a quorum of the Board each person present will count as only one Director, notwithstanding that they may be an alternate for any other Director.
- 12A.7 Notwithstanding clause 3.2(e), the replaceable rule in section 201K of the Law is displaced, and does not apply to the Organisation.

13. PRESIDENT, VICE-PRESIDENT CENTRAL CITY, VICE PRESIDENT WESTERN CITY AND TREASURER

13.1 Appointment of President, Vice-President Central City, Vice-President Western City and Treasurer

- (a) The President, Vice-President Central City, Vice-President Western City and Treasurer of the Board shall be those Directors elected to the office by the members at a General Meeting of the organisation which must be held during the months of October or November in each year and shall hold office until the election of these office bearers to be conducted during the General Meeting of the organisation held in the months of October or November the following year. The retiring President, Vice-President Central City, Vice-President Western City and Treasurer are eligible for re-election.
- (b) The Secretary of the organisation must call a General Meeting of the organisation to be held during the months of October or November in each year and the business to be conducted at such a meeting must include the election of the office bearers referred to in this Clause 13.1.
- (c) The business referred to in clause 13.1(b) may be included in the agenda for, and conducted at, the Annual General Meeting if that meeting is held in October or November in any year.
- (d) Method of Election:
Elections to fill the positions of President, Vice-President Central City, Vice-President Western City and Treasurer, shall be carried out in accordance with the provisions of the Local Government Act, 1993 i.e., Schedule 7 – Election of Mayor by Councillors, Local Government (general) Regulations 2005, and that a General Manager of a member Council (or if no General Manager is present, a Senior Council Officer), act as Returning Officer.

13.2 Vacation of Office

The office of President, Vice-President Central City, Vice-President Western City and Treasurer shall be vacated if the person holding office ceases to be a Director.

13.3 Vacation to Fill Casual Vacancy

- 13.3 (a) The Board may appoint any Director to fill any casual vacancy in the office of Vice-President Central City, Vice-President Western City and Treasurer occurring from time to time. A casual vacancy for the purposes of this clause 13 shall mean a vacancy occurring otherwise than upon conclusion pursuant to clause 13.1(b) of their term of office of any such office bearer.
- 13.3 (b) The Board must not at any one Board meeting fill more than two casual vacancies in the offices of the Vice-President Central City, Vice-President Western City or Treasurer.
- 13.3 (c) The Board must not fill any casual vacancy at a Board meeting held sooner than two months after the last Board meeting at which any casual vacancy for the Vice-President Central City, Vice-President Western City and/or Treasurer was filled.
- 13.3 (d) If there are more than two casual vacancies at any time in the offices of Vice-President Central City, Vice-President Western City or Treasurer then notwithstanding sub-clauses (a), (b) and (c) of this clause 13.3 all or any of such vacancies may be filled by Members at a General Meeting.
- 13.3 (e) A casual vacancy in the office of President may be filled by Members at a General Meeting and not otherwise.

14. POWERS OF THE BOARD

14.1 Management and Control

The management and control of the business and affairs of the Organisation shall, subject to this Constitution, be vested in the Board. In addition to the powers and authorities expressly conferred upon the Board by this Constitution, it may exercise all such powers and do all such acts and things as are within the scope of this Constitution and are not hereby or by statute or by this Constitution expressly directed or required to be exercised or done by the Members in general meeting. No variation to this Constitution shall invalidate any prior act of the Board which would have been valid if such variation had not been made.

14.2 Borrowing Powers

The Board may exercise all the powers of the Organisation to borrow money and to mortgage or charge its property, or any part of it, and to issue debentures and other securities whether outright or as security for any debt, liability or obligation of the Organisation.

14.3 Interest Payable to Members

For the purposes of clause 5 of this Constitution the rate of interest payable in respect of money lent by Members to the Organisation shall not exceed the lowest rate paid for the time being by banks in New South Wales in respect of term deposits.

14.4 Cheques, etc.

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Organisation shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any one (1) Director and the Secretary or in such other manner as the Board from time to time determines.

15. PROCEEDINGS OF BOARD

15.1 Regulation of Meetings

The Board shall meet for the dispatch of business at least three (3) times per year, adjourn and otherwise regulate its meetings as it thinks fit and determine the quorum necessary for the transaction of business (which shall in any event not be less than three (3) Directors). Reasonable notice, either oral or in writing, of all Board meetings shall be given to all Directors.

15.2 Convene Meetings

Upon the written request of three (3) Directors the President shall convene a meeting of the Board.

15.3 Chair of Meetings

The President or if he or she is absent or unwilling to act the Vice-President Central City, or Vice-President Western City (or if he or she is absent or unwilling to act, the Treasurer) shall be entitled to act as chair at meetings of the Board. If at any meeting none of the President, Vice-President Central City, Vice-President Western City and Treasurer are present within five minutes after the time appointed for holding the same the Directors present may choose one of their number to be chair of the meeting.

15.4 Casting Vote

Questions arising at any meeting shall be decided by a majority of votes and in case of an equality of votes the chair shall have a second or casting vote.

15.5 Authority and Power

A meeting of the Board at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions by or under this Constitution for the time being vested in or exercisable by the Board.

15.6 Resolutions

A resolution in writing (comprising one or more documents in like form) signed by all Directors shall have the same force and effect as a resolution passed at a meeting of the Board notwithstanding that such resolution has not been passed at a meeting of the Board.

15.7 Meeting of Board

A meeting of the Board shall mean a meeting of Directors assembled in person on the same day at the same time and place.

15.8 (Deleted – 12/10/01).

15.9 Attendance at Meetings

Any person holding elected office in or being an employee of a Member may attend and speak at any meeting of the Board.

15.10 Validity of Acts

All acts done at any meeting of the Board or by a Committee appointed by the Board or by any person acting as a Director shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of such Directors or persons acting as aforesaid or that they or any of them were disqualified be as valid as if every such person had been duly appointed and was qualified to be a Director.

16. COMMITTEES

16.1 Creation of Committees and Delegation of Authority.

The Board may by resolution or by power of attorney or writing under the seal of the Organisation delegate any of its powers to committees as it thinks fit or to appointed persons as it may determine from time to time. Any Committee so formed or person or persons so appointed shall, in the exercise of the powers so delegated, comply with any directions that may from time to time be given by the Board.

Any matters determined by a Committee or persons under delegated authority by the Board, shall be notified to the Board members within 48 hours of the decision and a report on the matter in full is to be presented to the next general Board meeting.

16.1A Composition of Committees

Any Committee formed pursuant to clause 16.1 shall consist of one or more directors or other persons as the Board thinks fit.

16.2 Proceedings of Committees

The meetings and proceedings of any Committee shall be governed by the provisions contained in this Constitution for regulating the meetings and proceedings of the Board so far as they are applicable and are not superseded by any direction made by the Board under clause 16. 1.

16.3 Advisers

The Board may from time to time appoint one or more Special Advisers or Advisory Committees or Task Groups to provide advice to the Board on such matters as the Board may determine. Special Advisers and Advisory Committee members need not be Members or Directors. No Special Adviser or Advisory Committee shall have or exercise any powers or authorities of the Board. The Board may, in its appointment of Advisory Committee or Task Groups, determine the term of that Committee or Group.

In the case of Task Groups, the Board may appoint General Manager/s to the Group who shall have voting rights on such Groups.

17. DIRECTORS INTERESTS

Each Director must disclose his or her interests to the Organisation in accordance with the Law and the Secretary shall record any such declaration in the minutes of the relevant meeting and send a copy of the declaration to each other Director as is required by the Law. The disclosure obligations of this Constitution shall apply to members of Committees of the Board, Special Advisers and members of Advisory Committees as if they were Directors.

18. MINUTES

- 18.1 At all Annual General Meetings, General Meetings, Board meetings and Committee meetings minutes shall be made:
- (a) of names of Directors and all other persons present at the meeting; and
 - (b) of all proceedings at the meeting including all resolutions considered and passed.
- 18.2 The minutes shall be signed by the chair of the meeting of the next succeeding meeting.

19. SECRETARY

19.1 Appointment

- 19.1.1 The Board shall in accordance with the Law appoint the Secretary of the Organisation for such term and upon such conditions as it thinks fit.
- 19.1.2 The Secretary shall be the Chief Executive Officer for the time being of the Organisation.

19.2 Voting

The Secretary shall not, by reason of office only, be a Member of the Organisation or a Director and shall not, by reason of office only, have any right to vote at any meeting of the Organisation or of the Board.

20. SEAL

20.1 Safe Custody and Use

The Board shall provide for the safe custody of the Seal which shall only be used by the authority of the Board or of a duly authorised Committee of the Board.

20.2 Affixing of the Seal

Every instrument to which the Seal is affixed shall be signed by a Director and shall be countersigned by the Secretary or by a second Director or by some other person appointed by the Board for the purpose.

21. ACCOUNTS

21.1 Proper Accounts

The Board shall cause proper accounting and other records to be kept and shall distribute to Members a copy of every profit and loss account and balance sheet (including every document required by law to be attached to them) accompanied by a copy of the auditor's report on them as required by the Law.

21.2 Annual Accounts

The Board shall cause to be made out and laid before each Annual General Meeting a balance sheet and profit and loss account made up to date not more than 5 months before the date of the meeting.

21.3 Inspection of Accounts

The Board shall from time to time determine at what times and places under what conditions or regulations the accounting and other records of the Organisation shall be open to the inspection of Members.

22. AUDITOR

A properly qualified auditor shall be appointed in accordance with the Law and his or her duties shall be regulated in accordance with the Law.

23. NOTICES

23.1 Service of Notices

23.1.1 Any notice required by law or by or under this Constitution to be given to any Member or any other person may be given by sending it by post to him or her at the postal address or by serving it on him or her personally.

23.1.2 Where a notice is sent by post, the notice shall be deemed to be given by properly addressing, prepaying and posting a letter containing the notice and shall be deemed to have been served at the time at which the letter would be delivered in the ordinary course of the post.

23.2 Notice of General Meetings

23.2.1 Notice of every general meeting shall be given in any manner authorised in this Constitution to:

- (a) every Member and Associate; and
- (b) the auditor for the time being of the Organisation; and
- (c) every Director in office at the date of the giving of the notice of the meeting.

23.2.2 No other person shall be entitled to receive the notices of general meetings unless otherwise agreed by the Board.

23.2.3 The accidental omission to give notice to or the non-receipt by a Member or other person referred to in clause 23.2.1 of any notice shall not invalidate the proceedings of any general meeting or any resolution passed at that meeting.

23.2.4 Notwithstanding clauses 10.2.3 and 23.2.2, as soon as practicable after his/her appointment to the Board a Director shall be given Notice of any General Meeting not yet held in respect of which notices have been given prior to that Director's appointment to the Board. For the purposes of clause 11.1(a) it is the Director whose appointment is current at the date of the relevant General Meeting who shall be entitled to represent the Member at that meeting unless the Member has appointed a proxy as provided in clause 11.1(b) or is represented by an authorised representative appointed in accordance with clause 11.1(c).

24. WINDING UP

(Deleted – 12/10/01)

25. COMMENT

Directors acting otherwise than in their capacity as Directors may make public comment on decisions of the Board which have been made public, provided that in doing so they do not breach their duties as Directors. Director acting in their capacity as Directors may comment to Members on decisions of the Board where they do not believe that those decisions are in the best interests of the Organisation as a whole, provided that in doing so they do not breach their duties as Directors.

26. INDEMNITY OF OFFICERS

Every Director, auditor, Secretary and other officer for the time being of the Organisation shall be indemnified out of the assets of the Organisation against any liability arising out of the execution of the duties of his or her office or which is incurred by him or her in defending any proceedings, whether civil or criminal, in which judgment is given in his or her favour or in which he or she is acquitted or in connection with any application under the Law in which relief is granted to him or her by the court in respect of any negligence default breach of duty or breach of trust.

27. CONDUCT

27.1 Directors and alternate Directors in carrying out any function of the Organisation including but not limited to their attendance at meetings of the Board, general meetings, annual general meetings and meetings of any committee appointed pursuant to clause 16.1 must comply with the Code of Conduct of the Member by which they have been appointed.

27.2 If:

- (a) the President of the Organisation or any Director chairing any meeting of the nature referred to in clause 27.1 is of the opinion that the conduct of a Director or alternate Director may have breached an obligation under the Model Code of Conduct issued by the Office of Local Government current at the time of the happening of the conduct by reason of conduct occurring at a meeting of the nature referred to in clause 27.1; or
- (b) any Director (including the President) or alternate Director of the Organisation at any time during such a meeting complains to the meeting about conduct of any other Director (including the President) or alternate Director which may have breached the said Model Code of Conduct current at the time of the conduct (whether or not such conduct occurred at a meeting)

then:

- (c) the Chief Executive Officer of the Organisation must notify the General Manager of the Member which appointed the Director or alternative Director whose conduct is the subject of the suspected breach of the said Model Code with a request that such General Manager deal with the alleged breach under that Member's Code of Conduct.

27.3 Directors and alternate Directors of the Organisation must cooperate with the General Manager referred to in clause 27.2 and any conduct committee or sole reviewer appointed by that Member to assist that Member in dealing with any possible breach of that Member's Code of Conduct.

Amended WSROC Constitution 25th August 2022:

W:\N07 ADMIN & ACCOUNTS\N07.07 Organisational\Governance\WSROC Constitution

**DOCUMENTS
ASSOCIATED WITH
REPORT EC10/24-4**

Attachment 6

**Sydney District & Regional
Planning Panels Operational
Procedures**



Sydney District & Regional Planning Panels Operational Procedures

November 2022

These procedures are provided for general guidance and information only and are made available on the understanding that the NSW Department of Planning and Environment (Department) is not providing legal advice.

The Department has compiled the procedures in good faith, exercising all due care and attention.

The procedures do not affect or replace relevant statutory requirements.

Where an inconsistency arises between the provisions of the procedures and relevant statutory provisions, the statutory requirements prevail.

While every reasonable effort has been made to ensure that this document is correct at the time of printing, the State of New South Wales, its agents and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.

The procedures are not intended to give rise to any rights, claims, benefits, privileges, liabilities, or obligations with respect to matters the subject of the procedures.

It should be noted that the procedures may be affected by changes to legislation at any time and/or be subject to revision without notice.

It is recommended that independent advice be sought in respect of the operation of the procedures and the statutory requirements applying to Sydney District and Regional Planning Panels under the *Environmental Planning and Assessment Act 1979*.

Sydney District and Regional Planning Panels Operational Procedures
© State of New South Wales through the NSW Department of Planning and Environment
November 2022
NSW Department of Planning and Environment
Four Parramatta Square, 12 Darcy Street, Parramatta, NSW 2150.
www.planning.nsw.gov.au

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Definitions

Capital Investment Value or *CIV* has the same meaning as 'capital investment value' defined in the Dictionary in Schedule 7 of the *Environmental Planning and Assessment Regulation 2021*.

Commission means the Greater Cities Commission.

Council means the council for the local government area in which the land the subject of a panel matter is located.

Days means calendar days unless otherwise stated.

Department means the Department of Planning and Environment.

Development Application or *DA* means an application for consent under Part 4 of the *Environmental Planning & Assessment Act 1979* to carry out development but does not include an application for a complying development certificate.

District means any part of the Greater Cities Region, or other region of the State, declared to be a district by the Minister.

EP&A Act means the *Environmental Planning & Assessment Act 1979*.

EP&A Regulation means the *Environmental Planning & Assessment Regulation 2021*.

Greater Sydney Region means the region comprising the local government areas as described in Schedule 1 of the *Greater Cities Commission Act 2022*.

GCC Act means the *Greater Cities Commission Act 2022*.

LALC means Local Aboriginal Land Council.

LEP means local environmental plan.

LGA means local government area.

LGNSW means Local Government NSW.

LG Act means the *Local Government Act 1993*.

LPP means local planning panel.

Minister means the Minister for Planning.

Panel or *Planning Panel* means a Sydney District Planning Panel or Regional Planning Panel constituted under Schedule 2 of the *Environmental Planning & Assessment Act 1979*.

Planning Panel meeting means a public briefing meeting or a public determination meeting.

Planning proposal has the same meaning as a 'planning proposal' under section 3.33 of the *Environmental Planning & Assessment Act 1979*.

Planning Systems SEPP or *PS SEPP* means the *State Environmental Planning Policy (Planning Systems) 2021*.

Regional Planning Panel means a regional planning panel constituted under clause 10 of Schedule 2 of the *Environmental Planning & Assessment Act 1979*.

Regionally significant development means development that meets criteria set out under Part 2.4, Part 3.3 and Schedule 6 of the *State Environmental Planning Policy (Planning Systems) 2021*.

Planning proposal authority or PPA means the public authorities identified under section 3.32 of the *Environmental Planning & Assessment Act 1979*.

SCC means a Site Compatibility Certificate issued under the *State Environmental Planning Policy (Transport and Infrastructure) 2021*.

Secretariat means the Planning Panels Secretariat of the Department which provides technical and administrative support to Planning Panels.

Secretary means the Secretary of the Department of Planning and Environment.

Strategic Planning Panel means a Sydney District or Regional Planning Panel convened for the specific function of considering a strategic or Aboriginal land planning matter.

Sydney District Planning Panel means a Sydney district planning panel constituted under clause 9 of Schedule 2 of the *Environmental Planning & Assessment Act 1979*.

Transport and Infrastructure SEPP means the *State Environmental Planning Policy (Transport and Infrastructure) 2021*

Unique submission means a submission which is in substance unique, distinctive or unlike any other submission. It does not mean a petition or any submission that contains the same or substantially the same text. Separate unique submissions may be made in relation to the same issue. One individual, or one household, could potentially submit multiple unique submissions.

November 2022

1. Introduction

The Planning Panels were introduced in NSW on 1 July 2009 to strengthen decision making for regionally significant development and certain other planning functions under the EP&A Act.

These procedures relate to the operation of the Sydney District Planning Panels and Regional Planning Panels.

The Planning Panels are independent bodies representing the Crown and are not subject to the direction of the Minister, except on matters relating to Planning Panel procedures or where the Minister issues a formal direction under the EP&A Act.

These procedures are the Planning Panels charter and have been developed to explain the objectives, powers, and authorities of the Planning Panels. They also detail the means of operating the Planning Panels and clarify the roles of various parties in the work of the Planning Panels.

The procedures should be read in conjunction with the Local Environmental Plan Making Guidelines, relevant Planning Circulars and the Planning Panels Code of Conduct which explains the standard of conduct expected of Planning Panel members.

These procedures will be kept under review and may be amended periodically.

November 2022

2. Defining the regions and districts

Planning Panels are constituted for each region of the State (other than the Greater Sydney Region), and each district of the Greater Sydney Region (see sections 2.12, 3.2 and Part 3 of Schedule 2 of the EP&A Act).

The nine Planning Panels are the:

- Hunter and Central Coast Regional Planning Panel,
- Northern Regional Planning Panel,
- Southern Regional Planning Panel,
- Western Regional Planning Panel,
- Sydney Eastern City Planning Panel,
- Sydney North Planning Panel,
- Sydney South Planning Panel,
- Sydney Central City Planning Panel, and
- Sydney Western City Planning Panel.

November 2022

3. Functions of Planning Panels

3.1 Functions

The principal functions of Planning Panels are to determine regionally significant DAs and undertake rezoning reviews of planning proposals. Other functions of Planning Panels include:

- determining Crown DAs,
- determining modification applications for regionally significant development,
- determining DA reviews,
- determining SCCs,
- undertaking independent reviews for specific Local Aboriginal Land Council lands,
- advising the Minister or the Secretary upon request, and
- preparing planning proposals if they are directed to be a planning proposal authority.

Note: Section 2.15 of the EP&A Act contains the functions that may be exercised by Planning Panels.

Note: In relation to preparing planning proposals, see Chapter 14 of this Operational Procedures.

