COUNCILLOR HANDBOOK

ALTERNATIVE MEDIA PUBLICATIONS

Special arrangements can be made for our publications to be provided in large print or an alternative media format. If you need this service, please contact us on (02) 4428 4100.

Contents

FOREWORD

FROM THE MINISTER
FOR LOCAL GOVERNMENT

Congratulations on your success at the recent local government elections.

Local government plays a critical part in the delivery of the most vital services for communities.

Residents have put their faith in you to represent their needs at the local level and I know this is a responsibility you will not take lightly.

Being a councillor is a privilege and a wonderful opportunity to make a difference to your community. Although challenging at times, your service will have a profound impact on your local community.

As a councillor you are expected to represent the views of the community while making decisions in their interests, demonstrate conduct that the community expects and deserves, and plan and oversee the running of a significant and complex business.

In fulfilling your duties with the integrity expected of an elected official, this handbook is a vital resource. It outlines how councillors can meet the wide range of obligations.

It will play a strong part in ensuring that you are fully prepared for the role and give the community comfort that it has civic leaders well supported and skilled as they perform their duties.

This handbook will serve throughout your term as a reference guide. In conjunction with workshops run by the Office of Local Government, you will develop your skills as a councillor and be kept up to date on issues affecting your responsibilities, particularly during this important time of reform.

The NSW Government remains committed to improving the performance of councils across the State, ensuring that they are able to deliver the services and infrastructure that local communities need both now and into the future.

I wish you the best in your role as local leaders of your communities.

The Hon Gabrielle Upton
Minister for Local Government

INTRODUCTION

Being a councillor is a significant privilege and challenge. New councillors will have a lot to learn as quickly as possible. Returning councillors need to be up to date with changes that impact the sector and to continue to develop their knowledge. This handbook will help new and returning councillors to be effective in the role.

The term of councils commencing in September 2016 will see significant changes to the way councils are governed through legislative and other reforms. Some of the changes that have already commenced include:

» changes to the prescribed roles of mayors, councillors and general managers

» a requirement for councillors to swear an oath or take an affirmation of office

» an extension of the term of office for mayors elected by councillors from one to two years

» external audit being overseen by the Auditor General

Some other important reforms that will be rolled out over this term include:

» a requirement for councils to provide induction training and ongoing professional development

» changes to the way in which ethical standards are prescribed and enforced

» mandating an internal audit, risk and improvement committee

» a new performance measurement framework for councils

» changes to the way ethical standards are regulated

» changes to the Integrated Planning and Reporting framework

All these changes are designed to improve the way councils exercise their functions and to assist them to meet the high standards of performance and internal governance that their communities are entitled to expect of them.

To help you hit the ground running, the following page contains a summary of the five things every councillor needs to know to achieve better outcomes for their community.

5 key things every councillor needs to know

How to achieve better outcomes for your community

Leadership

Be an effective leader of your local community by:

» setting the vision and direction for your community without getting involved in the day-to-day operations of your council

» balancing your advocacy role with the need to work as a team with other councillors to make decisions that benefit the whole community

» balancing short and long term community needs and interests

» fostering and maintaining positive internal and external relationships

Open decision-making

Ensure effective participation in council business by:

» making informed decisions through good preparation and involvement

» following your council's Code of Meeting Practice and/or legislation on meetings

» drawing on the information and assistance that the general manager can provide to councillors in making their decisions

Conduct

Conduct yourself in a way that enhances and maintains the credibility of your council and local government as a whole by:

» acting lawfully, honestly, transparently and respectfully in line with your council's Code of Conduct

» exercising care and diligence in carrying out your functions

» ensuring your relationships with the general manager and staff are based on trust and mutual respect, following clear and agreed protocols about staff contact

Accountability

Be accountable for understanding and meeting your community's needs by:

» engaging and consulting with your community

» responsibly managing your council's money and assets to meet current and future needs

» considering the long term consequences of your decisions

» ensuring the requirements of the Integrated Planning and Reporting framework are met

Learning

Take responsibility for your ongoing learning and professional development by:

» regularly assessing your learning needs

» actively seeking opportunities to acquire further knowledge and skills

» contributing your knowledge and skills to the development of local government as a whole

Purpose of this handbook and how to use it

While the '5 key things every councillor needs to know' summary is a helpful start, it's important that you have a comprehensive understanding of your role and responsibilities to be an effective councillor.

This handbook is the go-to resource for all councillors during their electoral term and includes links to other useful resources when more information is needed in relation to a particular issue.

It provides more detail on the issues covered in a series of workshops that will be held for new and returning councillors following the local government elections in September 2016.

This handbook is also available on the Office of Local Government's website electronically for ease of access.

If you still have queries after reading this handbook, there are a number of key organisations that may be able to assist.

We have provided a list of these organisations and their contact information in *Appendix 2 – Key organisations*.

Section 1

AN OVERVIEW OF LOCAL GOVERNMENT IN NSW

1.1 Local government

Local government in NSW employs over 45,000 people and spends more than $10.3 billion annually. The services it provides range from traditional town planning and waste management to community development, environmental protection, economic development and much more.

Councils can order people to do certain things, such as demolish a building or restrain a dog. They can also issue orders to ensure that public amenity is not compromised; for example, to prevent a noise nuisance, or the operation of an inappropriate business in a residential area. Increasingly, councils are playing a role in not just delivering services to their community but also shaping the future of the community by working with local people to develop and deliver a vision for each place.