3.2 Legislation

Legislation governing Planning Panels includes:

- the EP&A Act for the constitution and functions of Planning Panels and obligations in respect to councils, with the following key provisions:
 - Division 2.4 and Schedule 2 provides for the constitution of Planning Panels, member appointments, functions and general procedures,
 - Division 3.4 allows for a Planning Panel to act as the planning proposal authority and undertake planning proposal reviews,
 - Section 4.5 specifies that a Planning Panel is the consent authority for regionally significant development, and
 - Section 4.7 sets out the consent functions of a Planning Panel which are to be exercised by the relevant council.
- the EP&A Regulation contains provisions for where a Planning Panel is exercising consent authority functions,
- the Planning System SEPP sets out in Parts 2.4, 3.3 and Schedule 6 development declared to be regionally significant,
- the Transport and Infrastructure SEPP sets out the process for consideration and determination of relevant applications for Site Compatibility Certificates.

3.3 Classes of regionally significant development

The Planning System SEPP identifies the types of development classified as regionally significant (see Parts 2.4, 3.3 and Schedule 6 of the SEPP). The relevant Planning Panel will be the consent authority for regionally significant development.

Note State significant development or development within the City of Sydney cannot be declared as regionally significant development (see section 4.7 of the EP&A Act).

On lodgement of a DA, the council will decide if a DA is regionally significant development.

The capital investment value (CIV) is relevant for some regionally significant development and should be calculated at the time of lodgement. Councils should request a quantity surveyor's certificate or another relevant expert assessment to confirm the CIV from the applicant. The CIV is to be calculated in accordance the Planning Circular PS 21-020 (or as updated).

The Planning Panels determine applications to modify consent for regionally significant development under section 4.55(2) of the EP&A Act which seek to modify:

- new or amended conditions of consent imposed by the Panel;
- development for which the applicant or landowner is:

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- the council,
- a councillor,
- a member of council staff who is principally involved in the exercise of council's functions under the Act,
- a member of the NSW or Commonwealth Parliament, or
- a relative (within the meaning of the *Local Government Act 1993*) of a person referred to above;
- development that is subject to 10 or more unique submissions by way of an objection; or
- development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

All other modification applications under sections 4.55(2), 4.55(1) or 4.55(1A) to development consents granted by a Panel are to be determined by the relevant council. A court granted consent may be modified by a Panel under section 4.56 if it is in relation to regionally significant development.

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4. Membership of Planning Panels

(Part 4, Schedule 2 of the EP&A Act)

4.1 Chairs and Members

Each Panel consists of 5 members:

- 3 members, including the chair, appointed by the Minister (State members), and
- 2 members appointed by the relevant council (council members).

Property developers and real estate agents are not eligible to be members of a Panel.

The agenda of a Panel meeting may include consideration of multiple matters, each located in different council areas. The council members may change from time to time, depending on the LGA in which the matter under consideration is located.

Panel members can be appointed to more than one Panel, either as a Panel member and/or as an alternate member.

When there is a vacancy on a Panel, the Minister in the case of a State member, and the relevant council in the case of a council member, will appoint another member to that vacancy.

Terms of appointment for Panel members (both State and council members), must not exceed 3 years. Members are eligible for re-appointment. A State member of a Sydney District Planning Panel must not be a member for more than 9 years in total.

The Secretariat is responsible for maintaining a register of all Panel members.

The chair (or, in the absence of the chair, a deputy chair, or a person elected by the members) presides at Panel meetings. The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Note: In relation to the membership of a Planning Panel responsible for preparing planning proposals, see further Chapter 14 of this Operational Procedures.

4.3 Expertise requirements for members appointed by the Minister

All Panel members appointed by the Minister, including alternates, must have expertise in one or more of the following areas: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration.

4.4 Council members

Two council members are appointed by each council. At least one council member must have expertise in one or more of the following areas: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, or tourism.

To reduce the opportunity to improperly influence panel members councils should consider appointing a minimum of 4 alternate members to enable regular rotation.

4.5 Selection of council members

Each council determines how their members are selected. In selecting members, councils should have regard to any conflict of duties that would be created for a person nominated to the Panel if they are in any way responsible or involved in the assessment of matters to be determined by the Panel or involved in voting or deliberating on matters that come before the Panel.

When appointing its nominees to a panel, council should require a statutory declaration to be signed by proposed nominees stating that they are not property developers or real estate agents, as required by section 2.13 of the Act. Council should also arrange probity checks. These checks should include, at a minimum:

- a. public register of real estate agents check
- b. bankruptcy record check
- c. National Police check (ACIC).

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This is in line with the checks and declarations required for State members.

Councils are not restricted to nominating people from the council's local area. They can appoint, terminate, and reappoint members at any time, and can determine the duration of each appointment. Generally, so as to ensure the greatest degree of continuity for the Panels, councils should consider appointing members for the maximum term of 3 years. However, councils should reconsider if the nominations to the Panels are appropriate within 12 months following a council election.

Following a change to its nominees, council is to forward the new member's contact details to the Secretariat as soon as possible and this must be a minimum of 14 days before any meeting at which they will act as a Panel member.

If a council fails to nominate 1 or more council members, a Panel may still exercise its functions in relation to the area of the council concerned.

4.6 Payment of council members

Councils determine the fees they pay their Panel members. The Minister has provided guidance to all councils on appropriate rates of remuneration for travel and subsistence allowances for their members.

Each council is responsible for making any payments to its Panel members when they attend Panel meetings.

4.7 Alternate members

The Minister may at any time appoint a person to be the alternate of another member appointed by the Minister and may revoke any such appointment.

A council may also at any time appoint a person to be the alternate of a member nominated by the council and may revoke any such appointment.

Any changes are to be notified in writing to the Secretariat as soon as possible and at least 14 days before undertaking any Panel business.

The alternate will act in the place of the member with all the powers of the member. Although a member may be appointed as an alternate for two or more members, they will only have one vote on any Panel decision.

4.8 Rotation of members

To ensure there is a level of randomisation involved in which panel members and alternates hear a matter, all members are required to regularly rotate with alternate members. This will reduce opportunities for panel members to be improperly influenced. The chair is to determine the frequency of rotation in consultation with the Planning Panel secretariat.

Following a matter being deferred, where possible the same members should reconvene to finalise the determination.

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5. Code of Conduct considerations

5.1 Planning Panels Code of Conduct

All Panel members must comply with the Planning Panels Code of Conduct when exercising their functions as a Panel member and make impartial merit-based decisions in accordance with their statutory obligations. The latest version of the Planning Panels Code of Conduct is available online at www.planningpanels.nsw.gov.au. On appointment each Panel member must acknowledge in writing that they will abide by the Planning Panels Code of Conduct.

5.2 Declaration of interests

On being informed of a matter to come before the Panel members should consider if they have an actual, potential or reasonably perceived conflict and, if so, declare the conflict and take any appropriate action, such as allowing an alternate member to take their place.

Panel members are required to complete and sign a declaration of interest form in relation to each matter which is considered by the Panel, either before, or at the commencement of, the Panel's determination proceedings. Any verbal declarations are to be recorded in writing.

To avoid any perceptions of bias, and to meet requirements of the Code of Conduct, councillors who have previously deliberated or voted on a matter that is to come before the Panel (such as a submission from the council on a DA for regionally significant development, a related voluntary planning agreement or a planning proposal) must stand aside from their place on the Panel and allow council's nominated alternative member to take their place. Alternatively, the member may choose to not participate in the deliberations or voting on the matter at the council (or council committee) meeting. They should also not remain in the council chamber during the council's deliberations.

5.3 Representations to Planning Panel members

If a Panel member is approached by any person about a matter to come before the Panel, the Panel member must not discuss the matter.

Any person that approaches a Panel member should be encouraged to make a written submission to the council planning staff for DAs during the exhibition period, or if the matter relates to a planning proposal for which the Panel is the PPA, to the Secretariat. Issues raised in submissions will be addressed in the assessment report to be provided to the Panel.

5.4 Interactions with third parties about matters before the Planning Panel

Panel members are not to discuss any matter that is to be considered by the Panel with councillors, the applicant, their consultants, parties who have made a submission, or any other person with an interest in the matter outside of a Panel briefing, meeting or site visit.

5.5 Public meetings organised by the council or community about the proposed development

To avoid any perception of bias, Panel members should avoid attending public meetings about a proposed development organised by members of the community or council, unless the meeting has been organised at the request of the Panel.

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6. Administration

Administration and support for the Panels is provided by the Planning Panels Secretariat. Support includes:

- scheduling of meetings, briefings, and site visits,
- preparing and issuing agendas,
- notification of meetings,
- arranging for travel and accommodation for State appointed Panel members,
- preparing records of decision (with assistance from council),
- arranging for the audio recording of public Panel meetings,
- record keeping for the Panels, and
- being the first point of contact for councils to notify a Panel of any decision made by the Panel which is the subject of a merit appeal in the Land and Environment Court.

The Secretariat is the first point of contact for all Panel matters and publishes a wide range of information on its website:

www.planningportal.nsw.gov.au/planningpanels

The contact details for the Secretariat are:

phone: (02) 8217 2060

email: enquiry@planningpanels.nsw.gov.au

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7. Government information, privacy and complaints

7.1 Right to information and privacy management

The Department assists Planning Panels in managing applications made under the *Government Information (Public Access) Act 2009* and the *Privacy and Personal Information Protection Act 1998*.

For applications of this nature visit the Department's website at:

<http://www.planning.nsw.gov.au/About-Us/Right-to-Information/How-Can-I-Access-Information>

7.2 Complaints

The Department assists Planning Panels in managing complaints. Complaints are investigated and managed in accordance with the Department's Management of Complaints Policy.

Dissatisfaction with determinations of the Planning Panels will not be regarded as a complaint.

If you wish to make a complaint visit the Department's website at: telephone, write or email the Department at:

<https://www.planning.nsw.gov.au/Contact-Us?>

Complaints made in this way will be recorded in the Department's Complaints Register and will be allocated to the appropriate level for investigation and response.

If you are not satisfied with a response, you can ask for the issue to be considered by a more senior officer.

Code of conduct complaints will be dealt with under the Planning Panels Code of Conduct.

At any time, a person can complain to external bodies such as the Independent Commission Against Corruption (ICAC), the Ombudsman, or the Audit Office of NSW. Allegations of corrupt conduct, misconduct, or serious waste of resources are encouraged to be made directly to these organisations.

Complaints about council, councillors, council staff or local planning panels should be directed to the relevant council.

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8. Monitoring, review, and reporting

The Secretariat monitors the progress of DAs referred to the Panels. It is expected that council will complete its assessment report within 60 days after the close of the public exhibition period.

The performance of the Panels is monitored and reported in the Department's Annual Report.

Once a planning assessment is completed by the council and referred to the Panel, the Panel will be expected to:

- d. determine the matter within 2 weeks (14 calendar days) for development and modification of consent applications; and
- e. provide its advice within 2 weeks (14 calendar days) on planning proposals.

To ensure assessment and determination times are not subject to delay:

- a. Panel chairs are obliged to work with senior council staff to ensure that key issues are addressed during assessment, in order to minimise the number of deferrals by the panel at determination stage.
- b. Should an application experience unreasonable delays in excess of 180 calendar days from lodgement the Panel chair may require the council to report the matter to the Panel within 4 weeks for determination.

Note: The requirements relating to the timeframes for assessing development applications under the *Environmental Planning and Assessment Regulation 2021* must be considered by Panels.

8.1 Availability of information

The Secretariat makes a range of information publicly available on its website, including:

- Panel notices with dates, locations, meeting format and times (at least 7 days before the Planning Panel meeting),
- the relevant council's assessment report and recommendation (at least 7 days before the Panel meeting),
- records of briefings and Panel meetings, Determinations and Statements of Reasons, decisions on rezoning reviews and Site Compatibility Certificates, resolutions of the Planning Panels and any advice provided by the Panels to the Minister, Secretary or GCC, as relevant,
- audio recordings of Panel meetings, and
- a schedule of meeting dates reserved for Panel business.

Councils remain responsible for receiving, notifying and exhibiting DAs and supporting documents in accordance with statutory provisions and council's own notification and exhibition requirements set out in its community participation plan and for issuing the notice of determination.

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9. Liability and indemnification

Panel members are excluded from personal liability as long as the act or omission was done in good faith for the purpose of carrying out their duties under the EP&A Act (see s 2.28 of the EP&A Act).

The NSW Government extends insurance indemnity cover to Panel members. For indemnification provisions to apply Panel members must act honestly and in accordance with the Panel Code of Conduct in the performance of their responsibilities.

For further information please contact the NSW Self Insurance Corporation (icare) at:

<https://www.icare.nsw.gov.au>

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10. Roles of councils and other panels

10.1 Role of councillors and council staff

The elected council and council staff have different roles in the assessment of DAs. Under the *Local Government Act 1993*, the independence of council staff is protected in the preparation of advice and recommendations. Staff members are not subject to direction by the council or by a councillor as to the content of any advice or recommendation made by the staff member. Equally, a council or councillor is not bound by the advice or recommendation made by a member of staff.

10.2 Assessment role

Council staff undertake the assessment of a DA. The assessment of a DA includes accepting the DA, consultation, concurrence and obtaining general terms of approval from an agency if required, carrying out community participation requirements and assessment of the matters set out in 4.15 of the EP&A Act. The assessment is documented in a report with recommendations. The report is then considered by the person or body that is the consent authority.

Council is responsible for carrying out community participation requirements on behalf of the Panels (see section 4.7(2)(d) and Division 2.6 of the EP&A Act).

The Department undertakes the assessment of planning proposals and applications for site compatibility certificates referred to the Panels.

10.3 Determination role

Historically, one of the roles of an elected council has been to determine or make decisions on DAs in their capacity as a consent authority. There are occasions, however, where the determination role is performed by other people or bodies, either because the council has delegated that function, or because it has been conferred upon another person or body. For example, where local planning panels have been introduced, elected councils no longer determine DAs (see section 2.17 of the EP&A Act).

The Panel for the area in which the development is to be carried out is the consent authority for regionally significant development (see section 4.5 of the EP&A Act).

10.4 Post-determination role

Council staff are responsible for post-determination functions including:

- notifying Panel determinations on DAs (see sections 4.7(2)(e), 4.18 and 4.59 of the EP&A Act),
- registering Panel development consents on the NSW Planning Portal (see sections 4.7(2)(e) and 4.20 of the EP&A Act), and
- monitoring and enforcing compliance with conditions of the development consent.

The notice of determination should be issued once council receives a copy of the endorsed and final determination from the Panel. The notice of determination must include all conditions imposed by the Panel, including any additional or amended conditions.

The council has no power to amend conditions or include additional conditions following the Panel's determination.

Council will advise any person who made a submission on the DA of the determination.

The council continues to be responsible for the monitoring of, and enforcing compliance with, any conditions of the development consent.

Where an application has been approved subject to a 'deferred commencement' condition council is responsible for determining whether the requirements of the condition have been met (see section 4.16(3) of the EP&A Act). Council advises the chair of the Panel in writing when the matter specified in the condition has been satisfied (see section 277(2) of the EP&A Regulation).

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10.5 Support provided to Planning Panels by councils

Planning Panels are entitled on request to the general manager of a council, to use the staff and facilities of the relevant council, have access to council records, and any other assistance or action for the purpose of carrying out their functions (see section 2.27 of the EP&A Act).

It is expected that use of council facilities such as meeting rooms would be arranged prior to Panel meetings.

Support, such as recording the written decisions of the Panel, audio recording of Panel meetings, copying of documents and the provision of professional advice, may also be required.

Generally, the relevant council bears the administrative and council staffing costs associated with Panel meetings. Administrative costs may include those associated with the meeting venue and set up, the attendance of council staff, as well as administrative support.

The chair and members of a Panel will need to be mindful of the regular duties and responsibilities of council staff when requests for assistance are made. Requests by members of Panels for support and assistance from councils should be made through the chair to the general manager (or other person nominated by the general manager) of the council concerned.

10.6 Role of design review panels

Design review panels are established by councils either formally under *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development* with the approval of the Minister, or informally to bring special design expertise to the assessment of certain types of DAs.

Design review panels that are properly integrated in the assessment process are an effective tool which helps to improve the quality of design outcomes. The quality of design has a bearing on many, but not all, of the matters considered in the assessment of a DA.

The role of design review panels in the assessment of applications is not changed by the fact that the application is to be determined by a Panel. However, it is generally more effective in terms of design quality outcomes and timeliness if the design review panel is convened at the pre-DA stage or early in the assessment phase.

Council assessment officers and the Panels should consider the advice of the design review report in their assessment reports and in making a determination. The design review report may be used in the following ways:

- to support the application of relevant planning controls in a flexible manner where the design review panel has identified this will achieve better outcomes
- to establish if the reasonable recommendations of the design review panel have been followed
- as evidence for refusing development consent where the advice of the design review panel has not been adopted

In some instances, the Panel may require additional design quality advice or clarification of design quality matters to finalise their recommendations or to make a determination. In this instance, they may refer the project back to the design review panel. The following criteria can be used to establish when to re-engage with the design review panel:

- The application is poor and has not considered the advice of the design review panel – refusal.
No return to design review panel
- Application will require minor modifications – to be managed via conditions of consent.
No return to design review panel
- The application will require significant modification, the extent and nature of which requires advice from the design review panel.
Return to design review panel

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10.7 Role of local planning panels

Although similar in operation, the roles of local planning panels and the Sydney district and Regional Planning Panels do not overlap. Local planning panels determine all DAs that meet criteria set by the Minister.

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11. Development application and assessment

11.1 Pre-development application meetings

Pre-DA meetings between applicants and assessment officers are commonly used to inform lodgement requirements and likely assessment pathways before applications are submitted to the consent authority.

Applicants are encouraged to meet with council before lodging a DA, and to respond to the advice of council when preparing the DA.

Applicants should consider the Local Government Design Review Panel manual in relation to pre-application design reviews and the requirements to be met in that process.

11.2 Making of development applications

DAs for regionally significant development are made to the relevant local council.

In the case of development located in two or more LGAs, a separate DA must be lodged with the councils of each LGA. Additionally:

- each DA should only address that part of the development located on land in the relevant LGA,
- neighbouring councils may wish to consider setting up joint assessment procedures, if appropriate, and
- the Panel will determine each DA separately (although the determinations may be made concurrently).

11.3 Notification to the Secretariat

Within 7 days of receiving a DA for regionally significant development, the council registers the DA with the Secretariat.

The registration is made via the NSW Planning Portal. Documents can be automatically linked via the NSW Planning Portal meaning that DA documents and any updated information are electronically transmitted to the Secretariat.

The Secretariat advises relevant Panel members of the DA once the registration is accepted. The DA documents, including the application form are made available to Panel members electronically via the NSW Planning Portal.

These documents allow Panel members to become familiar with the development and to identify if they have any potential conflicts of interest prior to their review of the assessment report and before determining the application.

11.4 Kick-off briefing and timing for determination

Generally within 28 days of the lodgement of a DA, the Secretariat will arrange a Kick-off briefing between the Panel, relevant council staff and the applicant. At this meeting, the applicant will be invited to outline the DA to the Panel, and the Panel chair will identify key issues including areas where further information is required. Importantly, for larger matters, the Panel chair will outline a timeframe for a subsequent briefing between all parties (generally around day 128 since lodgement), and an estimated date for determination (generally no more than 250 days since lodgement).

11.5 Public exhibition of development applications by council

Public exhibition of the DA is undertaken by council staff in accordance with the requirements of the EP&A Act, EP&A Regulation and Council's Community Participation Plan or any relevant development control plan or policy of council. Public exhibition can commence or occur after the Kick-off briefing.

Notification of exhibition, including letters and advertisements, should contain appropriate statements to advise:

- that the {name of relevant} Panel is the consent authority for the application,

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- that submissions made in respect of the application should be made to {name of relevant} Council, but will be provided to the Panel and may be viewed by other persons with an interest in the application,
- names and addresses of submitters will be provided to the Panel for notification purposes, and
- other information required by the EP&A Act or EP&A Regulation.

11.6 Requests for additional information

It is the applicant's responsibility to provide adequate information and technical reports on potential impacts of the proposed development.

Holding a pre-DA meeting with council staff will often clarify council requirements for the lodgement of an application. However, the applicant may be requested by council staff to provide further information or reports to properly address all relevant aspects of the development, or to enable an assessment report to be completed.

During the assessment process the Panel may identify issues at a briefing that must be addressed or clarified in council's assessment report, and for which council may request further information.

Amended plans or additional information for a DA must be lodged with council.

11.7 Status reports

Councils must advise the Secretariat if it is evident that there are difficulties in assessing the DA or the assessment report will not be completed within the timeframe indicated in the referral notification.

The Secretariat tracks the progress of DAs registered with it and requests status updates from council for DAs lodged for 70 days or more.

Where a response or concurrence from public agencies delays the assessment of a DA, a council can ask the Secretariat for assistance to ensure the agency responds to council in a timely manner.

Where there is an ongoing and unreasonable delay in the processing of a DA, council may be requested by the Panel to complete its assessment without further delay.

11.8 Assessment of the development application

The council that received the DA is responsible, through its staff, for the assessment of the application.

It is council's responsibility to prepare an assessment report addressing all statutory requirements and properly considering all issues. Usually councils will rely on their own professional staff, however where they do not have the technical expertise required in-house, they may engage external expertise. All costs associated with the preparation of the assessment report are to be covered from application fees, which are retained by council.

The assessment report must clearly identify how the proposal meets the relevant requirements for regionally significant development, and that the Panel is responsible for determining the application.

The assessment report must include a recommendation on the proposed development:

- if the recommendation is for approval of the application, the report must include recommended conditions of consent, and
- if the recommendation is for refusal, the report must include reasons for refusal based on the assessment in the report.

The chair of the Panel may request without prejudice draft conditions of consent where council's report recommends refusal.

In considering an application, a Panel may request additional information to assist in its determination of the application.

Council assessment officers (and the Panels) should consider the advice of any design review report in their assessment reports and in making a determination. The design review report may be used in the following ways:

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- to support the application of relevant planning controls in a flexible manner where the design review panel has identified this will achieve better outcomes
- to establish if the reasonable recommendations of the design review panel have been followed
- as evidence for refusing development consent where the advice of the design review panel has not been adopted

In some instances, the Panel may require additional design quality advice or clarification of design quality matters to finalise their recommendations or to make a determination. In this instance, they may refer the project back to the design review panel. The following criteria can be used to establish when to re-engage with the design review panel:

- The application is poor and has not considered the advice of the design review panel – refusal.
No return to design review panel
- Application will require minor modifications – to be managed via conditions of consent.
No return to design review panel
- The application will require significant modification, the extent and nature of which requires advice from the design review panel.

Return to design review panel

11.9 Varying development standards

Where a DA includes a variation to a development standard, an application under clause 4.6 of the relevant LEP is required. Council's assessment report includes an assessment of the application against the relevant statutory provisions.

The function of obtaining concurrence from the Secretary under clause 4.6 is a matter for the council. However, where concurrence is assumed, the council does not need to obtain concurrence. The Panel will determine whether a clause 4.6 application is well founded on the basis of the applicant's justification.

11.10 Local infrastructure contributions

The assessment report should address contributions required in accordance with the council's relevant contributions plan (see section 7.11 and 7.12 of the EP&A Act). The Panel is able to impose additional or different contributions than those set out in the contributions plan. For Crown developments, councils should address contributions in accordance with the relevant planning circular (Circular No. D6, issued September 1995 or as updated).

11.11 Special infrastructure contributions and certification requirements

If the development falls within a special contributions area the council should address the relevant requirements in its assessment report and recommend appropriate conditions in accordance with the Ministerial direction (see section 7.24 of the EP&A Act).

The council must address any "Satisfactory Arrangements" clause in the applicable LEP in its assessment report. These clauses usually state that development consent must not be granted by a consent authority until arrangements to the satisfaction of the Secretary have been made to contribute to regional or State infrastructure. A Panel cannot provide consent to the DA until the Secretary (or delegate) of the Department has certified in writing that satisfactory arrangements have been made.

11.12 Development subject to delays in determination

An applicant with a DA that has a CIV between \$10 million and \$30 million can refer the DA to the relevant Panel for determination if it remains undetermined for 120 days after being lodged with council (see Schedule 6 of the Planning Systems SEPP). The referral process is outlined below:

- when making a referral, applicants must use the Regional Development Request form available on the Panels website,

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- the applicant is to complete the relevant part of the form and submit it to **both** the relevant council and the Secretariat,
- once the council receives the referral form it cannot determine the DA until a decision has been made regarding whether the Panel will have the function of determining the DA, however council can continue to assess the DA,
- the council sends the completed referral form and copies of all DA documents, to the Secretariat within seven days. Council should also send its explanation for the delay in completing its assessment,
- the chair will consider the information in the referral form and advise the Secretariat if the referral is accepted (i.e. the applicant is not responsible for a delay in the application), generally within 14 days of the applicant making the referral. The chair will consider a number of matters in making this decision, including:
 - permissibility and zoning, including whether the determination is dependent on a rezoning,
 - whether the determination is dependent on a voluntary planning agreement or the approval of a masterplan or DCP,
 - whether the landowner's consent has been provided,
 - whether the required referrals and concurrences have been obtained,
 - whether there have been requests for further information, and what the responses were to those requests, and
 - if council has considered the DA and the outcome of that consideration,
- once the chair decides, the Secretariat will notify the council and the applicant as to whether the development is regionally significant development,
- if the referral is not accepted the chair must advise the reason(s) for not accepting the referral,
- if the referral is accepted, council completes the assessment of the application and prepares an assessment report for submission to the Secretariat, and
- a briefing with council may be held prior to determination.

11.13 Council representation to the Planning Panel

An elected council may make a submission on a DA within their LGA that is to be determined by a Panel up to seven days before the Panel meeting.

After the assessment report is sent to the Secretariat, it may be given to the elected council to assist in its decision as to whether it will be making a submission to the Panel. The elected council's submission should not be prepared by persons involved in the assessment of the application but could be prepared by another council officer, or a consultant.

A council submission should not be specifically referenced in the assessment report or recommendations prepared by the council staff. If council makes a submission, a staff representative or individual Councillors may register to address the Panel at the meeting to express the views of council.

Councillors who are also Panel members have an independent role because they have been nominated by their council as its nominee to the Panel.

11.14 Submission of assessment report to the Secretariat

The completed assessment report and recommendation is to be immediately uploaded to the NSW Planning Portal such that it is sent via electronic means to the Secretariat.

The assessment report is not to be endorsed or presented to the elected council before being sent to the Secretariat.

The following items are to be uploaded to the NSW Planning Portal:

- assessment report and any attachments and recommendations (including conditions),
- the Council Assessment Report cover sheet (available on the Planning Panels website),

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- final architectural drawings and plans and other reports that the assessing officer considers that the Panel may require in order to make an informed decision,
- copies of each submission received in respect of the DA
- a completed List of Submitters (available on the Planning Panels website) containing the names, postal addresses and email addresses (if provided) of every person or body who made a submission to allow the Secretariat to notify submitters of the details of the Panel meeting,
- in the case of petitions, only the name and address of the head petitioner should be provided, if that person can be identified, and
- the final number of unique submissions received.

Note: Council's assessment report must include a summary and assessment of all submissions so that the Planning Panel can consider the submissions as part of the assessment of the DA. Based on the details provided by council, the Secretariat will notify persons who made submissions of the time, date and venue of the Panel meeting at which the relevant application will be considered. Councils should also upload copies of any late submissions to the NSW Planning Portal and, where necessary, provide further assessment if the issues are not already covered in council's assessment report.

11.15 Written submissions to the Planning Panel

All written submissions must be sent directly to council to be considered as part of the assessment of the DA.

Submissions sent to the Panel will be given to council for assessment. If additional late information is received from the applicant it will be published on the NSW Planning Portal for transparency. Panels will not normally accept information "in confidence" that is not also given to council. However, if confidentiality is requested, the reason must be clearly stated as to why it is confidential and relevant to the assessment matter before the Panel and the chair will consider the request.

11.16 Rezoning, development control plans and planning agreements

Where a DA is lodged concurrently with a planning proposal seeking the rezoning of land under the LEP Council's assessment report must address the DA against the proposed zoning. Council is responsible for progressing the planning proposal. The Panel cannot determine a DA to approve such development until the land is rezoned to permit that development.

Where the provisions of an environmental planning instrument require a development control plan (DCP), (previously known as a master plan) to be adopted by the council before granting development consent, it is the responsibility of council to prepare and adopt the DCP prior to sending the assessment report to the Panel. In such circumstances, the Panel will not determine the application until the DCP is adopted by the council.

If a planning agreement is proposed, it should be negotiated by council staff. Council's assessment report for the Panel would normally make reference to any planning agreement and its relationship to the DA. The planning agreement would normally be exhibited by the council before the assessment report is provided to the Panel, and the planning agreement would be provided to the Panel as part of the supporting documentation for the DA.

The Panel may only impose a condition of consent requiring a planning agreement be entered into if the condition reflects the terms of any offer made by the applicant to enter into a planning agreement (see section 7.4 of the EP&A Act).

11.17 Referral of Crown development applications with a CIV less than \$5 million

Crown DAs with a CIV greater than \$5 million are regionally significant development. Crown DAs with a CIV under \$5 million can be referred to the relevant Panel (see section 4.33 of the EP&A Act) by either:

- the applicant where council (or LPP, if relevant) has not determined in the prescribed period, or
- the council at any time including before the end of the prescribed period.

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Before the end of the prescribed period, only a council (not the applicant) can refer an application to the Panel.

For Crown DAs with a CIV of less than \$5 million where a council or LPP seeks to refuse consent or impose a condition to which the applicant has not provided their agreement, the application is also to be referred by council to the relevant Panel (see section 4.33(2) of the EP&A Act).

The referral to the Panel must be in writing. Additional procedures for the referral, including the requirement to notify the other party in writing of the referral are set out at sections 4.33(6) and section 4.33(7) of the EP&A Act.

Once the application is referred to a Panel, the council registers the DA on the NSW Planning Portal and uploads its assessment report to the NSW Planning Portal for the Planning Panel to consider.

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12. Determination of development applications

12.1 Determining regionally significant development applications

Planning Panels determine regionally significant development as the consent authority.

For contentious matters, where the DA has attracted 10 or more unique submissions by way of objection, the Panels will generally hold a public determination meeting to consider the DA. Refer to **Schedule 1** for more information on the detailed procedures for Panel meetings.

The purpose of the public determination meeting is for the Panel to hear views of the community and other interested parties, such as the applicant and the council, on the DA before the Panel makes a decision.

Public determination meetings may be held wholly or partly by audio link, audio visual link or other electronic means (EP&A Act Schedule 2 clause 25(4)). Such meetings must be recorded with the recording made publicly available on the Planning Panel website.

After reviewing written submissions on a DA, considering the recommendation in council's assessment report and hearing from those wishing to address the Panel, the Panel may determine the application or defer its decision for reasons that will be stated in the meeting record.

In circumstances where the DA is the subject of less than 10 unique submissions by way of objection a Panel is able to determine the application by an electronic circulation of papers.

In some instances, the Panel may require additional design quality advice or clarification of design quality matters to finalise their recommendations or to make a determination. In this instance, they may refer the project back to the design review panel. The following criteria can be used to establish when to re-engage with the design review panel:

- The application is poor and has not considered the advice of the design review panel – refusal.
No return to design review panel
- Application will require minor modifications – to be managed via conditions of consent.
No return to design review panel
- The application will require significant modification, the extent and nature of which requires advice from the design review panel.
Return to design review panel

12.2 Obligation to consult council – if adverse financial impacts

A Panel must not make a decision that will have, or that might reasonably be expected to have, a significantly adverse financial impact on a council without first consulting the council (see section 2.26 of the EP&A Act).

The consultation must be in writing, with the council being given a specified time to respond in writing. Where a briefing with the general manager (or nominee) is to be held to discuss the matter, all relevant Panel members should be present, and a meeting record and outcomes should be sent to the Secretariat.

12.3 Determining Crown development applications

A consent authority for Crown development cannot refuse consent to a Crown DA except with the approval of the Minister, nor can it impose a condition on a development consent for Crown development except with the approval of the applicant or the Minister.

This requirement applies to Crown development that is to be considered by a Panel, where the application is for regionally significant development, or where the DA is referred to the Panel under Division 4.6 of the EP&A Act.

Where the Panel wishes to either refuse an application or impose conditions not agreed by the applicant, or where a Panel fails to determine the DA within the prescribed period, the applicant or the

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Panel may refer the DA to the Minister. The Minister may then direct the Panel to approve or refuse the Crown DA within a specified time.

12.4 Determining DAs for coastal protection works

Certain coastal protection works are classified as regionally significant development. Where a Panel is to determine a DA for coastal protection works the chair and the council nominated members will remain on the panel, however the State members will be replaced by members appointed by the Minister who have expertise in coastal engineering or coastal geomorphology (see EP&A Act Schedule 2 clause 20(2) and clause 8A, Schedule 6 of the Planning System SEPP).

12.5 Delegation to council to determine applications

If the Minister agrees, Panels may delegate the determination of applications to councils, a local planning panel of a council or the general manager or other staff of council (see section 2.16(2) of the EP&A Act). Delegation may be for development in a specified area, for a class of application, or be made on a case-by-case basis.

In situations where the determination is delegated, councils must:

- register the application on the NSW Planning Portal,
- inform and update the Secretariat on the processing of the application as requested, and
- provide a copy to the Secretariat of all determination documents, including the assessment report and Notice of Determination.

The chair of the relevant Planning Panel may request the council to not exercise the delegated function in certain circumstances.

Any determination made by council under delegation is a decision of the Panel.

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13. Reviews and appeals

13.1 Decision reviews

Planning Panels also review decisions made on DAs by the Panels (see Division 8.2 of the EP&A Act). The Council notifies the Panel when a request to review a decision has been lodged through lodging it on the NSW Planning Portal. The Panel reviewing the decision will be comprised of different members to those members that made the original decision and will be called the Decision Review Panel of the [relevant] Planning Panel.

Note that decision reviews cannot be requested where the following applies:

- the time to lodge a legal appeal has passed,
- a merit appeal has been determined regarding the DA, or
- it is an application for complying development, a Crown DA or a designated development DA.

The Decision Review Panel may ask to be briefed on the decision review request, either by the applicant, Council staff undertaking the assessment, or other experts engaged to assess the application.

The circumstances where this may be needed include where the applicant for the DA has amended the development the subject of the original DA since the original determination.

If needed, the Decision Review Panel may also hold a site visit or public briefing meeting.

Council must prepare an additional assessment report to the Decision Review Panel if the DA or application to modify a development consent has been amended after its initial determination, or if submissions have been made following any further notification.

A Decision Review Panel will only need to hold a public determination meeting if the application was exhibited and 10 or more unique submissions by way of objection were received.

Council must give written notice to the applicant of the result of the review within 7 days of the completion of the review.

13.2 Appeals against a Planning Panel determination

Merit appeals

An applicant who is dissatisfied with a determination or deemed refusal of an application may lodge a merit appeal to the Land and Environment Court within six months against the decision as provided for in the EP&A Act.

Note: An application is deemed to have been refused if it is not determined within 40 days, or 60 days if the application is for designated or integrated development, requires concurrence of a concurrence authority or is accompanied by a biodiversity development assessment report and that proposes a discount in the biodiversity credits required under the report to be retired.

If the development is designated development, then an objector to the development who is dissatisfied with a determination may also lodge a merit appeal in the Land and Environment Court within 28 days as provided for in the EP&A Act.

The council for the area will be the respondent for any merit appeal against a determination made by a Panel on a development application. The council is subject to the control and direction of the Panel in connection with the conduct of the appeal.

The council is to give notice of the appeal to the Planning Panel. It must do this by notifying the Secretariat. Notification to the Panel must be made no more than seven days after the council receives notice of the appeal and must advise whether the council will be actively defending the appeal.

Note: Each Planning Panel chair has delegated authority to act as the Planning Panel's representative to provide instructions and seek legal advice in relation to appeals. Planning Panel delegations are published on the Planning Panels website.

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The Panel will determine its level of involvement in an appeal, and what directions (if any) it wishes to issue to the council, on a case-by-case basis. While a Panel has the power to direct and control the council, it may choose not to exercise the power. If a Panel wishes to take a more active role in a council's conduct of the appeal, the Panel can exercise its powers to control and direct council. In some circumstances the Panel may seek to join proceedings and act as the respondent in the place of the council.

Council is to:

- 1) provide the Panel with a copy of the application commencing the appeal within 7 days of the council being served with it,
- 2) provide the council's proposed statement of facts and contentions to the Panel at least 7 days before the earlier of:
 - a) the day of the first directions hearing for the appeal or
 - b) the day the statement is proposed to be filed,
- 3) identify in the council's statement of facts and contentions the steps taken by the council to notify the Panel of the appeal, and any response received by the council, and
- 4) provide the Panel, within 3 days, with:
 - a) a copy of any directions or orders made by the Court in relation to the appeal,
 - b) the dates on which the Court has arranged a conciliation conference under section 34 or section 34AA of the *Land and Environment Court Act 1979*,
 - c) the dates on which the appeal will be heard,
 - d) a copy of any judgment of the Court in relation to the appeal.
- 5) Request instructions if a conciliation conference has been arranged:
 - a) as to any agreement that might be reached between the parties as to the terms of a decision in the proceedings that would be acceptable to the parties, at least 14 days before the conciliation conference is held, and
 - b) as to any proposed in principle agreement that is reached between the parties at or after the conciliation conference, at the time of or no later than 2 days after an in-principle agreement is reached and before any written agreement is executed.

The Panel is to respond to requests from council for instructions within 7 days of the request.

Deemed Refusals

A Panel may determine a DA even though it is subject to a deemed refusal appeal. When a deemed refusal appeal has been filed with the Court, the usual practice is for council's assessment officer to complete their assessment report.

Applications may be deemed to have been refused before a Panel has been briefed on the application. Where a Panel has not been briefed on an application that is subject to an appeal, the Panel may request a briefing from the council.

Judicial review and civil enforcement proceedings

Any person may commence judicial review or civil enforcement proceedings in the Land and Environment Court against a Panel determination. Unlike merit appeals, in these types of proceedings the Panel will be named as a respondent.

A submitting appearance may be filed by the Panel if the grounds of challenge are not related to the powers or procedures of the Panel in determining the application.

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Appeals against determinations where council is the applicant

The Panel will be the respondent in merit appeal and judicial review proceedings in the Land & Environment Court where council is the applicant.

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14. Planning proposals - Strategic Planning Panels

Planning Panels also undertake LEP making functions, including:

- acting as the planning proposal authority in relation to LEP making if directed by the Minister and in certain circumstances,
- undertaking administrative reviews in relation to LEP making,
- overseeing Aboriginal land planning proposals, and
- providing advice to the Minister or the Secretary on matters relevant to LEP making.

Note: The Independent Planning Commission undertakes these functions if directed by the Minister in relation to LEP making for the City of Sydney LGA.

14.1 Strategic Planning Panels

When convened for specific strategic and Aboriginal land planning functions a Planning Panel will be known as the Strategic Planning Panel of the [relevant] Planning Panel.

14.2 Strategic Planning Panel members

The constitution of a Strategic Planning Panel is to comply with the EP&A Act and this Chapter 14 of the Operational Procedures.

A Strategic Planning Panel will consist of 5 members:

- 3 members, including the chair, appointed by the Minister (State members), and
- 2 members appointed by the relevant council (council members).

At least 2 of the State members appointed by the Minister must have expertise in strategic planning (district or regional strategic planning). The State members may be members or alternate members, so long as they have relevant strategic or Aboriginal land planning expertise.

For matters relating to Aboriginal land planning, specifically land in a development delivery plan made under the Planning Systems SEPP, at least 1 of the State members with strategic planning expertise should also identify as being Aboriginal or Torres Strait Islander or have expertise in Aboriginal land planning.