Councillors play a vital role in meeting the needs of local communities. They serve their communities by listening to people in the local area and then representing those views on council. They make decisions that can change local communities and environments.

The communities that councillors represent are made up of a mix of people with different needs and interests from a diverse range of backgrounds. Effective councils are made up of councillors that reflect this mix.

Local government is often called 'the third sphere' of government in Australia. It is an elected system of government directly accountable to the local community.

Each council is an independent, statutory body responsible for administering its local government area.

'The council' comprises all the elected representatives, or councillors, who work together to govern their local community. The council provides leadership to its local community.

FEDERAL GOVERNMENT
Foreign affairs
Defence
Trade relations
Communications
Immigration
Pensions

STATE GOVERNMENT
Public hospitals
Public schools
Police service
Ambulance service
Fire brigades
State roads

LOCAL GOVERNMENT
Town Planning
Social Planning
Cultural Development
Public libraries
Waste collection
Child care
Local roads
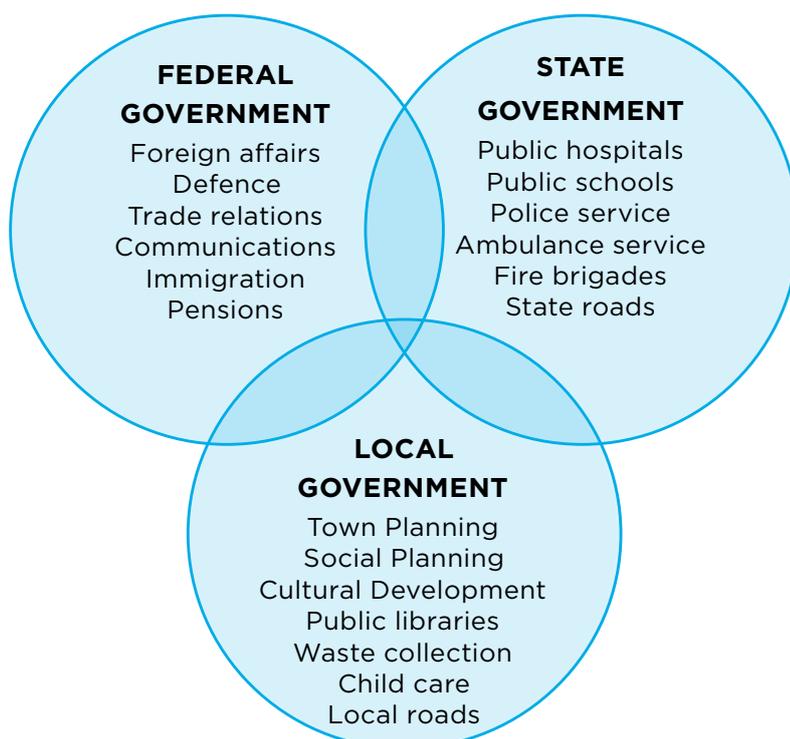
The three spheres of government and examples of their responsibilities

For further information about the specific services provided by councils, see *Services and functions that councils provide*, on page 13.

1.2   Local government reform

The NSW Government has been working with local councils since 2011 to achieve the shared vision of strengthening local communities.

The NSW Government is committed to creating a stronger, modern system of local government that will deliver the high-quality infrastructure and services that communities across NSW deserve.

Significant progress has been made, with the creation of new councils, modernising the Local Government Act 1993 (the Act), working with councils to support regional collaboration and starting to address the unique issues facing the communities of the Far West of NSW.

The Government will build on these achievements as well as the consultation, research and independent reviews conducted since 2011.

The NSW Government's local government reforms include a number of integrated initiatives that are delivered through three key programs. These programs are:

Program 1. Creating stronger councils

» Create new councils
» Facilitate regional collaboration
» Support Far West councils and communities

Program 2 — Improving council performance and governance

» Deliver programs to improve council capability, with an initial priority on financial sustainability
» Support rural councils to deliver the services their communities need
» Provide new powers to intervene in financially unsustainable councils
» Deliver tools to support improved leadership and governance

Program 3 – Strengthening the system of local government

» Create streamlined, modern legislation
» Improve financial systems, including rating, access to TCorp and Financial Assistance Grants
» Develop stronger accountability systems for councils, including Auditor-General oversight and performance improvement tools and frameworks

The broad range of initiatives recognise that there is no 'one-size-fits-all' approach to local government, with different solutions required to address the varied circumstances and needs of communities across the State.

The NSW Government is committed to working collaboratively with councils to strengthen local government over the coming years.

More information on local government reform is available by contacting the Office of Local Government.

1.3 The principles for local government

All councillors should read and be familiar with the principles prescribed under the Local Government Act 1993 to guide the exercise by councils of their functions, decision making, community participation, sound financial management and integrated planning and reporting.

The *Local Government Act 1993* has been amended to prescribe new principles for local government. The object of the principles is to guide councils to carry out their functions in a way that facilitates strong, healthy and prosperous local communities.

Under these principles, in exercising their functions, councils should:

» provide strong and effective representation, leadership, planning and decision-making

» carry out their functions in a way that provides the best possible value for residents and ratepayers

» plan strategically, using the Integrated Planning and Reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community

» apply the Integrated Planning and Reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements

» work co-operatively with other councils and the State Government to achieve desired outcomes for the local community

» manage lands and other assets so that current and future local community needs can be met in an affordable way

» work with others to secure appropriate services for local community needs

» act fairly, ethically and without bias in the interests of the local community

» be responsible employers and provide a consultative and supportive working environment for staff.