Note: This Chapter should be read together with Chapter 4 of this Operational Procedures.

14.3 Reviews

A Strategic Planning Panel may conduct certain LEP related reviews, including:

- Rezoning reviews — that may be requested by a proponent before a planning proposal has been submitted to the Department for a Gateway determination,
- Independent reviews — that may be requested by a LALC before a planning proposal for land subject to a development delivery plan made under the Planning Systems SEPP has been submitted to the Department for a Gateway determination.

The Department's LEP Making Guidelines sets out how to apply for a rezoning review, fees and costs, eligibility requirements and information the council or proponent must provide for reviews to be undertaken.

14.4 Rezoning reviews

The Department will provide the Strategic Planning Panel with the rezoning planning proposal, council's comments on the proposal and a summary briefing report for review.

The Strategic Planning Panel will be briefed by the proponent and council and may request a site visit to assist in its consideration of any matter relevant to the planning proposal. All briefings or site visits should follow the procedures set out in Schedule 1 of this Operational Procedures.

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Assessment and Determination

The Strategic Planning Panel's review and determination are to be in accordance with the LEP Making Guidelines.

The Strategic Planning Panel will assess the rezoning planning proposal, having regard to the matters outlined in the LEP Making Guidelines and determine whether the planning proposal has:

- strategic merit, and
- site-specific merit.

Planning proposals that do not reasonably meet the strategic and site-specific merit tests are unlikely to proceed to a Gateway determination.

The Department will monitor the progress of the rezoning review to achieve an outcome within a target of 100 days of receiving the initial rezoning review request.

Recommendation

If the Strategic Planning Panel recommends that the planning proposal should proceed to a Gateway determination, it will:

- notify the relevant council that the Strategic Planning Panel will assume the PPA role, if the council has refused to support the planning proposal, or
- identify the PPA (either council or itself) where council has not made a determination on a planning proposal but has informed the panel in writing prior to the Strategic Planning Panel meeting of its nomination.

Planning Proposal Authority

The Strategic Planning Panel may be directed to be the PPA for a planning proposal by the Minister.

The Strategic Planning Panel has delegated authority to direct itself to be the PPA in the following cases:

- a. in a case where the recommendation relates to a proposed instrument relating to land owned by a Local Aboriginal Land Council and to which Chapter 3 of the State Environmental Planning Policy (Planning Systems) 2021 applies:
 - i. before the recommendation was made, a written request to prepare a planning proposal has been submitted to the Department of Planning and Environment by the Local Aboriginal Land Council, or
- b. in any other case:
 - i. before the recommendation was made, a written request to prepare a planning proposal has been submitted to the council, and
 - ii. after the recommendation was made, the council has been given an opportunity to be the planning proposal authority, unless the council has previously refused to support the request to prepare a planning proposal.

Note: The appointment function under s 3.32(2)(c) of the EP&A Act has been delegated by the Minister to the Planning Panels and the Independent Planning Commission under an instrument of delegation.

14.5 Independent reviews

An independent review is an administrative review process closely aligned with rezoning reviews. Independent proposal reviews give LALCs an opportunity for an independent body to give advice on planning proposals for land subject to a development delivery plan made under the Planning Systems SEPP.

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Assessment and Determination

When a Strategic Planning Panel is undertaking an independent review, it must consider the:

- strategic merit - consideration must be given to the consistency of the planning proposal with the relevant development delivery plan for the land, and
- site-specific merit - consideration must be given to the social and economic benefit to the Aboriginal community facilitated by the proposal.

The Strategic Planning Panel must determine whether or not to recommend that a planning proposal be submitted for a Gateway determination under section 3.34 of the EP&A Act.

Further detail on the independent review process can be found in Planning Circular PS 22-001 Independent review of planning proposals for identified Aboriginal land, or as updated.

14.6 Planning Proposal Authority

As the PPA, the Strategic Planning Panel performs functions that a council normally would in preparing a LEP. This includes:

- submitting a planning proposal that satisfies the requirements of section 3.33 of the EP&A Act including any requirements issued by the Secretary for a Gateway determination,
- undertaking any necessary agency consultation prior to public exhibition of the planning proposal,
- exhibiting the planning proposal in accordance with the terms of the Gateway determination (if all relevant Gateway conditions have been met Panel endorsement to proceed to exhibition is not necessary),
- considering a recommendation report, addressing submissions received during public exhibition,
- holding a public meeting if the planning proposal is the subject of 10 or more unique submissions by way of objection following public exhibition,
- if required by the Minister, conducting a review of the planning proposal if there has been any delay in the matter being finalised, or if for any other reason the Minister considers it appropriate to do so,
- providing a revised planning proposal to the Minister following consideration of any submission or report during community consultation or for any other reason,
- submitting a request to the Department, as delegate of the Minister, that the LEP be legally drafted and made.

The Minister (or delegate) remains responsible for determining the planning proposal.

The Secretary is responsible for making arrangements for the drafting of any required LEP to give effect to the final proposals of the PPA.

14.7 Support provided to the Planning Panel in its role as PPA

The Secretariat are to provide any necessary support for agency and community consultation (public exhibition) and can facilitate the provision of technical support from other parts of the Department and briefings to the Strategic Planning Panel.

14.8 Strategic Planning Panel decisions and advice to be made publicly available

A Strategic Planning Panel will need to make decisions throughout the LEP making process when undertaking reviews or acting as PPA. Decisions of the Strategic Planning Panel must be made publicly available on the relevant Planning Panels website within 7 business days of any decision.

14.9 Community consultation

There is no requirement for a Strategic Planning Panel meeting to be held prior to determining a rezoning review. The Gateway determination details requirements, if any, for community consultation on planning proposals. The Strategic Planning Panel may hold Panel meetings at any time, at the discretion of the chair, and request briefings from relevant parties at any time.

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Submissions received as part of the public exhibition of a planning proposal for which the Strategic Planning Panel is the PPA must be made publicly available on the Panels' website.

15. Site compatibility certificates

Panels determine applications for SCCs made under section 3.14 of the Transport and Infrastructure SEPP.

Written applications are to be lodged with the Department. The Department prepares an assessment of the application and a recommendation for the relevant Panel. The Panel considers the application and the Department's assessment report and those matters set out at section 3.14(6) of the SEPP. The Panel may determine an application by issuing a SCC or refusing to do so.

The Panel may request a briefing and/or a site visit to assist in its considerations.

A briefing or site visit will be attended by the Panel and Department staff and follow the procedures set out in Schedule 1.

Decisions on SCCs will generally be made by a resolution following a circulation of papers in accordance with the procedures set out in Schedule 1.

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Schedule 1: Procedures for briefings, meetings and decisions.

1 Briefings and site visits

The chair may agree to a site visit or a briefing prior to a Planning Panel making a decision or providing advice on a matter.

A site visit or briefing is solely to identify and clarify issues with the proposal. Panel members will not offer opinions on the merits of the proposal or ask those involved with the assessment of the proposal for their opinion or recommendations at site visits or briefings.

However, the Panel may identify issues that it expects to be addressed or clarified in any assessment report.

A site visit or briefing will be attended by the Panel and relevant council or Department assessment staff or other persons engaged in the assessment of the DA or matter to be determined by the Panel. Secretariat staff may also attend site visits and briefings. In some circumstances, other parties, including the applicant or people who made submissions on an application or matter may also be invited to attend a site visit or briefing. The invitation of parties is at the discretion of the chair.

Briefings on DAs may include a presentation by council assessment staff on key elements of the proposal and the planning controls that affect it (such as zoning), and an overview of issues of concern arising through the Council's assessment or raised in submissions. The timing of the submission of the assessment report and tentative date for a determination may also be discussed.

The assessment officer briefing the Panel during a site visit should have available a set of large-scale plans and be able to point out relevant features of the site and the proposed development.

Only Panel members who will sit on the Panel to determine the matter should attend the briefing.

Briefings and site visits on planning proposals and site compatibility certificates follow the same format, with Departmental staff briefing the Panel.

It is not mandatory that the Panel be briefed prior to considering a matter. However, the Panel will typically hold a Kick-off briefing within 28 days of the DA being lodged. At this Kick-off briefing, the Panel chair will identify key issues, any areas where further information is to be requested and set out a timetable for the next phases of the assessment process, including the estimated timing for determination. Where there is an additional assessment briefing, it should take place no later than 128 days after the lodgement of the DA. The assessment of a DA should not be delayed for a briefing to occur.

Panel members may identify further issues where they need clarification or more information. A Panel may request briefings with council or Department staff or the applicant at any time to clarify any element of the proposal and the assessment report prior to the Panel making its decision.

Briefings are not determination meetings and Panel members should not make any comment that would indicate pre-determination of the matter.

The chair should take into consideration the availability of all members of the Panel and any other necessary persons when deciding to conduct a site visit.

Entry to any private land may only take place with the express permission of the owner of the land, and it is the responsibility of council staff, in relation to a DA, or Department staff in relation to a planning proposal, to seek owner's consent when required.

A written record of the briefing or site visit is made including time, date, attendees, any declarations and key issues discussed and is published on the Planning Panels website within 7 days. Site visits or briefings are not recorded by audio/ video record, an audio record or a transcription record.

It may be appropriate to invite the applicant or proponent to attend a briefing or site visit when:

- it would be beneficial to gain a joint understanding between the Panel, council and applicant of the key issues and timing for resolution relating to a DA or planning proposal,
- the Panel could benefit from additional technical explanation on a complex matter,

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- the development or other options are still being considered (e.g. if a major re-design has been requested by the council), or if
- material to be presented may be commercially sensitive or confidential.

Site inspections and briefings are not public meetings of the Panel.

2 Meetings

The Panel may meet on-line, in-person or a combination of both. The Panel will generally conduct its business on-line.

Public briefing meetings

If the matter before the Panel attracts significant community interest, the Panel may consider calling a public briefing meeting.

Public briefing meetings are held to hear submissions in a public forum and to meet with key stakeholders to discuss unresolved issues. Community groups and individuals may register to speak to the Panel at the public briefing meeting. Public briefing meetings are held at the discretion of the Panel. A recording will be made of public briefing meetings and made available on the Planning Panel website.

Panel members should not make any comment that would indicate pre-determination of the application at a public meeting.

Determination meetings

For contentious matters, where a DA has attracted 10 or more unique submissions by way of objection, the Panels will generally hold a public determination meeting to consider the DA.

Notice of a public determination meeting is given at least 7 days before the meeting. Notice of the meeting (including the time, date, meeting format and if relevant, venue for the meeting) are:

- notified on the Panels website, and
- given to every person who made a submission to the council (in the case of petitions, only the head petitioner).

The meeting agenda, any business papers, assessment reports and attachments (including any representations made by council) are distributed to members of the Panel and uploaded on the Planning Panels website in advance of the meeting.

People wishing to address the Panel must register prior to the meeting.

The chair determines the order of presentations to the Panel and the amount of time given to each speaker. At the meeting, it is acceptable to provide the Panel with written material which summarises the matters to be presented to the panel by the speaker. However, written material must be kept to a minimum. Any written material provided may be made available on the Planning Panel website.

3 Procedures for public meetings

Planning Panel meetings are to be conducted in public.

Meeting dates and agendas

Expected determination timeframes for DAs are estimated soon after the DA is lodged and referred to the Planning Panels. Regular status updates on DAs ensure that DAs are determined in a timely manner. Briefings and meetings are scheduled on an as-needs basis. Generally, Panels will have a regular schedule of proposed meeting dates that is determined at the beginning of each year by the Secretariat in consultation with the chair. Meeting dates can be utilised for any Panel related business including public briefing meetings, Panel briefings including Kick-off briefings and site visits, meetings with relevant Government agencies (eg concurrence authority) or Panel meetings. Panel public determination meetings are generally arranged within 14 days of receiving council's assessment report.

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Additional meetings or briefings of a Panel may be organised at the discretion of the chair and via the Secretariat.

The council notifies the Secretariat of any revised date for completion of the assessment report as soon as it is aware of any delay and advises of the reasons for the delay.

The meeting time and venue

The meeting time, meeting format and if relevant, venue is determined by the chair in consultation with relevant councils, and taking into account:

- the location of the proposed developments to be considered at the Panel meeting,
- the number of persons who have expressed an interest in the different matters to be considered at the Panel meeting,
- if the meeting is being held on site, the availability of a suitable venue and the accessibility of the proposed venue for those persons, and
- local considerations and logistics.

The meeting time, meeting format and if relevant, venue should:

- maximise accessibility to people who have expressed an interest in the matters to be considered at the meeting, and
- facilitate the open exchange of information between the Panel members and other parties.

Notice of meeting

Notice of a Panel meeting is to be given by the Secretariat at least 7 days before the meeting. Notice is given to Panel members, the general managers (or their nominee) of the councils in that region or district, every person who made a submission to the council (in the case of petitions, only the head petitioner) in respect of an item to be considered at the meeting and the applicants for those items. A notice is placed on the Panels website and may be placed in the local newspaper.

The notice is to include details of:

- the time, date and format of the meeting,
- if relevant, the venue for the meeting,
- the matter under consideration (DA/s or planning proposal),
- the availability of the assessment report, supporting documentation and recommendations, and
- other matters to be considered at the meeting.

Distribution of meeting papers

The meeting papers including assessment reports and attachments, including any representations made by councils, are to be distributed to members of the Panel and uploaded on the Panels website by the Secretariat no less than 7 days prior to the meeting.

Opening and closing meetings

The chair will open the meeting with an Acknowledgement of Country followed by introducing the Panel and its members, state the purpose of the meeting, read out any apologies and call for declarations of interest following the declarations of interest procedures.

The chair will note any site visits or briefings the panel has had the benefit of and describe the order of proceedings and time limits for speakers.

The chair may also request council staff to briefly summarise the key issues that have arisen in the assessment report.

The panel will then listen to those wishing to address the panel. After the presentations the panel will make its determination and the chair will read out the decision of the panel before closing the meeting.

Declarations of interest procedures

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The declarations of interest procedures set out below follow the requirements of the Panels Code of Conduct (Code):

1. The chair calls on Panel members to complete and sign written declarations of interest forms prior to the meeting for each panel matter (under clause 4.1 of the Code). Any verbal declarations must be recorded in writing.

Note: Under the Code, a panel member should declare the following interests:

- a. an actual, potential or reasonably perceived conflict of interest (see clause 3.1 of the Code),
 - b. a pecuniary interest listed under clauses 3.10 – 3.12 of the Code,
 - c. a non-pecuniary interest (see clause 3.14 of the Code),
 - d. a conflict of duties listed under clauses 3.18 – 3.25 of the Code,
 - e. a pecuniary interest or non-pecuniary interest arising from a political contribution or donation (see clause 3.26 of the Code),
 - f. a position and pecuniary interest in corporations, partnerships or other businesses that may be relevant to the activities of the Panel in accordance with the Department of Premier of Cabinet's Guidelines 'Conduct Guidelines for Members of NSW Government Boards and Committees' (see clause 4.3 of the Code),
 - g. a personal dealing with council (see clause 5.1 of the Code), and
 - h. a gift or benefit listed under clauses 5.2 – 5.6 of the Code.
2. The chair reviews the written and signed declarations and the management measures put in place for any declared interests.
 3. If the chair is satisfied that reasonable and appropriate management measures are consistent with those set out in the Code, then a note to this effect is to be made on the meeting record.
 4. Should the chair have concerns, the chair is to raise these concerns with the member and suggest additional reasonable and appropriate management measures including, if warranted, that the member not take part in the determination for the matter (see clause 3.8 of the Code).
 5. The chair is to provide the member an opportunity to respond.
 6. The chair is to consider any response prior to making a final decision on the reasonable and appropriate management measures and note the response, the decision, and the chair's reasons for the decision in the meeting record.

Presentations at a Panel meeting

The chair determines the order of presentations to the Panel. Panel members may ask questions of those making presentations. The amount of time given to each speaker is at the discretion of the chair.

At the Panel meeting, it is at the chair's discretion whether to accept written material which summarises the matters to be presented to the Panel by the speaker. Any allowed written material must be kept to a minimum.

By registering to speak at a meeting, speakers agree to being audio recorded and to the publication of that recording on the Panels website.

- a) Presentation by the assessment officer

The chair may request that the assessing officer responsible for preparing the assessment report (or a representative) presents a summary of the DA or planning proposal, as the case may be, and outline any relevant assessment issues at the start of the presentations. For meeting being held in person, the assessment officer should have available at the Panel meeting a set of large-scale plans (including any amended plans).

Generally, it is council's professional planning and assessment staff that prepare DA assessment reports for the Panel's consideration.

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Where a Panel is acting in the role of the PPA for a planning proposal matter the Department provides technical assistance, which may include the provision of an assessment report for the Panel.

The assessment officer (or representative) should inform the chair of any late submissions received, and of any issues raised which may not have been addressed in the assessment report.

The assessment officer (or representative) should be present throughout the Panel meeting, so that the chair can seek clarification where necessary of assessment issues that may arise during the course of the meeting. Other technical experts from the council/Department may also be present (such as traffic engineers) and the chair may ask for clarification of specific issues. Any questions to council/Department staff can only be made by Panel members and are to be directed through the chair.

b) Presentation by the applicant or proponent

The applicant, in the case of a DA, or the proponent, in the case of a planning proposal, will be given the opportunity to outline the proposal and respond to the assessment report. The applicant/proponent may also be required to respond to submissions made at the meeting. The time allocated to the applicant/proponent, including their consultant(s), is at the discretion of the chair, but is generally 15 minutes. Additional time may be allocated where professional consultants have been engaged by the applicant/proponent to present at the meeting.

c) Presentation by people or groups who made submissions

Panel meetings enable people or groups to make a presentation to the Panel meeting. People who wish to address the Panel must register with the Secretariat prior to the meeting by contacting the Secretariat by telephone or email within the timeframe specified in the notification letter (generally two days before the Panel meeting).

For those people who are of the view that they would not be appropriately or adequately represented by any groups, they may register to speak to the Panel as individuals.

The chair will advise on the time allocated for verbal submissions which will vary from meeting to meeting depending on a number of considerations such as the number of registered speakers.

As a guide:

- individual submitters will have 3 minutes to speak,
- a speaker for a community organisation/group will have 10 minutes to present. Additional time may be allocated where professional consultants have been engaged by community groups to present at the meeting.

In addition, where a large group of people have common issues to raise at the meeting, the chair may ask that a spokesperson be appointed to speak on behalf of the group. In such cases, the spokesperson will generally be allocated more time than individual speakers.

The chair seeks to ensure that all groups or individuals who request to address the Panel are heard. Any requests for extending time limits should be made to the Panel at the meeting and may be granted at the discretion of the chair.

Speakers should focus their oral presentations on the assessment report and its recommendation rather than re-stating information outlined in their earlier written submissions. The Panel has been provided with all submissions and associated documents before the Panel meeting.

d) Presentation by people or groups that have not made a submission

The chair has the discretion to allow any member of the public to address the Panel, even if they have not made a submission or registered to speak by the relevant deadline. Considerations may include the number of persons that made submissions and have requested to address the meeting and the available time.

e) Presentation by an expert engaged by the Panel

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For the purpose of making a decision on a matter, such as a DA or a planning proposal, a Panel may obtain independent assessment reports, advice and assistance that the Panel may require, particularly in relation to complex technical matters. This would be in addition to any assessment report or other information provided by the relevant council/Department in assessing the application.

Selection of such experts is to be determined by the chair in consultation with the other Panel members.

Depending on the circumstances, the expert may submit a report with recommendations directly to the Panel. In addition, the expert may be invited to present the outcomes of their report at the Panel meeting.

The independent assessment report should be made available on the Planning Panels website prior to the meeting, except where this information includes legal advice provided to the Panel and is subject to legal professional privilege.

Adjourning during a Planning Panel meeting

A Panel may adjourn a meeting where:

- a briefing is required to hear confidential or sensitive information, and/or
- the panel wishes to confer amongst itself before reconvening the meeting for voting and determination.