When making decisions, councils should:

» recognise diverse local community needs and interests

» consider social justice principles

» consider the long term and cumulative effects of actions on future generations

» consider the principles of ecologically sustainable development

» ensure their decisions are transparent and that decision-makers are accountable for decisions and omissions.

Councils should also actively engage with their local communities through the use of the Integrated Planning and Reporting framework and other measures.

The Act also prescribes principles of sound financial management and integrated planning and reporting, which are discussed in more detail below.

1.4   A council's structure

**COUNCIL'S GOVERNING BODY
– ELECTED COUNCILLORS**

» Providing policy framework
» Setting strategy
» Monitoring performance
» Allocating resources

Reporting to council on activities and outcomes

Implementation of council's decisions

**GENERAL MANAGER
– COUNCIL STAFF**

» Implementing strategy & policy
» Ensuring compliance
» Advising council on strategies

COUNCIL'S ADMINISTRATIVE BODY

Key Relationships

Between five and 15 elected councillors hold office as 'the council' for four years. The elected council's role may be compared to that of the board of a public company or a more complex version of a board that oversees a local club; the elected council oversees the activities of the council but is not involved in the day-to-day running of the council. The 'shareholders' of a public company can be likened to a local community.

Many councils delegate functions to specialist committees that include councillors, council staff and members of the public. These committees provide councillors with the opportunity to participate in council decision-making at a more detailed level.

Councils employ staff to administer the council. The general manager is the most senior member of staff and is responsible to the council for carrying out council decisions and policy and overseeing the day-to-day operation of the council.

The general manager provides the link between the elected council and its employees. While all council staff have a duty to carry out council decisions, they are responsible to the general manager, not the councillors. Individual councillors cannot direct staff in their day-to-day activities. However, this is counterbalanced by the responsibility of general managers to provide information, guidance and support to councillors to make good decisions.

1.5 Services and functions that councils provide

Councils provide a very wide range of services and functions. Broadly, these may be grouped into five categories, as shown below.
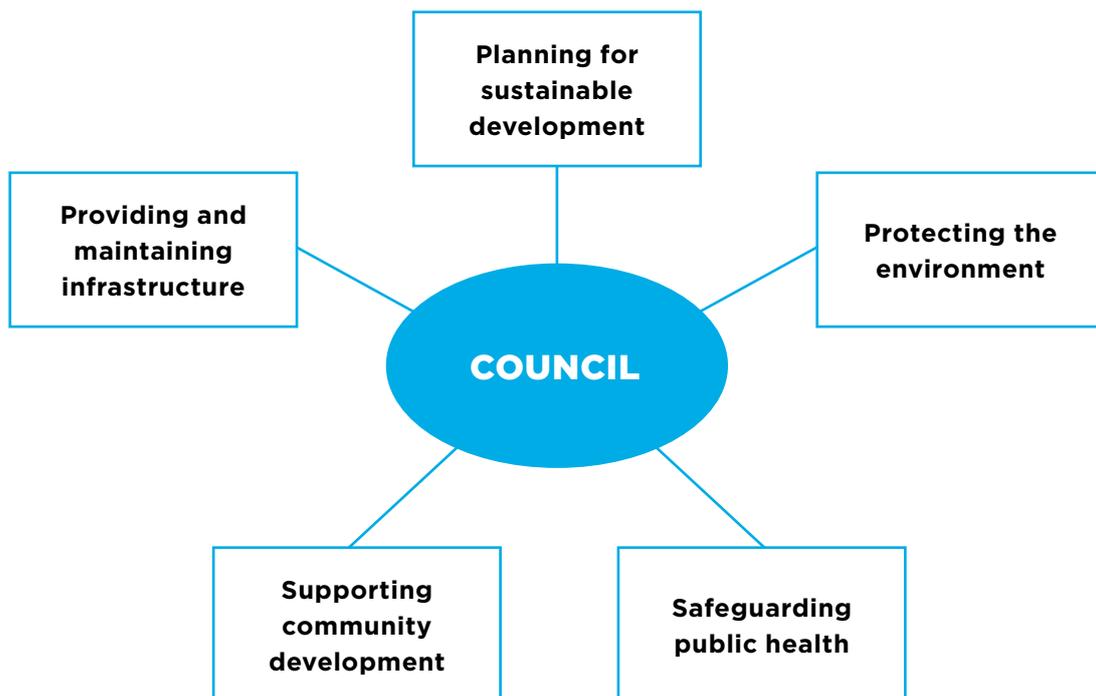
Services and functions that councils provide

Examples of services that fall into each of these categories are given below. These represent a sample only.

Providing and maintaining infrastructure

Providing an appropriate and affordable level of infrastructure is one important contribution a council makes to its community. For example, councils provide and maintain local roads, bridges, public car parks, footpaths, sporting fields, parks and art galleries. Outside of metropolitan areas, councils are also responsible for water and sewerage. Councils must consult with their local community about providing and maintaining these public assets.

Planning for sustainable development

Councils have a major role in providing long term strategic planning for a local government area as well as town planning, zoning and sub-divisions. They engage communities in key planning decisions that will affect the growth of their communities. They seek to integrate planning for infrastructure with the strategic planning of land use so that infrastructure that supports growth is funded and delivered.

In addition, councils are responsible for processing development applications, for building site and compliance inspections, and for ensuring compliance with building regulations.

Protecting the environment

Councils also have a major role in helping to protect the environment. They have responsibilities under the Protection of the *Environment Operations Act 1997* and can issue various protection of the environment notices including clean up, prevention, compliance cost, provision of records and information and noise control notices.

Councils regularly assess the state of their local environment, provide environmental programs and use their regulatory powers to prevent pollution or restore degraded environments.

Councils also have environmental protection responsibilities under other legislation. For example, councils are responsible for noxious weed control under the Noxious Weeds Act 1993.

They also carry out activities to preserve access and amenity to the environment, such as recycling, street cleaning, regulating parking and management of vegetation including bush land reserves.

Supporting the community

Councils regularly consult with and assess the needs of their community with a view to supporting the community and its development. They provide a range of services, including some aimed at groups in the community with special needs.

Community services include libraries, sport and recreation facilities, home care services such as 'meals on wheels', swimming pools, playground facilities and child care centres.

Supporting economic development

Many councils contribute to economic development by working with local businesses, coordinating economic development groups/activities/events and providing tourism services and facilities.

Safeguarding public health

Councils help maintain high standards of public health and reduce the risk of exposure to a wide range of diseases through activities such as food shop inspections, waste disposal, pest and vermin control and hazardous material containment. They also ensure public safety through controlling dogs and cats (or companion animals).

1.5.1 Why does local service provision vary between councils?

Councils can choose the range and quality of services they provide, based on discussions with their community about their needs and what they want to pay for. This is done through the Integrated Planning and Reporting framework process, which is explained in more detail later.

1.6 How are councils funded?

On average, councils receive 21 per cent of their regular income from ordinary land rates, which is paid by landowners. Councils can also charge for services such as waste management, and water supply and sewerage (outside metropolitan areas). Charges must be used specifically for the purposes for which they are collected.

Councils can get additional income from fees for things like parking and the use of publicly owned facilities like swimming pools, halls and other user-pays services. Fees can also be charged for giving information, supplying products or processing applications.

All councils receive a Financial Assistance Grant every year, which is paid by the Australian Government through the State Government. The amount of the grant varies from council to council. Councils receive grants from other sources from time to time. For example, Roads and Maritime Services may make a grant for work on a particular road.

Councils may borrow funds for any purpose. Councils may also invest funds and receive income from the interest. Ministerial Investment and Borrowing Orders and associated guidelines provide the framework in which councils may invest and borrow.

Council revenue is discussed in further detail in *Section 6—Financial Management*.

1.7 Legal framework

Councils work within the laws established by the NSW Parliament. The *Local Government Act 1993* provides a legislative framework reflecting modern community expectations, and gives councils broad powers to plan for and provide local community services and facilities. The Act is administered by the Minister for Local Government through the Office of Local Government.

Councillors have a wide range of legislative responsibilities with which they need to acquaint themselves.

As well as the *Local Government Act 1993*, there are a number of other laws which councils are responsible for implementing.

For example, councils have responsibilities for animal control under both the *Companion Animals Act 1998* and the *Impounding Act 1993*; for building and development controls under the *Environmental Planning and Assessment Act 1979;* for environmental protection under the *Protection of the Environment Operations Act 1997*; for the control of noxious weeds under the *Noxious Weeds Act 1993*, and for the provision, maintenance and management of roads under the *Roads Act 1993*.

The *Local Government Act 1993* provides councils with broad service powers. At the same time, if a council takes action or makes a decision without the necessary legislative authority, it may be held by a court of law to be acting beyond its power. If a council's power is not exercised in the manner prescribed by Parliament, it may be deemed not to have been exercised at all.

Councils must take care to exercise their powers properly. Otherwise their decisions, and any resultant actions, may be declared void by a court, often with consequent financial loss.

When a council has to make a decision involving a value judgement, it must do so with fairness and justice. Natural justice requires that the decision be unbiased and that everyone whose rights and interests are affected is given an opportunity to express their views before the decision is made. Adequate notice of the decision should also be given so that any right to be heard can be exercised.

A council may be liable for actions carried out negligently that result in damage or injury to persons or property. This liability extends to the actions of employees or other people to whom the council's functions have been delegated.

However, councillors and employees will not incur personal liability where the matter complained of was done in 'good faith' for the purpose of executing any Act. 'Good faith' can be broadly defined in this context as something done honestly.

1.7.1 Limited legal protection

The *Local Government Act 1993* provides councillors with a level of protection from civil liability action for undertaking council-related and council-endorsed activities as a councillor.

Protection from civil liability is only provided where a councillor's actions are undertaken in the manner referred to in the relevant sections of the Local Government Act 1993, including in good faith and for purposes related to council activities.

Councillors must read and understand sections 731, 732 and 733 of the *Local Government Act 1993*, which provides protection. In the event that a councillor does not understand an issue, it is the obligation of that councillor to seek and be guided by their own legal advice. Councils are required to have an adopted 'Payment of Expenses and Facilities for Mayors and Councillors' policy which may outline the circumstances where the council will reimburse an elected representative's legal expenses.

In relation to defamation action, a council may be sued for defamation, although it cannot itself sue for defamation. Individual councillors and council employees may also be sued for defamation, whether in their private or public capacities.