Before the adjournment the panel chair publicly states the reasons for the adjournment which are recorded in the audio and written record of the meeting.

If the meeting is adjourned so that the panel may confer amongst themselves prior to making a decision, the chair briefly summarises the matters discussed in the adjournment after reconvening the meeting. The panel may discuss the matter further in the meeting and/or make its determination.

Panel discussions during adjournments are not recorded.

4 Decisions and determinations

The Panel will strive to make its decisions unanimously. Where a decision cannot be made by unanimously, the decision will be made by majority vote. The chair will have a second or casting vote if required because of an equality of votes.

Quorum for a Planning Panel decisions

A quorum is a majority of the Panel's members, including the chair, i.e. a total of three members. The decision of the Panel will be deferred if a quorum is not present.

Where conflicts of interest are known before a decision is to be made, alternate members will be used to make a quorum.

The Planning Panel's consideration

In addition to the assessment report, the Panel is to take into account all written submissions, as well as the views expressed by those addressing the Panel should a public meeting be required.

Deferring the decision

A decision may be deferred for any reason including to obtain additional information or advice.

Should the Panel determine to defer a decision on an application, it must provide a written record of the reasons for deferral.

Where the determination of a proposal is deferred pending the provision of additional information, the panel must specify the timeframe in which the information is to be provided to the council for assessment.

It is the council's responsibility to follow up on any requests for additional information or amendments from the applicant, to determine whether re-exhibition is required, and to provide a supplementary assessment report to the Panel.

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The Panel's reasons

The Panel must provide reasons for its decisions, which are to be recorded in the 'Determination and Statement of Reasons' template provided by the Secretariat.

The Panel may rely on the conclusions and recommendations within the assessment report, however, the Panel must identify where it has its own reasons for making the decision and where it adopts the reasons from any assessment report of Council or the Department. As part of setting out its reasons the Panel is to:

- provide a summary of the main issues raised in submissions,
- demonstrate how the Panel considered the community's concerns, and
- demonstrate how the Panel dealt with the issues raised, should they have been found to have merit i.e. requested further studies, applied appropriate conditions or, agreed with council recommendation that the applicant had satisfactorily addressed the concerns.

Determinations on DAs

The determination must clearly state whether a DA is unconditionally approved, approved with conditions, has a deferred commencement or refused.

Any new conditions of consent or changes to the recommended conditions of consent must be recorded.

If the Panel resolves to approve an application that is recommended for refusal, the Panel may seek a further report from the council's planning officer providing recommended conditions of consent. The Panel may request without prejudice conditions of consent before a Panel meeting if council's report recommends refusal.

The determination and statement of reasons must include the following:

- the decision of the Panel,
- the date of the decision,
- the reasons for the decision (having regard to any statutory requirements applying to the decision), and
- how community views were considered in making the decision.

DA determinations must be publicly notified in accordance with clause 20 Schedule 1 of the EP&A Act. The date that the determination has effect is the date that it is registered (by the Panel secretariat) on the NSW Planning Portal (EP&A Act s.4.20(1)). The council will provide the Notice of Determination after this date.

The decision of the Panel is not subject to a 'Rescission Motion' as in local government.

Decisions of Decision Review Panels are called a 'Review of Decision' Determination and Statement of Reasons.

Determinations on matters other than DAs

Decisions made by the Panels on SCCs, Rezoning Reviews and where the Panel is the PPA will include the following:

- the decision of the Panel,
- the date of the decision, and
- the reasons for the decision (having regard to any statutory requirements applying to the decision).

Resolutions of the Panels

The Panels may from time to time make resolutions on certain matters, e.g. to authorise the chair to provide instruction in relation to legal appeals on behalf of the Panel.

Resolutions of the Panel will be published on the Panels website.

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Dissenting views

If the decision (and reasons for the decision) is not unanimous, all members of the Panel (i.e. including the minority) still need to give reasons.

Timing of Determination and Statement of Reasons

It is preferable that the Panel record both its decision and its reasons at the time of the determination.

Signatures

All members of the Panel must sign the Determination and Statement of Reasons. Where one or two members are in dissent, they must still sign, as the reasons will set out their dissenting views.

5 Transactions of business outside meetings

A Panel can transact its business by the circulation of papers, (including the electronic transmission of the information in the papers) (known as an electronic determination) (see Schedule 2, Clause 26 of the EP&A Act). The chair and each Panel member have the same voting rights as they have at a public meeting.

The chair may decide that the Panel can complete its business through an electronic determination. These circumstances may arise when:

- there are less than 10 unique submissions by way of objection,
- the Panel has held a public meeting and deferred its decision to request specific additional information from an applicant or council (such as amended drawings) and if council, after having accepted the amended drawings, has decided that re-exhibition of is not required,
- the Panel is voting on a procedural matter, or
- the Panel is voting on a decision following a briefing in relation to a Rezoning Review, Planning Proposal or site compatibility certificate.

Prior to an electronic determination the council report and recommendation is made available on the Planning Panels website for 7 days.

Following consideration of the assessment report, the Panel advises the Secretariat of its decision and a record of decision is completed and endorsed by all members.

Resolutions approved by circulation of papers are recorded in writing and made publicly available on the Panels website within 7 days. The circulation of papers is generally done electronically and are not recorded by audio/ video record, an audio record or a transcription record.

6 Records of proceedings

The chair is responsible for ensuring that full and accurate records are kept of the proceedings of Panel meetings, briefings and other business.

An audio recording will be made for all public briefing meetings and determination meetings and will be published on the Panels website. By registering to speak at a meeting, speakers agree to being recorded and to the publication of that recording. Where a speaker has not registered to speak but wants to make a submission at the meeting it is at the chair's discretion and the speaker is asked to agree to being recorded and that recording being published.

Document templates for written records of proceedings are provided by the Secretariat.

Secretariat or council staff will assist in the preparation of draft written records. A copy of the unconfirmed written record is provided to all Panel members who participated in the proceedings. Panel members may submit any proposed corrections to the unconfirmed record to the Secretariat for confirmation by the chair.

Alternatively, a Panel may choose to complete and endorse the final record immediately after completing the meeting or briefing. In this case, draft records are not circulated.

When the written records have been confirmed and endorsed by the chair the written record is placed on the Panels website.

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The confirmed written record is available within 7 days of the Panel meeting or briefing.

Record details are to include:

- the opening and closing times of the meeting,
- the details of the matter considered by the Panel,
- the names of all members of the Panel, including the chair, and any other attendees at the meeting,
- any disclosure of interest made by a member, the reason for that disclosure of interest and whether the member making the disclosure participated in the discussion or determination of the matter,
- any adjournments and reasons for the adjournment,
- the names of each person heard by the Panel in respect of a matter,
- any decision of the Panel,
- reasons for the decision,
- the names of each member who voted for or against the decision, and reasons for dissent, where the decision is not unanimous, and
- the signatures of all the members making the decision.

A written record of briefings or site visits are made including time, date, attendees, any declarations and key issues discussed and are published on the Panels website within 7 days. Site visits or briefings are not recorded by audio/ video record, an audio record or a transcription record.

The Secretariat, with assistance from the relevant council, is responsible for recording decisions for Panel meetings.

Panel members are required to provide any notes made during a meeting, briefing or site inspection to the Secretariat for registration as a record. This includes handwritten or electronic notations.

Item No: EC10/24-5

ANNUAL DISCLOSURE OF PECUNIARY INTEREST RETURNS FOR COUNCILLORS & DESIGNATED PERSONS

Directorate: Governance and Risk
Responsible Officer: Director Governance and Risk
Community Strategic Plan Goal: *Providing Local Leadership*

SUMMARY

This report outlines the tabling of Disclosure of Pecuniary Interest Returns lodged by Councillors and Designated Persons in accordance with Schedule 1 of the *Model Code of Conduct for Local Councils in NSW* (the Model Code of Conduct).

RECOMMENDATION

That Council note the confidential tabling of the Annual Disclosure of Interest Returns, in accordance with requirements under cl. 4.25 of the *Code of Conduct*.

REPORT

Clause 4.25 of Council's *Code of Conduct* requires that Disclosure of Interest Returns lodged by Councillors and Designated Persons are to be tabled by the General Manager at the first available Council meeting following 30 September, for designated persons as at 30 June each year.

A 'designated person' is described in Clause 4.8 of the *Model Code of Conduct* as:

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

Accordingly, the returns for the period ended 30 June 2024 are tabled for information. It is noted that newly elected Councillors must lodge their returns within 3 months of the declaration of election results date. These returns are not included in this report and will be tabled at a future Council meeting.

COMMUNITY ENGAGEMENT

There are no consultation processes for Council associated with this report.

POLICY IMPLICATIONS

The tabling of Annual Disclosure of Interests Returns ensure Council is in full compliance with the requirements outlined in its adopted *Code of Conduct*.

RISK IMPLICATIONS

By finalising these returns, Council is adhering to its compliance requirements under the *Code of Conduct* as prescribed under the *Local Government Act 1993*.

FINANCIAL IMPLICATIONS

There are no financial implications for Council associated with this report.

CONCLUSION

The Annual Disclosure of Interest Returns are tabled to Council for information, in accordance with Council's obligations under the *Code of Conduct* as prescribed under the *Local Government Act 1993*.

ATTACHMENTS

Nil

Item No: EC10/24-6

NEW COUNCILLOR CONDUCT AND MEETING PRACTICES FRAMEWORK - OFFICE OF LOCAL GOVERNMENT DISCUSSION PAPER

Directorate: Governance and Risk
Responsible Officer: Director Governance and Risk
Community Strategic Plan Goal: *Providing Local Leadership*

SUMMARY

Council is aware via the Office of Local Government that a new discussion paper has been released on a new proposed Code of Conduct and Meeting Practices Framework. The discussion paper seeks to significantly reform the Councillor Code of Conduct, and procedures within Council meetings. This report seeks to inform Council of these proposed changes, in early form.

RECOMMENDATION

That Council receive the report.

REPORT

Proposed reforms to the *Code of Conduct* would streamline the code of conduct down to 2-3 pages similar to the State Parliamentary code, and outline clear expectations of behaviour elected councillors. The existing Code of Conduct for Council staff, would remain unchanged under this proposal.

The new code of conduct system would see minor complaints about councillor misbehaviour dealt with by a councillor's peers and leave serious matters relating to conflicts of interest to be examined by the Office of Local Government.

The NSW government is also putting forward reforms to improve transparency of council meetings to ensure decisions are being made openly and in the best interests of the community as a whole.

Key reforms outlined in the discussion paper, some of which would require changes to the *Local Government Act 1993*, include:

- Establishing a local government privileges committee of experienced councillors with mayoral experience to assess complaints made against councillors for misbehaviour, consistent with practices in other tiers of government (where the conduct does not meet the threshold for police or referral to another investigative body or tribunal)
- Removing private investigators from the councillor conduct process, while strengthening the investigative capability of the Office of Local Government to investigate and prosecute legitimate complaints (such as issuing penalty infringement notices where conflict of interest declarations have not been made)
- Banning private councillor briefing sessions, except in very limited circumstances

- Strengthening lobbying guidelines for local government
- Giving mayors more power to expel councillors from meetings for acts of disorder and remove their entitlement to receive a fee in the month of their indiscretion

The discussion paper is now open for community and sector feedback and is attached to this report. Council's administration is broadly supportive of the changes proposed. Council's Internal Ombudsman Shared Service is preparing a submission on behalf of its member Councils. Submissions can be made until 15 November 2024.

It is expected that a new Code of Conduct will be prescribed to Council's in Mid-2025, with Council's typically given 6 months to adopt the new Model Code, based on previous changes made in 2020. Changes to the Model Code of Conduct will likely impact the Model Code of Meeting Practice also.

As this matter progresses, Councillors will be kept informed by the General Manager.

COMMUNITY ENGAGEMENT

The Draft Councillor conduct and meeting practices discussion paper is currently open for community and Council consultation until 15 November 2024.

POLICY IMPLICATIONS

Changes to the Model Code of Conduct will be required to be adopted by Council in future once enacted, superseding the current Code of Conduct. Legislative changes to the Local Government Act 1993 will be required to be passed in Parliament to give effect to the new framework.

RISK IMPLICATIONS

There are no risk implications for Council associated with this report.

FINANCIAL IMPLICATIONS

There are no financial implications for Council associated with this report.

CONCLUSION

The proposed changes to the Code of Conduct are significant in nature. This report informs Council of these changes. Councillors will be kept informed as the matter progresses.

ATTACHMENTS

1. Councillor Conduct and Meeting Practices Discussion Paper [↓](#)

**DOCUMENTS
ASSOCIATED WITH
REPORT EC10/24-6**

Attachment 1

**Councillor Conduct and Meeting
Practices Discussion Paper**

Office of Local Government



Councillor conduct and meeting practices

A new framework

September 2024

olg.nsw.gov.au



Acknowledgement of Country

The Department of Planning, Housing and Infrastructure acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

Published by NSW Department of Planning, Housing and Infrastructure

dphi.nsw.gov.au

Councillor conduct and meeting practices

First published: September 2024

More information

Office of Local Government

Locked Bag 3015 NOWRA NSW 2541

Ph (02) 4428 4100

olg@olg.nsw.gov.au

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The need for change – returning local democracy to councils

Strong and thriving communities need effective local government. No other level of government is as close to the issues and people.

Effective local government comes when councillors are visibly in control of their councils. How councillors act and how appropriately and transparently decisions are made at meetings is critical in demonstrating to the community that their elected representatives understand the consequences of their decisions, and then make the best possible decisions they can for their community as a whole.

Unfortunately, the existing councillor conduct framework is not delivering on the need for transparency or the necessary degree of respect in the community for the role that councillors have.

Closed council briefing sessions are being used to make decisions away from the public view. Council debates on issues are too often personal slanging matches, rather than forums for robust but respectful discussions on what is best for the community.

Similarly, we have seen a growth in the number of complaints, often over trivial issues. Data from the Office of Local Government (OLG) has shown there has been 4289 complaints over the last 3 years (2020/21 to 2022/23) through the code of conduct process. Overall:

- 420 were referred for preliminary enquiries and then discontinued
- 136 were investigated as potential pecuniary interest matters
- 102 were investigated as potential misconduct (not pecuniary interest)
- 36 related to public interest disclosures, and
- 2 related to political donations

But of these thousands of complaints, in the years since 2020/21 OLG has:

- taken action against 14 councillors by way of a suspension or reprimand
- referred 4 councillors to the NSW Civil and Administrative Tribunal (NCAT) for misconduct, and
- disqualified and dismissed one councillor on the basis of Independent Commission Against Corruption (ICAC) recommendations

The volume of frivolous complaints is crowding out the ability of the OLG and the sector to adequately deal with councillors who abuse their office or cause serious governance problems. It is critical the framework that governs both the behaviour and meeting practices of councillors ensures the community can observe and comment on the behaviour of councillors, instead of inhibiting the operation and function of local democracy.

The weaknesses of existing frameworks

The simple, but compelling premise is local councils should be accountable to their community with council staff being accountable to their councillors, through the General Manager. The best way to achieve this aim is for councils to provide strong and effective representation, leadership, planning and decision making. Unfortunately, this simple concept has been lost.

How councillors behave, how they deliberate and the responsibilities they hold should be modelled on how members of Parliament are expected to behave and act. As the governing body, councillors should act fairly, ethically and without bias in the interests of the local community, and they should be responsible employers and provide a consultative and supportive working environment for staff. A criticism made about the current framework for councillor conduct or meeting practices is that they do not reflect local government's status as an independent third tier of government: it allows an unelected State Government official to determine penalties and guilt thus undermining the status of local government.

While most local councils and local councillors do the right thing with the best intent, there are some councillors who are not so motivated. In these cases, the current councillor behavioural framework, as implemented in NSW, does not facilitate the best outcomes or resolve issues.

In relation to complaint management, it is not considered acceptable to create better complaint management pathways for the processing of code of conduct complaints. The current code of conduct simply enables too many complaints about councillors, all too often for political or vexatious reasons.

It is for this reason that the Government has embarked upon a new approach that refocuses the limited resources of the State on those concerns that matter most: serious misbehaviours and attempts by councillors to enrich themselves through their office.

Weaknesses of the current framework include:

- The councillor conduct framework distracts from, rather than enhances, robust democratic debate. Complaints are weaponised for political reasons, or to silence dissent from other elected representatives.
- Councillors and community members report dissatisfaction with the process for resolving code of conduct complaints – being expensive, overly legal, prone to political sparring and not timely, with average timeframes exceeding 12 months and more than 24 months if they are then referred to OLG for further investigation.
- Issues are not being addressed and resolved at the local level – instead complaints are escalated unnecessarily to the State Government to resolve because of the view that public censure from the local council is not a 'strong enough' punishment.
- Communities and councillors report that council decision making is not transparent – with decisions being seen as made behind closed doors, information not being provided or withheld, too much use of closed to the public briefings or councils going into closed sessions for no adequate rationale.
- Bad councillor behaviour is not considered to have been addressed quickly enough and when sanctions are imposed it is too late or of little consequence.
- There is a lack of clarity around OLG's role as the sector regulator – taking too long to resolve matters and not focussing on the important financial and government concerns in the sector, instead spending time focussed on individual councillor behaviour.
- OLG reports challenges in relying on the reports of council conduct reviewers – investigations into councillors need to be done afresh, the process is cumbersome with multiple feedback loops and serious sanctions can only come from suspensions handed down by NCAT.

With so much focus on the bad behaviour of a limited number of councillors there is not enough attention given to the good work that councillors do. The role of a councillor is a noble public service, and the local government behavioural framework should support those who seek to do the right thing and punish those that are not so motivated.

Options for a better approach

Improving the councillor conduct framework and the meeting practices of councils can be achieved but will require changes to the Local Government Act 1993 (the Local Government Act), as well as updating the various regulations, codes and policies that apply. Some of the work to update the regulations and codes can be done quickly, while others requiring legislative change will take some time.

This paper provides an overview of the proposed new approach to both the councillor conduct framework and meeting practices. The proposals are to:

- Make OLG directly responsible for dealing with pecuniary interest and significant non-pecuniary conflicts of interest, with sanctions (suspensions and loss of pay) being determined by an appropriate tribunal or body,
- Refer behavioural based concerns about councillor conduct to a State-wide panel of experienced councillors to judge their peers,
- Reset the code of conduct to be similar to Parliamentary Codes, making it clear the expected patterns of councillor behaviour,
- Ensure the community can observe local democratic processes by banning closed to the public briefing sessions, while at the same time restoring the dignity and prestige of the council chamber.

These changes are only proposed for councillors and there is no change proposed for the code of conduct for Local Government staff. Feedback from stakeholders is that the existing code of conduct of staff remains fit for purpose and is largely effective.

Seeking your views

This discussion paper has been prepared to seek the views of the community, key stakeholders and the local government sector about the proposed changes.

Submissions will be accepted to **COB Friday 15 November 2024**.

All input received through this consultation process **may be made publicly available**. Please let us know in your submission if you **do not want** your name and personal details published.

As part of the consultation process, we may need to share your information with people outside OLG, including other public authorities and government agencies. We may also use your email to send you notifications about further feedback opportunities or the outcome of the consultation.

There may also be circumstances when OLG is required by law to release information (for example, in accordance with the requirements of the Government Information (Public Access) Act 2009). There is a privacy policy located on OLG's website that explains how some data is automatically collected (such as your internet protocol (IP) address) whenever you visit OLG's website. The link to that policy is <https://www.olg.nsw.gov.au/about-us/privacy-policy/>.

Further information about how to make a submission is provided at section 7 of this paper.

What are the principles of change?