Generally speaking, councillors at meetings of council (or council committees) are protected from defamation by the defence of 'qualified privilege', but only to enable them to speak freely and publicly in undertaking their duties in council meetings.

Any comment or statement a councillor makes at a council meeting must be relevant to the council business, made in good faith and without malice.

SECTION 2

ROLES, RESPONSIBILITIES AND RELATIONSHIPS

The importance of trust and mutual respect within the council team and between council and senior management cannot be underestimated.

Councillors can have a major and positive impact on the health and well-being of the whole community.

A good working relationship between councillors, the mayor, the general manager and other council staff is fundamental to an effective council.

Councillors must also have an understanding of how to manage external relationships, with the community, the media and other organisations including State agencies.

The roles of key people in councils, including councillors and the general manager, are defined in the *Local Government Act 1993* and are discussed in detail below.

2.1   Roles and responsibilities

2.1.1   Role of a councillor

The role of the governing body of a council

Councillors comprise the governing body of a council in the same way that a Board of Directors is the governing body of a corporation. The *Local Government Act 1993* prescribes the collective role of a council's governing body as follows:

» to direct and control the affairs of the council in accordance with the Act

» to provide effective civic leadership to the local community

» to ensure as far as possible the financial sustainability of the council

» to ensure as far as possible that the council acts in accordance with the principles for local government (as described above) and the plans, programs, strategies and polices of the council

» to develop and endorse the community strategic plan, delivery program and other strategic plans, programs, strategies and policies of the council

» to determine and adopt a rating and revenue policy and operational plans that support the optimal allocation of the council's resources to implement the strategic plans (including the community strategic plan) of the council and for the benefit of the local area

» to keep under review the performance of the council, including service delivery

» to make decisions necessary for the proper exercise of the council's regulatory functions

» to determine the process for appointment of the general manager by the council and to monitor the general manager's performance

» to determine the senior staff positions within the organisation structure of the council

» to consult regularly with community organisations and other key stakeholders and keep them informed of the council's decisions and activities

» to be responsible for ensuring that the council acts honestly, efficiently and appropriately.

As members of the governing body, and in the interests of ensuring the organisation operates effectively to achieve the best outcomes for the community, councillors should endeavour to work constructively with council staff that are responsible for implementing council decisions.

This need is reflected in the Act which requires the governing bodies of councils to consult with the general manager in directing and controlling the affairs of the council.

The role of individual councillors

The Act prescribes the role of individual councillors as follows:

» to be an active and contributing member of the governing body

» to make considered and well informed decisions as a member of the governing body

» to participate in the development of the Integrated Planning and Reporting framework

» to represent the collective interests of residents, ratepayers and the local community

» to facilitate communication between the local community and the governing body

» to uphold and represent accurately the policies and decisions of the governing body

» to make all reasonable efforts to acquire and maintain the skills necessary to perform the role of a councillor.

The Act makes it clear that councillors are individually accountable to the local community for the performance of the council.

In the case of councils divided by wards, councillors have an obligation to make decisions that are in the best interests of the community as a whole, not just the ward that elected them.

While councillors are free, subject to their obligations under the council's Code of Conduct, to advocate a position on matters that are before the council for a decision, once a decision has been made they are required to 'uphold' the policies and decisions of the council.

The requirement to uphold the policies and decisions of the council should be read in the context of the implied freedom of political communication under the Australian Constitution. In practical terms, councillors remain free to speak about the policies and decisions of the council but they must accept and abide by them and must not misrepresent them.

Councillors' oath of office

Under the *Local Government Act 1993*, councillors are obliged to take an oath or affirmation of office at or before the first meeting of the council after they are elected. In doing so, councillors are required to swear or affirm that they will undertake the duties of the office of councillor in the best interests of the local community and the council and that they will faithfully and impartially carry out the functions to the best of their abilities.

The oath or affirmation of office operates as a mechanism for inducting councillors into their role and reinforcing for them the seriousness of the responsibilities and duties that role entails.

A councillor who fails, without a reasonable excuse, to take the oath or 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 must be held.

What does a councillor do as a 'member of the governing body'?

One of the most important roles of a councillor is to participate in policy decision-making on behalf of the community.

Councillors must work as a team to make decisions and policies that guide the activities of the council. Policies can be defined as the principles and intent behind the programs that a council implements.

This includes setting the broad, strategic direction for the local community. To do this, councillors have to understand their community's, characteristics and needs, and the types of services required to meet these needs.

The key responsibilities of the council's governing body in working with and through the general manager are to:

» prepare and adopt the community strategic plan, delivery program and operational plan

» develop the policy framework for their council in relation to the council's regulatory functions

» develop and oversee the delivery of the council's strategic plans that shape the future direction for the local area

» make sure that taxpayers' money is spent in the best interest of the community

» make sure that the council is fulfilling its regulatory functions appropriately by developing policies

» make sure that the general manager, through performance measurement in his or her employment contract, carries out all of council's policies, plans and strategies appropriately

» provide accountability to the community by reporting on the outcomes of council's activities

» monitor and review the performance of the council.

In doing all of these things councillors must consider the principles for local government as outlined in *Section 1* of this publication.

Council will benefit by analysing its activities from time to time, including asking how it is spending its time, where its priorities should be and whether it has the balance of its priorities right.