In preparing the proposed reforms the following principles have guided the discussion and the intent of the changes:

- **Council leadership and decision making is paramount** – it is critical that the sector, as the third tier of government, is given independence to make decisions in the best interests of the community
- **Freedom of speech** – as elected officials, councillors have the constitutional right and democratic responsibility to speak freely about issues affecting their local community and to advocate for the interests of that community
- **Transparency and accountability** – as a democracy councils need to hear, consider and debate issues in an open manner
- **Significant penalties should only be imposed by a judicial or quasi-judicial body** – to ensure procedural fairness and thorough testing of allegations, significant penalties should be given by bodies such as the NSW Civil and Administrative Tribunal
- **A strong and proportionate local government regulator** – the role of OLG should be to create the framework for local government, ensure councils, joint organisations (JOs), and county councils have the capacity to operate within the framework so that the regulator intervenes as rarely as needed
- **Subsidiarity** – decisions are made at the level closest to those impacted by those decisions
- **Justice is timely and proportionate** – where allegations are made, they should be heard, tested and dealt with as quickly as possible.

Question

Are we missing anything in the principles of change?

Potential changes to the code of conduct and oath of office

The key proposed reform for the councillor behavioural framework is to move to a streamlined, aspirational Code of Conduct. This is equivalent to the Code of Conduct framework for NSW Members of Parliament available [here](#) and [here](#).

The aspirational Code of Conduct would clearly and succinctly outline the behavioural expectations of local councillors (approximately 2-3 pages) in easy-to-understand language. It would then be supported by a clearer framework and definitions for misbehaviour of elected officials.

The aspirational Code of Conduct would not set out the definitions of misbehaviour as these would be legislated as explained in later sections of this discussion paper.

Separating the behavioural expectations in a Code of Conduct from definitions of misbehaviour reflects a positive approach to councillor behaviour. The separation also recognises that the majority of councillors want to do the right thing and they should have easy access to the standards expected of them.

The revamped Code of Conduct could also be aligned to the Oath of Office for local councillors ensuring that the behavioural standards and expectations are clear and understood when a councillor takes office. The existing framework can make it difficult to understand the behavioural expectations and standards upon councillors.

Importantly, the revamped Code of Conduct will not seek to restrain the ability of a councillor to speak publicly on matters pertaining to their council, even when that councillor is disagreeing with, or being critical of, the decisions of the majority.

It is proposed to make the new Code of Conduct an aspirational code of expected behaviours instead of enforceable for local councillors.

Question

What are the key elements of an aspirational Code of Conduct that should be enshrined?

Question

What are your views about aligning the Oath of Office to the revamped Code of Conduct?

Potential changes to the definitions and assessment of councillor misbehaviour

The current Local Government Act defines councillor misconduct as a breach of the Local Government Act or other regulatory provisions, which includes the Code of Conduct. This means that it is difficult for the average person to understand the definition of misconduct as they need to reference several other regulatory instruments and policy documents to determine what constitutes.

It is proposed in the revised framework that misbehaviour will be more clearly defined and articulated within the Local Government Act, with the reference to regulations and other statutory instruments only for further enunciation or explanation.

These definitions, which are described in later sections would cover:

- Pecuniary conflicts of interests, (for example decisions that financially benefit the councillor or a close associate),
- Significant non-pecuniary conflicts of interests (for example where a councillor participates in a decision and a direct advantage/disadvantage is created for a person or company the councillor is friendly with or associated with), and
- Councillor misbehaviour in public office (for example, poor conduct in meetings leading to exclusion by the Mayor or Chair of the Committee).

This will make clearer to all participants in the local government sector what is considered misbehaviour by a local councillor.

The definitions of misbehaviour do not change the other legislative requirements. Communities, residents, workers and fellow councillors expect their elected officials to act in an appropriate and ethical way, including observing workplace health and safety, environmental and criminal laws. If there is an offence or complaint under these other laws, people should

seek redress from the appropriate regulator including SafeWork, Independent Commission Against Corruption or the NSW Police.

The behavioural standards in the revamped Code of Conduct will reinforce the expectation that councillors are community leaders and therefore exemplars of good behaviour. As community leaders it is also expected councillors will meet legislative obligations. Therefore, misbehaviour only needs to be defined as those issues which go to the nature of councillors as elected officials, being conflicts of interest or misbehaviour in public office.

These are the expectations that are upon councillors because of the public trust that is placed in them as elected officials. In this way it more closely reflects, with appropriate adjustments the framework that applies to other elected officials in other levels of Government.

Conflicts of interest

The first proposed limb of the revised misbehaviour definition is a councillor's failure to manage a conflict of interest.

Management of conflicts of interest is important to ensure that councillors act and are seen to act in the public good, not for private benefit or personal gain. Conflicts of interest arise when there is a conflict, perception or potential of a conflict between an official's private interests and public duty.

The test for pecuniary interests is quite clear as it is an objective test; would a councillor or one of their close associates (spouse, family members), receive a financial benefit as a result of a decision. However, testing whether there is a non-pecuniary conflict of interest is more challenging.

Pecuniary interests

It is proposed to align the definition of pecuniary interests for NSW councillors with those that are utilised and defined for NSW members of parliament, requiring disclosure of the following interests:

- Real property – property in which councillors have an ‘interest’
- Sources of income – all income over \$500 other than salary of office
- Gifts – all gifts of cumulative value of more than \$500
- Contributions to travel – of value of more than \$250 (including flight upgrades)
- Interests and positions in corporations – eg stocks and shares, directorships
- Positions in unions and professional or business organisations
- Debts – of cumulative value of more than \$500, excluding home loans or debts for goods and services disposed of within a year
- Dispositions of property
- Engagement to provide a service involving use of a councillor’s position and
- Discretionary disclosures.

It is proposed that the interests for disclosure by the councillor are similarly extended to the interest of a spouse or de facto partner, relative, or partner or employer, or a company or other body of which the councillor, or their nominee, partner or employer, is a shareholder or member. This extends only to the extent the councillor is aware or should be aware of such interests.

It is proposed there remains an absolute prohibition on a councillor being involved in any matter before council where a pecuniary conflict of interest exists, unless otherwise determined via regulation.

It is also proposed to give extended investigation powers to OLG to investigate and request information on corporate structures such as trust or companies to

determine underlying beneficial ownership and interests.

OLG, as the agency responsible for investigating alleged breaches of pecuniary interests, needs clear powers to compel the production of information and/or records, to ensure that pecuniary interest returns are provided and made publicly available. If there is non-compliance with an OLG direction, which may include the requirement to make a declaration, remedies such as penalty infringement notices (PIN) should be available to ensure cooperation with investigative processes.

Question

Is the proposed pecuniary interest framework appropriate? Is anything missing?

Non-pecuniary interests

A conflict of interest does not necessarily have to be financial in nature. It could also arise from familial or personal relationships, affiliations or memberships. It is equally important that such conflicts are managed appropriately to ensure that decision making is seen to be transparent and remains in the public interest.

An interested and informed observer should be confident a decision made by a councillor is free from bias or a reasonable apprehension of bias. This means that any concerns about a potentially significant conflict of interest should be declared and appropriately managed.

The nature and breadth of non-pecuniary interests naturally means that the framework for management of such interests is more nuanced, with the management approach often dependent upon the individual circumstances of the case.

It is also important to recognise that councillors, as representatives of their community, reside within their community, so memberships of clubs, congregational

memberships etc should not automatically be seen as conflicts of interest.

If a decision of a councillor directly advantages (or disadvantages) a particular individual or organisation the councillor is friendly with or associates with, then that can be a conflict that should be publicly declared, if the councillor considered it of minor consequence, it wasn't controversial, or the councillor did not hold the casting vote.

Alternatively, if a decision of a councillor directly advantages (or disadvantages) a particular individual or organisation the councillor is friendly with or associates with, then that can be a conflict requiring the councillor to recuse themselves from being involved in the decision-making process if there was a major advantage or disadvantage (or potential for), if it was controversial or the vote of the councillor was critical.

The appropriate test for whether a non-pecuniary interest should be declared is based on an objective test, not in the mind of the individual who is subject to the conflict of interest. The test is whether a reasonable and informed person would perceive that the councillor could be influenced by a private interest when carrying out their official functions in relation to a matter.

Whether the councillor abstains themselves from a decision, or decides to participate, the continued and timely disclosure of interests is critical. Disclosure ensures the community is aware of any potential conflicts and how the councillor is managing and responding to the issue.

Councillors should remain as vigilant about disclosure of non-pecuniary interests as they are about pecuniary interests.

Question

Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?

Property developers and real estate agents

The NSW Government has made a commitment to ensure the conflicts of interest that exist between a councillors' public duties to make decisions on behalf of communities and the private interests that exist in securing a profit as a developer or real estate agent are addressed. A simple change to ban developers or real estate agents from being councillors is not possible as it infringes the right to political free speech implied by the Australian Constitution.

Ordinarily conflicts of interest are managed through declarations and withdrawing from decision making. However, in the case of property development and real estate interests, where so much of what a council does is related to land and the potential for speculation in the changes of land value arising from planning, development and infrastructure decisions, it can be impossible to isolate the precise interests that would drive a councillor's decision.

Without some way of managing these conflicts, the community confidence that planning, development and infrastructure decisions are taken transparently in the public interest will erode. Given the importance of planning, development and infrastructure decisions to resolving the housing crisis, driving the move to net zero through the electrification of the economy and building community resilience to disasters, it is critical to restore confidence.

To address this concern, an alternative means of managing the inherent conflict of councillors undertaking real estate and development business activity is being considered which involves requiring councillors to divest themselves from real estate or development business activities and contractual obligations.

Legislation is being drafted that will:

- identify how developers and real estate agents are identified,
- create the obligation to divest and not enter into real estate or development business arrangements through contracts,
- establish the penalties, including disqualification, where a councillor engages in contractual arrangements with real estate agents or developers,
- ensure there are exemptions so councillors can buy and sell their own property using a real estate agent, and
- create transitional arrangements for the introduction of the new obligations.

Question

Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?

Councillor misbehaviour in public office

The third proposed component of a revised definition of misconduct is misbehaviour in public office.

Misbehaviour in public office would cover behaviour which is inconsistent or outside of the norms of behaviour expected from a councillor, particularly given their role as a community leader. Given the discussion is about behaviour rather than action, there is a much greater degree of interpretation, and it is appropriate that councillors judge their fellow councillors on whether they could be considered to have misbehaved.

There would be three limbs to this proposed misbehaviour definition being conduct that:

- Is unbecoming of a councillor
- Brings council into disrepute; and/or
- Is assessed as being outside the norms and expectations of a sitting councillor.

The first two tests of this framework are established legal concepts with existing case law and precedents.

Unbecoming conduct means behaviour more serious than slight, and of a material and pronounced character. It means conduct morally unfitting and unworthy, rather than merely inappropriate or unsuitable, misbehaviour which is more than opposed to good taste or propriety. Conduct unbecoming refers to the conduct that is contrary to the public interests, or which harms his/her standing of the profession in the eyes of the public. Examples can be referenced in *Oei v The Australian Golf Club [2016] NSWSC 846*.

To bring something into disrepute is to lower the reputation of the profession or organisation in the eyes of ordinary members of the public to a significant extent. It is a higher threshold than the test of bringing an individual into disrepute - (*Zubkov v FINA (2007) CAS 2007/A/1291*).

The third limb of the misbehaviour definition allows consideration of behaviours and actions of a sitting councillor which are considered egregious or problematic that are otherwise not captured by the other elements of the definitions.

As this is a test of appropriate behaviour, the determination of whether the misbehaviour occurred would be undertaken by the peers of the councillor. This would involve the formation of an 'Local Government Privileges Committee' (Privileges Committee) of senior and experienced mayors and ex-mayors from across NSW to meet and assess the complaints made against councillors. The Privileges Committee would be supported by OLG, but decisions would be made by the mayors or ex-mayors on the Privileges Committee who would draw on their expertise as mayors, as well as having served at least two council terms as a councillor.

There would also be an opportunity to apply these principles to poor behaviour in meetings, particularly where a councillor has failed to comply with the directions given by the mayor or Privileges Committee Chair.

Question

Is this the appropriate threshold to face a Privileges Committee?

Question

How else can complaints be minimised?

Addressing inappropriate lobbying

A number of investigations by the Independent Commission Against Corruption (ICAC) has led to recommendations to put in place measures to address concerns about lobbying of councillors. ICAC has been concerned about councillors having relationships with development applicants that pose a conflict of interest, concerns with councillors meeting with development applicants in private settings to discuss their applications, and concerns about councillors receiving gifts and inducements as part of lobbying activities to improperly influence council decision-making.

Lobbying is an important feature of democratic representative government, and all councillors get lobbied by residents, businesses and community groups. However, inappropriate lobbying that isn't declared presents certain risks and can lead to corrupt behaviour or improper decision-making. On the recommendation of ICAC to address these risks, OLG is developing lobbying guidelines and a model policy on lobbying for councils to adopt that will:

- address how professional lobbyists are identified and the obligations on councils and councillors if they met a professional lobbyist,
- set out inappropriate behaviours when being lobbied,
- identify steps to be taken to ensure transparency,
- require council officials to report inappropriate or corrupt lobbying behaviours to the councils general manager.

The development of lobbying guidelines and a model policy on lobbying will ensure councillors and councils understand these risks and have effective controls in place to address them.

Question

What key features should be included in lobbying guidelines and a model policy?

Dispute resolution and penalty framework

Consistent with the principles outlined earlier, it is proposed that there be a significant change to the dispute resolution and penalties framework for misbehaviour.

While the overall intent is to reduce the weaponisation of the complaints process and reduce the number of complaints, there is also a need for more timely resolution of matters and ensure that the limited investigation and regulator resources are directed to the more significant misbehaviour matters.

There is also an opportunity to bring the dispute resolution framework more into line with that used in other levels of government.

The approach being proposed is to create clear separation between the process for consideration of conflicts of interest and the processes for consideration of misbehaviour. This has the benefit of removing general managers from being central to the complaint process.

Under the reforms, the investigation of serious conflicts of interest would be put entirely into the hands of OLG. The approach also removes the existing 'two step' process of referrals to conduct reviewers and then OLG.

There would be no investigations of misbehaviour, instead councillors would be required to demonstrate to their peers why their actions, which may have led to the complaint, were appropriate to the circumstances.

To implement these new approaches, changes to the systems and structures of investigation and complaints handling are needed.

Abolishing the 'two step process'

The existing process for complaints is set out in the Procedures for the Administration of the Model Code of Conduct.

In simple terms, the complaint process involves the general manager or the mayor receiving a complaint, determining whether the complaint is valid and referring the matter to a complaints coordinator within the council, who will in turn appoint an external conduct reviewer. Once the conduct reviewer investigates the issue, interviews the complainant and the subject of the complaint, as well as any other relevant people, provides a report to the council and the council makes a decision, many months can pass.

As it currently stands, if OLG, receives a referral following the council consideration of a complaint, they are then expected to rely on the investigation report of the conduct reviewer to make an assessment. However, investigation reports prepared by conduct reviewers may satisfy the evidentiary standard required for a councillor to be censured but may not satisfy the higher evidentiary standard required to support disciplinary action under the misbehaviour provisions under the Local Government Act, such as suspension or disqualification. OLG's experience is that rarely can it rely on these reports and must instead recommence an investigation process if it decides to pursue the matter.

Instead of this existing two-step process:

- Complaints about conflict of interest matters would be made directly to OLG, and
- Complaints about misbehaviour would be made directly to the Local Government Privileges Committee via a dedicated webform.

Under the proposed approach, there would be no role for privately hired investigators to determine whether the Code of Conduct has been breached.

Giving OLG the power to issue penalty infringement notices

In order to ensure information is provided to OLG more effectively, it is proposed to enable OLG the discretion to issue penalty infringement notices (PINs) for minor or insignificant breaches of the conflicts of interest declarations. The PINs would be primarily utilised in circumstances where the breach is considered minor or administrative in nature – for example an inadvertent failure to lodge a return of interests.

This change to PINs is designed to allow a quick process for dealing with minor matters to free up limited regulatory resources while still ensuring that sanction for important matters is provided.

Like all other PIN provisions in other NSW legislations there would be the ability for the PIN to be appealed or special circumstances to be considered. Where the breach was considered more serious in nature then it can be referred to an appropriate tribunal or body for more significant punishment.

Question

What level of PIN is appropriate?

NSW Local Government Privileges Committee

Along with the PIN framework, it is also proposed to create a Local Government Privileges Committee (Privileges Committee) to examine all allegations of misbehaviour in public office. This would replace the existing code of conduct review framework and instead aim to provide a speedy process for resolution and assessment of behavioural complaints against councillors. It also allows for the sector to better govern itself. The Privileges Committee would only examine issues of misbehaviour, not conflicts of interest.

The Privileges Committee would be made up by a group of experienced mayors and ex-mayors from across NSW to ensure that a variety of perspectives and experiences are considered. The Privileges Committee would be supported by a small Secretariat from OLG who could be delegated the power by the Privileges Committee to dismiss matters that are vexatious, trivial, where the Privileges Committee lacks jurisdiction, or where there is an alternative remedy available.

The Privileges Committee process would be paid for by either individual councillors or their councils, dependent on the outcome.

Penalties that could be imposed by the Privileges Committee are as follows:

- Censure of the councillor
- Warning of the councillor
- Where referred following misbehaviour in a council meeting, a potential loss of sitting fees
- Referral to an appropriate tribunal or body for more serious sanction, including suspension or disallowance.

As noted above if the breach is deemed serious then the Privileges Committee would have the power to refer a matter to the OLG for preparation of a brief for an appropriate tribunal or body.

Question

Are the penalties proposed appropriate, and are there any further penalties that should be considered?

Referral of significant sanctions to appropriate tribunal or body

Under the existing processes for consideration of complaints, OLG, in particular the Departmental Chief Executive (or their delegate), can suspend a councillor for between 1-3 months with a consequential loss of sitting fees. This creates the situation where a public servant is sitting in judgement on an elected official. Where a greater suspension is appropriate, the Departmental Chief Executive may refer the matter to an appropriate tribunal or body.

To remedy the concerns about whether it is appropriate for an unelected official to stand in judgment on an elected councillor, it is proposed that any significant sanction, such as suspension, significant fine or disqualification from office, can only be undertaken by an appropriate tribunal or body.

This reduces the existing power of the Departmental Chief Executive to impose penalties. It reflects the principle that significant sanctions, including suspension, should only be imposed by a judicial or quasi-judicial body. It also removes the dual roles of the head of OLG, meaning OLG's focus is on preparing the brief of evidence for consideration by the appropriate tribunal or body.

The role of the appropriate tribunal or body would therefore be to look at all serious misconduct matters that have either been referred by the Privileges Committee, appeals from PINs or referrals of conflict of interest matters from the OLG.

Question

Are the existing sanctions available under the Local Government Act sufficient?

Question

Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?

Restoring dignity to council meetings

A council chamber is a chamber of democracy, and the mayor as figurehead represents the authority of that council.

Unfortunately, many council meetings are conducted without the appropriate level of dignity or reverence for tradition that suggests the importance of the debate and the need for civility. Councillors are not expected to agree with each other, in fact debate is encouraged, but the debate should be fair and respectful.

A council meeting, and the council chamber itself, should see meetings conducted with dignity. Unfortunately, there are too many examples where the dignity of council meetings has been lost, either because councillors are not appropriately reverential and respectful, or the manner of debate is lowered by inappropriate chamber design or meeting practices.

Proposed reforms to the Model Code of Meeting Practice

To restore the prestige and dignity of the council chamber reforms to the meeting code of practice are being developed to support the mayor in exercising their statutory responsibility to preside at meetings and to ensure meetings are conducted in an orderly and dignified manner.

The proposed reforms will confer the power on mayors to expel councillors for acts of disorder and to remove the councillor's entitlement to receive a fee for the month in which they have been expelled from a meeting.

As a further deterrent against disorderly conduct, councillors will also be required to apologise for an act of disorder at the meeting at which it occurs and, if they fail to comply at that meeting, at each subsequent meeting until they comply. Each failure to apologise becomes an act of misbehaviour and will see the councillor lose their entitlement to receive their fee for a further month.

To provide a check against misuse of the power of expulsion and subsequent loss of entitlement of a fee, councillors will be entitled to a right of review.