What does a councillor do as 'an elected representative'?

A councillor's role as an elected representative is to provide an essential link between the community and council.

Councillors are expected to represent the interests of the community, provide leadership, and communicate and promote the interests of the council to other levels of government and relevant bodies.

Councillors have a responsibility to make decisions in the best interest of the whole community when deciding on the provision of services and the allocation of resources.

Councillors also need to provide leadership and guidance to the community. This is especially important when communities face challenges, such as climate change, drought, high unemployment or skill shortages.

How do councillors balance their roles?

Councillors must attempt to find a balance between the obligation to represent the interests of individual constituents and the need to make decisions on behalf of the whole community. This dilemma can cause some interesting debates in council.

Councillors need to display leadership and integrity to help ensure that the decisions they make as a member of the governing body are in the best interest of all the community.

Councillors can best help individual members of the community by satisfying themselves that their council's policies are being carried out correctly. If a councillor thinks that a policy needs changing, they need to debate this in a full meeting of council. It is inappropriate for a councillor to informally attempt to ignore or alter a policy in order to satisfy the demands of special groups.

The community expects every councillor to understand and provide representation on all council activities. So it is important that councillors quickly become familiar with the whole council area and the important issues affecting their community.

Councillors may find *Appendix 1 – Skills and knowledge checklist* useful in assisting them to identify the skills and knowledge they need to perform their role effectively.

Determination of the organisation structure

After consulting with the general manager, the *Local Government Act 1993* requires the governing body of council to determine:

» the senior staff positions within the organisation structure of the council

» the roles and reporting lines (for other senior staff) of holders of senior staff positions

» the resources to be allocated towards the employment of staff.

The general manager is responsible for determining non-senior staff positions within the organisation structure of the council but must do so in consultation with the governing body.

The Act requires the positions within the organisation structure of the council to be determined to give effect to the priorities identified in the council's community strategic plan and delivery program.

The general manager is responsible for the appointment of staff in accordance with the organisation structure determined by the council and the general manager and the resources approved by the council. The general manager is also responsible for the management, direction and dismissal of staff.

In the case of senior staff, the general manager may only appoint or dismiss senior staff after consultation with the council. It is important to note that while the general manager should consider the views of the governing body of the council in making a decision to appoint or dismiss a senior staff member, the ultimate decision to do so rests with the general manager and not the governing body. It is therefore not open to the governing body of the council to direct the general manager on the appointment or dismissal of senior (and any other) staff.

Appointment and oversight of the general manager

The Act also requires all councils' governing bodies to appoint a person to be general manager.

The Office of Local Government has prepared *Guidelines for the Appointment and Oversight of General Managers* with the assistance of Local Government NSW (LGNSW) and Local Government Professionals Australia, NSW.

The Guidelines provide a checklist for councillors to refer to when considering:

» the recruitment and appointment of general managers

» re-appointment of general managers or ending contracts

» conducting performance reviews of general managers

» engaging in the day-to-day oversight of general managers.

The Guidelines aim to promote a consistent approach across NSW councils to the recruitment, appointment and oversight of general managers. They are issued under section 23A of the *Local Government Act 1993*. The *Guidelines* are available on the Office of Local Government's website at *www.olg.nsw.gov.au*.

2.1.2 Role of the mayor

The mayor is considered to be the voice of the council and the leader of the community.

Popularly elected mayors hold office for four years. Mayors who are elected by their fellow councillors hold office for two years.

The role of the mayor on a council is that of the 'first among equals'. The mayor has the same role and responsibilities as councillors but has additional responsibilities that reflect their leadership role.

Under the Local Government Act 1993, the role of the mayor is to:

» be the leader of the council and a leader in the local community

» advance community cohesion and promote civic awareness

» be the principal member and spokesperson of the governing body, including representing the views of the council as to its local priorities

- exercise, in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council
- preside at meetings of the council
- ensure that meetings of the council are conducted efficiently, effectively and in accordance with this Act
- ensure the timely development and adoption of the strategic plans, programs and policies of the council
- promote the effective and consistent implementation of the strategic plans, programs and policies of the council
- promote partnerships between the council and key stakeholders
- advise, consult with and provide strategic direction to the general manager in relation to the implementation of the strategic plans and policies of the council
- in conjunction with the general manager, ensure adequate opportunities and mechanisms for engagement between the council and the local community
- carry out the civic and ceremonial functions of the mayoral office
- represent the council on regional organisations and at inter-governmental forums at regional, State and Commonwealth level
- in consultation with the councillors, to lead performance appraisals of the general manager
- exercise any other functions of the council that the council determines.

2.1.3   Role of the general manager

The general manager's role is to implement council decisions without undue delay and carry out functions imposed by legislation.

A council's governing body monitors the implementation of its decisions via reports by the general manager to council.

The general manager is the most senior employee of a council and is the only member of staff selected and appointed by councillors. The general manager is appointed on a renewable, fixed-term, performance-based contract for a maximum period of five years.