Councillors will also be expected to stand, where able to do so, when addressing a meeting and when the mayor enters the chamber.

The proposed reforms will also expand the grounds for mayors to expel members of the public from the chamber for acts of disorder and enable the issuing of a PIN where members of the public refuse to leave a meeting after being expelled.

Question

Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?

Banning briefing sessions

A practice has recently developed in local government where councillors receive briefings from staff that are closed to the public.

As an example, development applications should be considered in the public domain. However, councillors receive private briefings from the council planners before they are dealt with in the public forum of a council or committee meeting. Consequently, members of the public impacted by the council's decision have no idea what the councillors have been told or what has been discussed.

To promote transparency and address the corruption risks identified by the Independent Commission Against Corruption (ICAC) that can arise from a lack of transparency, it is proposed that councils will no longer be permitted to hold pre-meeting briefing sessions in the absence of the public.

Any material provided to councillors, other than the mayor, that will affect or impact or be taken into account by councillors in their deliberations or decisions made on behalf of the community must be provided to them in either a committee meeting or council meeting. This restriction will not apply to mayors. As the leader of the organisation, the mayor needs to have candid conversations with the general manager outside of formal meetings.

To further promote transparency, the proposed reforms will also extend the period that recordings of council and committee meetings must be maintained on a council's website.

Question

Are there any other measures needed to improve transparency in councillor deliberations and decision making?

How to provide feedback?

This discussion paper has been released through the Office of Local Government's communication channels and on the Government's Have your Say Website.

You can make submissions on this proposed framework by **COB Friday 15 November 2024**. Further information is available on OLG website at <https://www.olg.nsw.gov.au/councils/misconduct-and-intervention/councillor-conduct-framework/>.

Submissions can be made online here - <https://www.olg.nsw.gov.au/councils/misconduct-and-intervention/councillor-conduct-framework/>

OR

in writing to: councillorconduct@olg.nsw.gov.au

OR

Locked Bag 3015 NOWRA NSW 2541

Submissions must be clearly labelled "Councillor Conduct Framework Review"

Please direct any inquiries to the OLG's Strategic Policy Unit at councillorconduct@olg.nsw.gov.au or on (02) 4428 4100.

Next Steps

Feedback from this consultation process will be carefully analysed and incorporated to finalise the revised councillor conduct framework.

OLG will then look to finalise necessary draft legislation, regulations and materials for implementation of the revised model over the coming year. Consultation will continue with the local government on the implementation of the revised framework.

Information about the progress of the Councillor Conduct Framework Review will be available on the [OLG website](#).

Office of Local Government

olg.nsw.gov.au

Item No: EC10/24-7

LOCAL GOVERNMENT NSW ANNUAL CONFERENCE 2024

Directorate: Governance and Risk
Responsible Officer: Director Governance and Risk
Community Strategic Plan Goal: *Providing Local Leadership*

SUMMARY

This report is prepared in accordance with the adopted *Councillor Expenses and Facilities Policy*, and outlines the details of the Local Government NSW (LGNSW) Annual Conference 2024. The report requests that Council nominate up to 10 Councillors to attend as voting delegates and give consideration to potential motions for lodgement.

RECOMMENDATION

That Council:

- 1. Nominate the Mayor and/or Councillor(s) to attend the Local Government NSW Annual Conference 2024 as nominated voting delegates; and**
- 2. Give consideration to submitting motion(s) to the Local Government NSW Annual Conference 2024.**

REPORT

The Local Government NSW (LGNSW) Annual Conference is an annual policy-making event for NSW general-purpose councils, where local councillors across NSW Council's convene to share ideas and debate issues that influence the way councils are governed. Cumberland City Council is a financial member of Local Government NSW and is eligible to send representation to the Conference.

The LGNSW Annual Conference 2024 will be held from Sunday, 17 November 2024 to Tuesday, 19 November 2024 at the Tamworth Regional Entertainment and Conference Centre in Tamworth, NSW.

Motions may be submitted for consideration at the Conference and must be submitted, at latest, by Sunday, 20 October 2024. For a motion to be included in the Business Paper, it must meet the criteria detailed in the *LGNSW 2024 Annual Conference Motion Submission Guide* (Attachment 1).

When submitting motions to be considered at the Conference, a copy of the Council resolution or the signature of the Mayor and General Manager on Council letterhead must be provided to enable lodgement.

All Councillors are able to attend the conference if they wish, however Council is entitled to register up to 10 voting delegates to the Conference, and must determine these Councillors. LGNSW must be provided with the names of nominated voting delegates by 5pm (AEDT) on Wednesday, 6 November 2024. It is now recommended that Council proceed to determine its nominated voting delegates for the conference.

COMMUNITY ENGAGEMENT

There are no consultation processes for Council associated with this report.

POLICY IMPLICATIONS

The Local Government NSW Annual Conference 2024 is the key policy development conference for the local government sector. Councillor attendance at the Local Government NSW Annual Conference is provided for under the *Councillor Expenses and Facilities Policy*.

RISK IMPLICATIONS

There are no risk implications for Council associated with this report.

FINANCIAL IMPLICATIONS

Councillor attendance to the Local Government NSW Annual Conference 2024 is provided for under the *Councillor Expenses and Facilities Policy* and is budgeted within the 2024/25 annual budget.

CONCLUSION

The Local Government NSW Annual Conference is the key policy-making event for the local government sector. To ensure representation and participation at this key event, this report recommends that Council nominate Councillors to attend as voting delegates and consider submitting motions to be debated at the Conference.

ATTACHMENTS

1. LGNSW 2024 Annual Conference Motion Submission Guide [↓](#)

**DOCUMENTS
ASSOCIATED WITH
REPORT EC10/24-7**

Attachment 1

**LGNSW 2024 Annual Conference
Motion Submission Guide**



LGNSW 2024 Annual Conference Motion Submission Guide

**ONE VOICE
FOR COUNCILS**

[LGNSW.ORG.AU](https://www.lgnsw.org.au)

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MOTION SUBMISSION GUIDE

1. Introduction

Each year, LGNSW members submit a range of motions to the Annual Conference conducted by Local Government NSW (LGNSW). These motions relate to strategic local government issues which affect members state-wide and introduce new or emerging policy issues. They are debated and resolved by Conference delegates, with successful resolutions guiding LGNSW's advocacy priorities for the year ahead.

All LGNSW member councils are invited to submit motions to the Annual Conference, with the following guide outlining the motion development and submission process.

2. Deadlines

- Motion submission will open on **Wednesday 17 July 2024**
- Members are encouraged to submit motions [online](#) as early as possible before **Friday 16 August 2024**, to allow assessment of the motions and distribution of the Business Paper before the Conference.
- Under LGNSW Rules, the latest date motions can be accepted for inclusion in the Business Paper is **12 midnight (AEDT) on Sunday 20 October 2024** (28 days prior to Conference).

3. Criteria for motion submission 2024

Members are encouraged to be mindful that each Annual Conference can only reasonably consider and debate around 100 motions in the available time. With 128 member councils in NSW, and more than a dozen associate members, LGNSW requests that members only submit motions that relate to their highest priorities.

The LGNSW Board has resolved that motions will be included in the Business Paper for the Conference only where they fit in with the following criteria.

Criteria for motions

To be included in the Business Paper, motions must:

1. **Be consistent with the objects of the LGNSW Rules (Rule 4)**
2. **Demonstrate that the issue concerns or is likely to concern a substantial number of local governments in NSW**
3. **Seek to establish or change a policy position of LGNSW and/or improve governance of the association** (noting that the LGNSW Board is responsible for any decisions around resourcing and campaigns or operational activities, and any necessary resource allocations will be subject to the LGNSW budgetary process)
4. **Be strategic**
5. **Be concise, clearly worded and unambiguous**
6. **Not be focussed on just a small specific part of NSW**
7. **Not encourage violation of prevailing laws**
8. **Not seek to advantage one or several members at the expense of other members.**

Motions of a similar objective:

9. May be consolidated by LGNSW as a single item.

Motions reflecting existing LGNSW policy:

10. Remain part of LGNSW's Policy Platform but will not be included for debate as they have already been considered by Conference.

Before submitting motions for this year's Annual Conference, members are encouraged to review [Action Reports](#) (on the member only pages of the LGNSW website) from previous Conferences and the [LGNSW Policy Platform](#) to ensure the proposed motion wording reflects any recent developments and does not duplicate existing policy positions.

4. How to write a motion

Motions adopted at Conferences inform LGNSW's advocacy actions on behalf of the local government sector. LGNSW includes the exact wording of motions when writing to ministers, departments and agencies post-conference, so it is important that the wording of motions clearly outlines your council's policy intent or objective.

The format of motions, as much as possible, should call on a specific body (e.g. LGNSW, state government, federal government, a specific department or minister) and have a specific outcome that the motion is aiming to achieve. The wording should be unambiguous.

*Examples of clearly-worded Annual Conference motions:***Local government representation on National Cabinet**

That Local Government NSW lobbies the Australian Government for permanent local government representation on the National Cabinet.

Natural Disaster Funding, Day Labour

That LGNSW requests the Australian and NSW governments reinstate the claimable expense for the use of council staff during their normal working hours to attend to natural disaster relief and recovery funded works and reverse the present policy that effectively requires the mandatory use of contractors for recovery works.

Risks and costs of local government FOGO mandate

That Local Government NSW calls on the NSW Government to ensure the food organics garden organics (FOGO) mandate is achievable, and doesn't expose local councils to unnecessary risk and cost by:

1. Extending the roll-out of mandated FOGO services to multi-unit households until 2035
2. Ensuring minimum and maximum collection frequencies are not mandated for domestic waste collection
3. Ceasing to promote that current FOGO services are achieving a 2.6% contamination rate

4. Offsetting the full costs of implementation of the mandated FOGO services using additional funds from the section 88 Waste Levy revenue.

For more examples see Business Papers from past Conferences on the [LGNSW website](#).

5. Demonstrating evidence of council support for motion

The member submitting the motion must provide accompanying evidence of support for the motion. Such evidence takes the form of an attachment note or extract from the minutes of the council meeting, at which the member council resolved to submit the motion for consideration by the Conference. In the absence of a council meeting, the evidence should be a letter signed by both the Mayor and General Manager.

6. How to submit a motion

LGNSW members are invited to submit motions through an [online portal](#) from **Wednesday 17 July 2024**.

Attachment A provides detailed instructions on how to submit motions via the online portal.

7. How LGNSW manages incoming motions

The LGNSW Board typically delegates the function of managing incoming motions for the Conference to a motions committee. The Chief Executive will refer motions to the committee and the committee will assess whether each motion meets or does not meet the Board-endorsed criteria. This assessment forms the final decision on which motions are included in the Conference Business Paper.

Prior to the committee making a final decision, LGNSW may contact the council that submitted the motion to seek clarity on its intent or wording.

Incoming motions which seek to change any long-held [Fundamental Principles](#) (Part A of the Policy Platform), will be highlighted in the Business Paper for members' information at time of voting.

Motions which are consistent with existing LGNSW positions or current LGNSW actions, or that are operational and can be actioned without a Conference resolution, may still be printed in the Business Paper but will not be debated at the Conference.

8. Late motions

Late items are only to be included in the Business paper addendum if, in addition to the above criteria, the late items relate to highly urgent matters that have arisen after the deadline for the motion submission has passed.

In considering whether a late item relates to a highly urgent matter, the Board Motions Committee is to have regard to:

- (a) whether the late item has arisen after the deadline for motions has passed, and
- (b) whether the urgency of the matter justifies it being presented to voting delegates with short notice and limited opportunity to review and consider before they are required to vote on the motion.

9. What happens to motions at the LGNSW Annual Conference

Standing orders are outlined at the front of the Business Paper and adopted at the commencement of each Conference. They outline the manner in which the Conference deals with motions. The standing orders adopted at past conferences can be found on the LGNSW [website](#).

During debate on motions at Conference, the standing orders generally permit voting delegates to speak in support of or against each motion. Following a vote on a motion, the motion is either carried and becomes a resolution of the Conference, or it is defeated.

10. Post-conference: Updates to the LGNSW Policy Platform

LGNSW's [Policy Platform](#) consolidates the voices of councils across NSW, reflecting the collective positions of local government on issues of importance to the sector. Importantly, the Policy Platform guides LGNSW in its advocacy on behalf of the local government sector.

The Policy Platform consists of two parts: LGNSW's Fundamental Principles, and the more targeted Position Statements.

- **Fundamental Principles** are the enduring and overarching principles that direct LGNSW's response to broad matters of importance to the local government sector. These Fundamental Principles are endorsed (or amended) by LGNSW members at Annual Conferences.
- **Position Statements** contain LGNSW's more detailed positions on specific issues and guide LGNSW's work on, and response to, policy issues of the day. Position Statements are subordinate to LGNSW's Fundamental Principles but are more agile and are targeted at specific policy issues as they arise.

Changing Fundamental Principles

Where a motion conflicts or may conflict with a Fundamental Principle, this will be clearly highlighted for delegates in the Conference Business Paper. If the motion is adopted as a resolution at Conference, then the relevant Fundamental Principle will be changed.

It is expected that changes to the Fundamental Principles will be uncommon, given their broad focus and general acceptance among the local government sector.

Changing Position Statements

Following each Conference, LGNSW will review resolutions of that Conference to determine whether the intent of each resolution is adequately covered by existing Position Statements. Where the Position Statements do not adequately include the intent of a resolution, LGNSW will update an existing Position Statement or draft a new Position Statement for inclusion in the LGNSW Policy Platform.

LGNSW members will be informed of updates to the LGNSW Policy Platform.

11. Post-conference: Determining LGNSW Advocacy Priorities

Following the LGNSW Annual Conference, LGNSW will review the resolutions and identify key areas of focus to guide LGNSW's advocacy. These areas of focus are also informed by member feedback, the LGNSW strategic plan, position statements, emerging issues, and Board input.

LGNSW's Advocacy Priorities for the following year are then submitted for endorsement by the LGNSW Board.

As LGNSW undertakes advocacy actions on each of the Conference resolutions throughout the year, these actions and their outcomes will be published in LGNSW's Action Report. ([Past Action reports](#) are available on the member only pages of the LGNSW website).

12. Further information

For further information on the motion submission process, please contact LGNSW at policy@lgnsw.org.au.

13. Frequently Asked Questions

How do I know if my proposed motion is consistent with existing LGNSW policy positions?

The subject matter expert within your council may be best placed to identify this (for example, if the motion relates to a planning matter, this question should be answered by the Planning Manager). Subject matter experts are encouraged to review LGNSW's [Policy Platform](#) to gain an understanding of LGNSW's position on a particular matter to help identify whether your proposed motion is consistent.

What is the deadline for submitting motions?

Members are encouraged to submit motions [online](#) as soon as possible to allow assessment of the motions and distribution of the Business Paper before the Conference. However, in line with the LGNSW Rules, the latest date motions can be accepted for inclusion in the Conference Business Paper is **12 midnight AEST on Sunday 20 October 2024** (28 days prior to Conference).

LGNSW can receive more than 300 motions for an Annual Conference. Submitting motions as early as possible helps LGNSW to manage the large volume of motions

received within a short period of time and allows LGNSW to seek clarification on any motions if required.

However, the LGNSW Rules allow councils to submit motions with less than 28 days' notice and the LGNSW Board may, in some circumstances, allow these to be considered at Conference as a **late item** (but not included in the Business Paper).

I'm unsure which motion category or sub-category I should select in the online portal

If you are unsure, just select the category you think best fits. LGNSW can re-categorise the motion if necessary.

Who should be the council contact for motions?

We recommend the council contact is someone who is available during the months that motions are open, and able to respond promptly to communications between your council and LGNSW. Some councils have identified the General Manager and others have identified a Governance Manager – it is a decision for each council.

How can I amend my council's motion that I've already submitted?

Once a motion has been submitted it cannot be edited without contacting LGNSW so please review the content carefully before submission. If you need to edit a submitted motion, please contact LGNSW at policy@lgnsw.org.au . You may need to provide evidence of support for the change (see section 5).

ATTACHMENT A - STEP BY STEP GUIDE TO LODGING MOTIONS IN THE ONLINE PORTAL

This section provides step-by-step instructions to assist council staff in lodging a motion via our online portal Survey Monkey Apply.

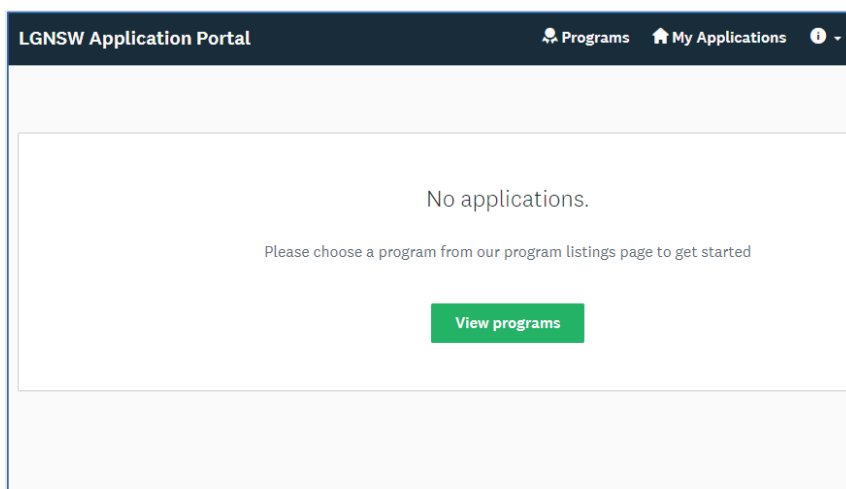
- Member councils are invited to submit motions for the LGNSW Annual Conference via [Survey Monkey Apply](#) from 17 July 2024.
- Under LGNSW Rules, the latest date motions can be accepted for inclusion in the Business Paper is **12 midnight (AEDT) on Sunday 20 October 2024** (28 days prior to Conference).
- Once a motion has been submitted it cannot be edited without contacting LGNSW, so please review the content carefully before submission.

For further assistance contact LGNSW at policy@lgnsw.org.au

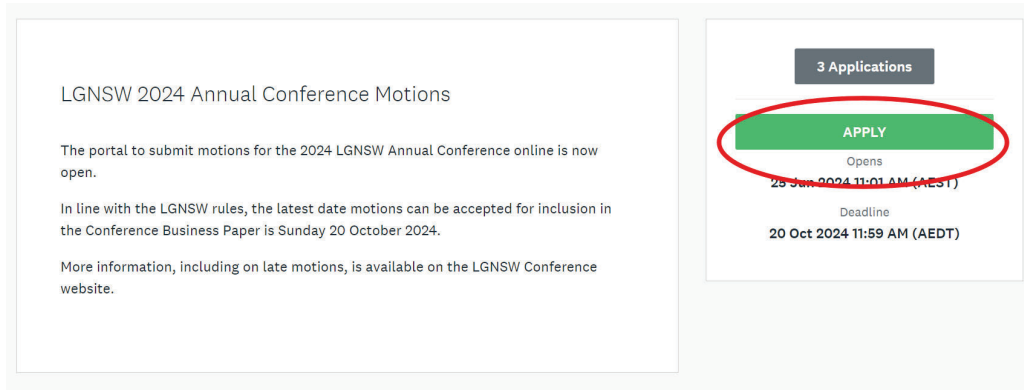
Step 1: Log into [LGNSW's online portal](#) using the same password you use to access the LGNSW member website. If you don't know your password, click "forgot password" to reset your password.

Note: you will need to register if you are logging in for the first time.

Step 2: Click *View Programs* and then select *LGNSW 2024 Annual Conference Motions*.



Step 3: Click **APPLY**.



LGNSW 2024 Annual Conference Motions

The portal to submit motions for the 2024 LGNSW Annual Conference online is now open.

In line with the LGNSW rules, the latest date motions can be accepted for inclusion in the Conference Business Paper is Sunday 20 October 2024.

More information, including on late motions, is available on the LGNSW Conference website.