Under the Act the general manager has the following functions:

- to conduct the day-to-day management of the council in accordance with the strategic plans, programs, strategies and policies of the council
- to implement, without undue delay, lawful decisions of the council
- to advise the mayor and the governing body on the development and implementation of the strategic plans, programs, strategies and policies of the council
- to advise the mayor and the governing body on the appropriate form of community consultation on the strategic plans, programs, strategies and policies of the council and other matters related to the council
- to prepare, in consultation with the mayor and the governing body, the council's community strategic plan, community engagement strategy, resourcing strategy, delivery program, operational plan and annual report
- to ensure that the mayor and other councillors are given timely information and advice, and the administrative and professional support necessary to effectively discharge their functions
- to exercise any of the functions of the council that are delegated by the council to the general manager
- to appoint staff in accordance with the organisation structure determined by the council and the general manager and the resources approved by the council
- to direct and dismiss staff
- to implement the council's workforce management strategy

» any other functions that are conferred or imposed on the general manager.

A governing body of council may by a resolution delegate certain functions to the general manager. The general manager may, in turn, delegate functions to other staff with some exceptions. However, the general manager still retains responsibility to ensure that any sub-delegated function is carried out appropriately.

2.1.4   Role of council staff

General managers employ council staff to carry out the day-to-day operations of the council and implement council policies and other decisions, as directed by the general manager.

The general manager is the primary link between the elected body and its employees.

Council staff are responsible to the general manager, who is responsible for the conduct and performance of council staff.

2.1.5   Role of the Minister for Local Government and the Office of Local Government

The Minister for Local Government is responsible for overseeing local government in NSW, including administration of the *Local Government Act 1993* under which local councils and county councils operate.

System of local government in NSW
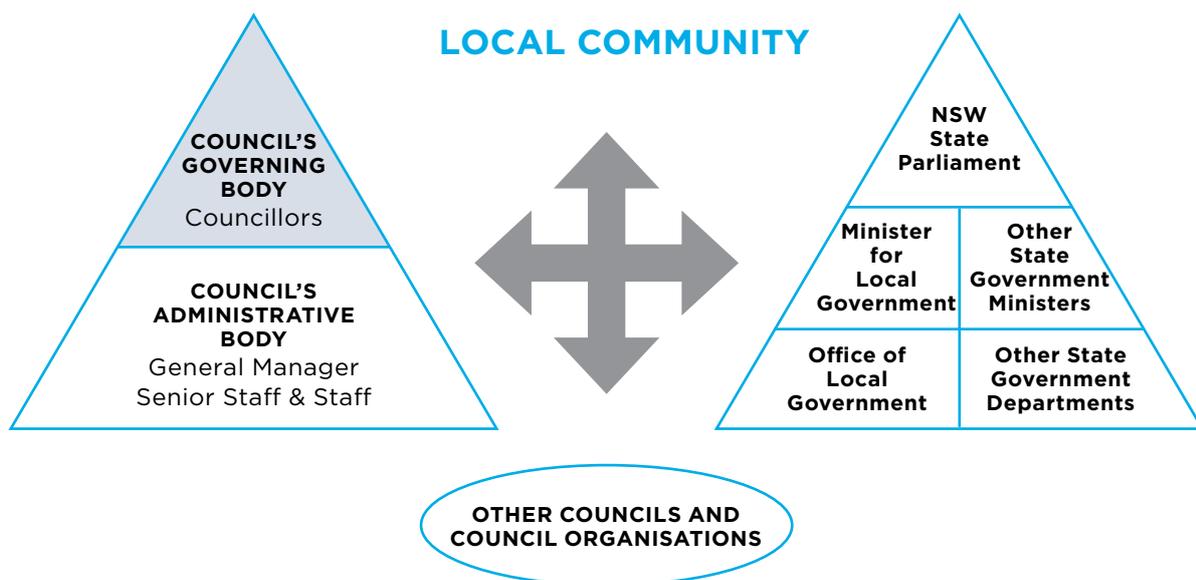
The Minister ensures councils operate within the law and the NSW Government's policies relating to local government.

The diagram above shows the relationship between NSW state and local governments and the community.

The Office of Local Government (OLG) is an executive agency of the NSW Government. The OLG is responsible to the Minister for Local Government and is the Minister's key adviser on local government matters. The OLG is a source of expertise for the NSW Government on all local government issues, including finance, infrastructure, governance, performance, collaboration and community engagement.

The OLG also undertakes important regulatory functions, such as conducting investigations, and supports and advises the Chief Executive and the Minister for Local Government in the exercise of their statutory powers to respond to council under-performance and official misconduct.

The OLG also implements the decisions of the Minister and the NSW Government relating to local government, which includes delivering programs across NSW to strengthen councils and to build local government capacity. In carrying out its functions, the Office of Local Government strives to work collaboratively with the NSW local government sector.

2.1.6 Role of Local Government NSW

Local Government NSW represents general purpose councils, special purpose councils and the NSW Aboriginal Land Council. LGNSW's objective is to strengthen and protect an effective, democratic system of Local Government across NSW by supporting and advocating on behalf of member councils and delivering a range of relevant, quality services.

LGNSW is headed by a President, two Vice Presidents (Metropolitan/Urban and Regional/Rural), Treasurer and a Board of Directors. All Board members are elected democratically every two years at the LGNSW annual conference.

The LGNSW annual conference is an important opportunity for councillors to be updated about important issues for local government, vote on policy directions and network with other councillors.

LGNSW produces a range of member-focused publications, newsletters and updates, including a weekly e-newsletter which can help you stay up to date on topical issues and events.

2.1.7 Role of Local Government Professionals Australia, NSW

Local Government Professionals Australia, NSW is the peak body for local government professionals and managers. It seeks to ensure the organisation and its members are industry leaders and are at the forefront of good practice, change, innovation and the continuous improvement of local government.