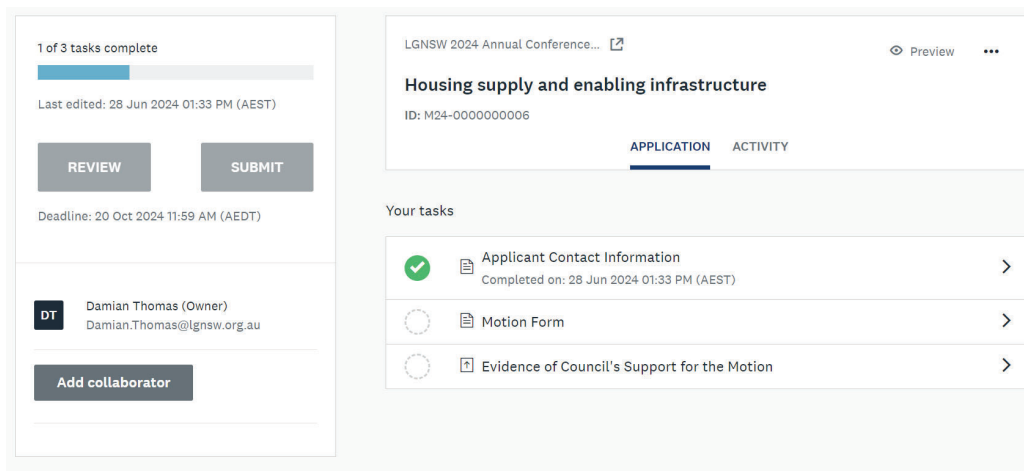
3 Applications

APPLY

Opens
28 Jun 2024 11:01 AM (AEST)

Deadline
20 Oct 2024 11:59 AM (AEDT)

Step 4: Add your motion title (a few words). You will then be taken to the landing page which will show three tasks to complete:



1 of 3 tasks complete

Last edited: 28 Jun 2024 01:33 PM (AEST)

REVIEW SUBMIT

Deadline: 20 Oct 2024 11:59 AM (AEDT)

DT Damian Thomas (Owner)
Damian.Thomas@lgnsw.org.au

Add collaborator

LGNSW 2024 Annual Conference... [Link]

Preview ...

Housing supply and enabling infrastructure

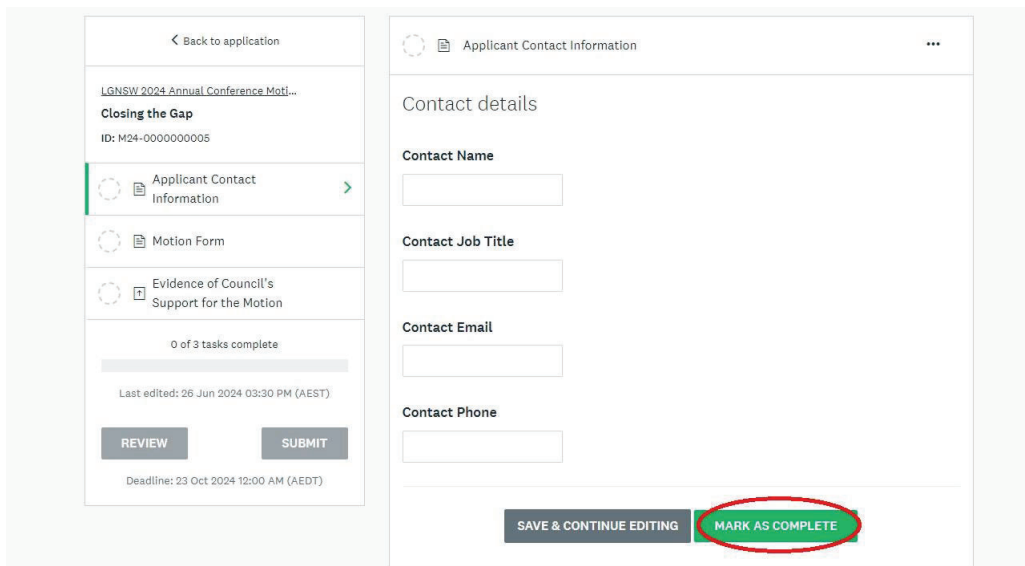
ID: M24-0000000006

APPLICATION ACTIVITY

Your tasks

- ✔ Applicant Contact Information
Completed on: 28 Jun 2024 01:33 PM (AEST)
- Motion Form
- Evidence of Council's Support for the Motion

Step 5: Click on 'Applicant Contact Information' to add the contact information. This should be the relevant officer within your council who can respond to any questions from LGNSW about the motion promptly. Click **MARK AS COMPLETE** once finished.



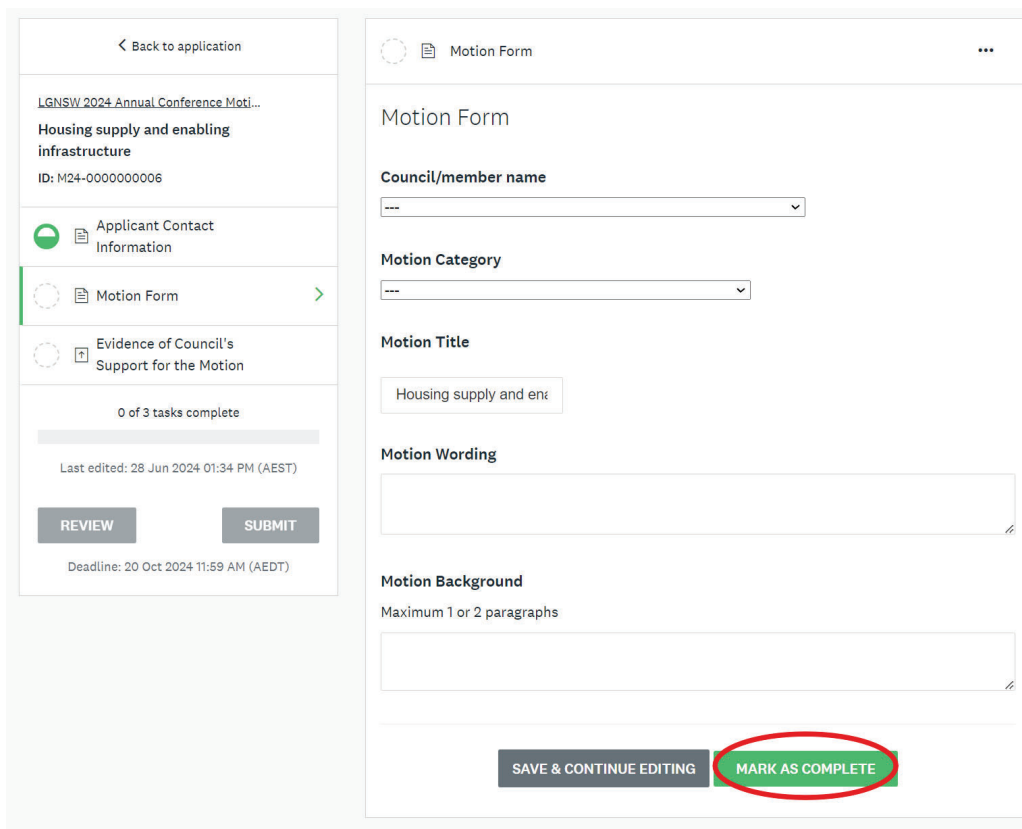
The screenshot shows a web interface for 'Applicant Contact Information'. On the left is a sidebar with a navigation menu containing 'Applicant Contact Information', 'Motion Form', and 'Evidence of Council's Support for the Motion'. The 'Applicant Contact Information' item is highlighted with a green bar and a right-pointing arrow. Below the menu, it shows '0 of 3 tasks complete', 'Last edited: 26 Jun 2024 03:30 PM (AEST)', and buttons for 'REVIEW' and 'SUBMIT'. A 'Deadline: 23 Oct 2024 12:00 AM (AEDT)' is also visible. The main content area is titled 'Applicant Contact Information' and contains a 'Contact details' section with four input fields: 'Contact Name', 'Contact Job Title', 'Contact Email', and 'Contact Phone'. At the bottom of the form are two buttons: 'SAVE & CONTINUE EDITING' and 'MARK AS COMPLETE'. The 'MARK AS COMPLETE' button is highlighted with a red circle.

Step 6: Click 'Motion Form' to add the motion details.

Motion category and sub-category assists with categorising motions and grouping related motions in the Conference Business Paper.

Motion wording should include a sentence or two which includes the call to action.

Background note should provide a paragraph or two to explain the context and importance of the issue to the local government sector.
Click **MARK AS COMPLETE** once finished.



← Back to application

LGNSW 2024 Annual Conference Moti...
Housing supply and enabling infrastructure
ID: M24-0000000006

Applicant Contact Information

Motion Form

Evidence of Council's Support for the Motion

0 of 3 tasks complete

Last edited: 28 Jun 2024 01:34 PM (AEST)

REVIEW SUBMIT

Deadline: 20 Oct 2024 11:59 AM (AEDT)

Motion Form

Council/member name

Motion Category

Motion Title

Housing supply and ena

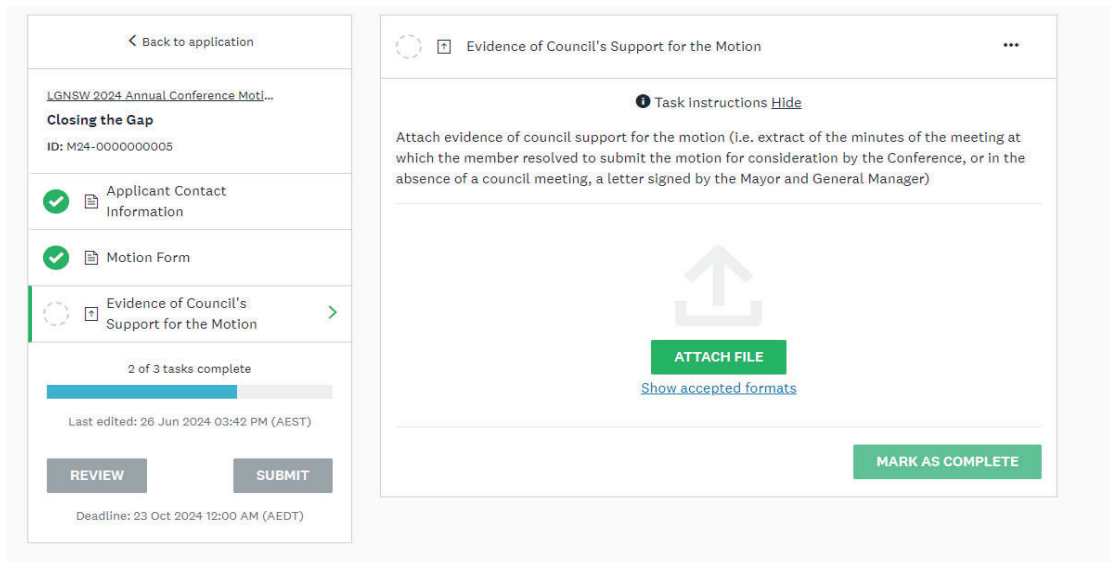
Motion Wording

Motion Background

Maximum 1 or 2 paragraphs

SAVE & CONTINUE EDITING MARK AS COMPLETE

Step 7: Click 'Evidence of Council's Support for the Motion' and attach the relevant file. This could be an extract of council meeting minutes. Click **MARK AS COMPLETE** once finished.



Back to application

LGNSW 2024 Annual Conference Moti...
Closing the Gap
ID: M24-000000005

- Applicant Contact Information
- Motion Form
- Evidence of Council's Support for the Motion**

2 of 3 tasks complete

Last edited: 26 Jun 2024 03:42 PM (AEST)

REVIEW SUBMIT

Deadline: 23 Oct 2024 12:00 AM (AEDT)

Evidence of Council's Support for the Motion

Task instructions [Hide](#)

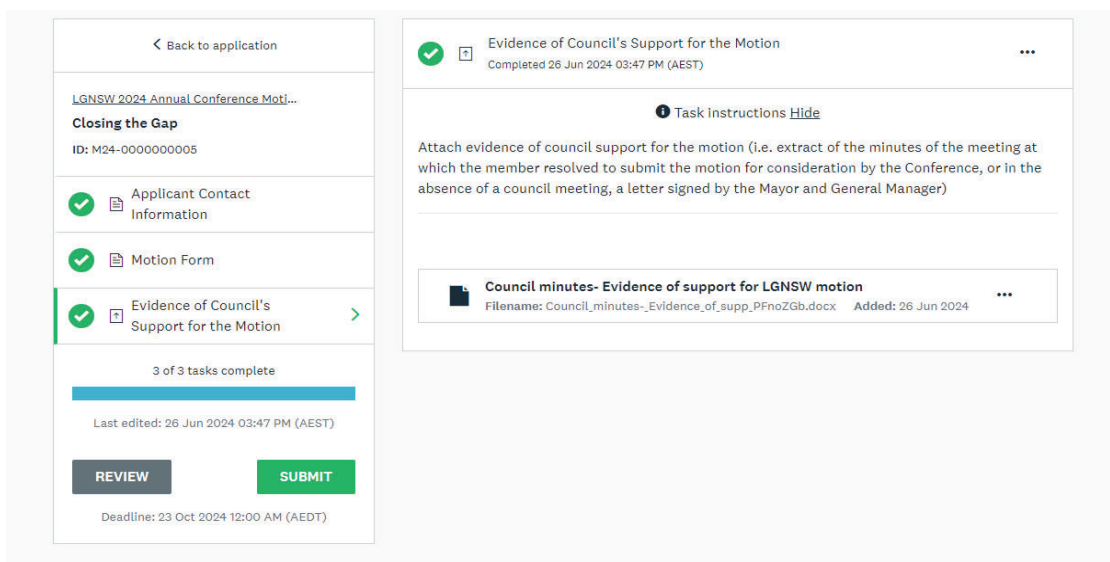
Attach evidence of council support for the motion (i.e. extract of the minutes of the meeting at which the member resolved to submit the motion for consideration by the Conference, or in the absence of a council meeting, a letter signed by the Mayor and General Manager)

ATTACH FILE

[Show accepted formats](#)

MARK AS COMPLETE

Step 8: Once you have completed all tasks (a green tick is displayed next to each task), click **SUBMIT**.



Back to application

LGNSW 2024 Annual Conference Moti...
Closing the Gap
ID: M24-000000005

- Applicant Contact Information
- Motion Form
- Evidence of Council's Support for the Motion**

3 of 3 tasks complete

Last edited: 26 Jun 2024 03:47 PM (AEST)

REVIEW **SUBMIT**

Deadline: 23 Oct 2024 12:00 AM (AEDT)

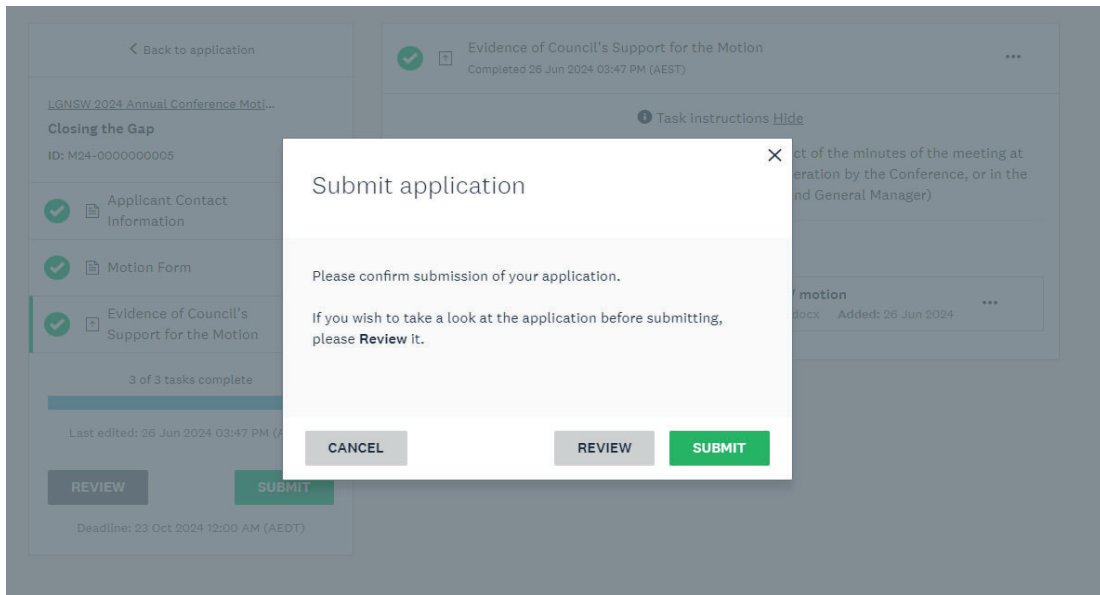
Evidence of Council's Support for the Motion
Completed 26 Jun 2024 03:47 PM (AEST)

Task instructions [Hide](#)

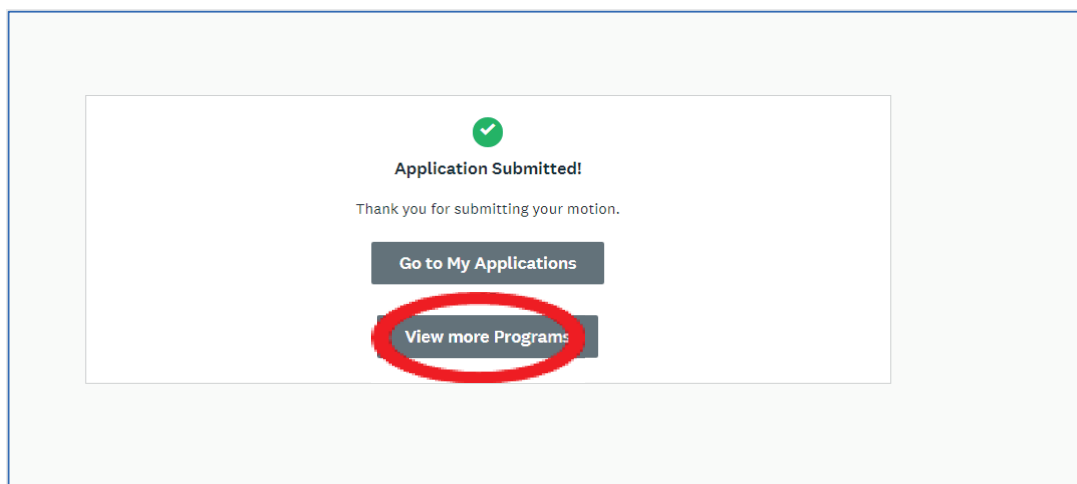
Attach evidence of council support for the motion (i.e. extract of the minutes of the meeting at which the member resolved to submit the motion for consideration by the Conference, or in the absence of a council meeting, a letter signed by the Mayor and General Manager)

Council minutes- Evidence of support for LGNSW motion
Filename: Council_minutes_Evidence_of_supp_PFnoZGb.docx Added: 26 Jun 2024

Step 9: You will be asked to confirm submission of the motion. There is an option to review the motion before submitting. When you are ready, click **SUBMIT**.





Step 10: If you are submitting multiple motions, click 'View more Programs'. This will take you back to the landing page to submit more motions.









Step 11: An automated confirmation email will be sent to the email address listed in the 'Applicant Contact Information' section.

LGNSW Annual Conference: Motion has been submitted

 noreply@mail.smapply.net
To  Damian Thomas

11:23 AM

 If there are problems with how this message is displayed, click here to view it in a web browser.

CAUTION: This email originated from outside of LGNSW. Do not click links or open attachments unless you recognise the sender and know the content is safe.

LGNSW Application Portal

Your motion to the LGNSW Annual Conference has been submitted.

To submit another motion, visit: <https://lgnsw-grants-portal.smapply.io/saml2/login/>

Once you have logged in, click on 'programs' to submit a motion.

You are receiving this email from [LGNSW Application Portal](#) - Local Government NSW.

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