The goal of Local Government Professionals Australia, NSW is to provide advocacy, networking, leadership, learning and support for members. It represents and supports professional practice by upholding a code of conduct and assists its members and councils with professional development and a range of council improvement services.

Further information and contact details for these organisations and other key State Government agencies may be found in *Appendix 3—Key organisations*.

2.1.8 Joint Organisations of Councils

Creating new Joint Organisations (JOs) is a key component of the NSW Government's commitment to achieve strong, modern local government in NSW.

JOs are designed to provide a forum for local councils, the NSW Government and others to work together on regional strategic priorities and on things that matter most to regional and rural communities, such as jobs, education and transport.

JOs would give communities a stronger voice, improve collaboration between State and local governments and make it easier to undertake important projects across council boundaries.

In 2015, councils in five regions piloted different models for regional collaboration. The pilot process informed the development of a potential model for JOs that was consulted on during June 2016. This demonstrated that JOs can work for regional councils and communities.

Based on the lessons learned from the JO pilots and consultation, the Office of Local Government has developed a proposed model that would see JOs created as statutory bodies corporate under the Local Government Act 1993.

JOs would undertake core functions at a regional level including:

» strategic planning and priority setting

» intergovernmental collaboration

» regional leadership and advocacy.

JOs would also be able to undertake other functions, like offering shared services delivery for member councils that agree to do so.

It is proposed that each JO Board would be made up of mayors of all voting member councils with equal voting rights, and a nominee of the NSW Department of Premier and Cabinet as a non-voting member. Each JO Board would also have the option of inviting other organisations to participate as non-voting members such as neighbouring councils and county councils.

Please note, at the time this Handbook was printed, the enabling legislation for JOs had not been introduced into the NSW Parliament.

2.2 Managing internal council relationships

A good working relationship between councillors, the mayor, the general manager and other council staff is fundamental to an effective council.

The following section provides an overview of the various relationships between councillors and other internal council officials and staff. This issue is dealt with in greater detail in the professional development program for councillors run by Local Government NSW.

2.2.1 Relationship between the mayor and the general manager

The relationship between the mayor and the general manager is the most important one in a council and can have a significant impact on the council's performance.

As their relationship is often subject to community and media scrutiny it is important for the mayor and general manager to have a transparent and supportive working relationship. Should conflict or significant differences of opinion arise, both the mayor and the general manager should work to ensure that they are resolved in a timely manner, and not in the public eye.

The mayor and general manager also exercise key leadership roles within the organisation. The mayor also has a key role in the appointment of the general manager and therefore requires a full understanding of the general manager's role and responsibilities.

2.2.2 Relationship between councillors and the general manager

The quality of the relationship between a general manager and councillors is vital to a healthy and effective organisation. Public inquiry outcomes show that where this relationship breaks down, the organisation may become dysfunctional and communities lose confidence in the council.

Indicators of good working relationships between councillors and managers (adapted from material provided by the UTS Centre for Local Government)

» Councillors who publicly express faith in general managers and staff

» General managers who support councillors in their role and who consider ways to improve their levels of support

» A clear understanding about how councillors ask questions and receive information from staff, and a formal communication protocol which matches everyday practice

» Informal briefings and discussions in which councillors can ask for advice and discuss their position on key decisions

» Opportunities for staff who are experts in their area to put forward their experiences and opinions to councillors to inform key decisions

» Council decisions which are seen as being based on merit rather than 'the numbers game'

» Relationships which are characterised by respect, good humour and good faith.

The general manager is made accountable to their council principally through their contract of employment. The role of the governing body, led by the mayor, is to oversee the general manager's performance in accordance with the Standard Contract.

The relationship between the general manager and the council is managed through the general manager's contract of employment.

The Office of Local Government has standardised the contract of employment for general managers in consultation with the local government sector.

The standard contract provides for the performance of the general manager to be formally reviewed at least annually against the agreed performance criteria for the position. The agreed performance criteria are set out in an agreement that is signed within three months of the commencement of the contract. A council may also undertake interim performance reviews as appropriate.

The general manager must sign a performance agreement with the council. Other senior staff must sign a performance agreement with the general manager. These performance agreements should reflect the activities, performance targets and performance measures as outlined in the council's delivery program.

Monitoring and reviewing the general manager's performance

Performance management is an essential part of good management practice. It provides not only a means to monitor the council's performance but also a means to recognise and reward good performance and to manage under-performance.

The development of a performance agreement and regular review of the general manager's performance against the criteria set out in

the agreement establishes links between the council's and the general manager's objectives and priorities and helps improve the council's performance.

It is recommended that the general manager's performance be reviewed by a panel of councillors. Where a panel is formed, it is further recommended that the whole process of performance management be delegated to the panel.

It is also recommended that the role of the review panel should include:

» conducting performance reviews
» reporting the findings and recommendations of those reviews to council
» development of the performance agreement.

This process provides a good forum for constructive discussion and feedback.

Councillors selected to take part in the panel should have received training on the performance management of general managers.

Although the composition of the panel is up to the governing body, the usual mix is the mayor, the deputy mayor and one councillor nominated by the governing body. The general manager should also have the option of nominating another councillor to the panel.

All councillors should be notified of relevant dates in the performance review cycle and be kept advised of the panel's findings and recommendations.

Councillors not on this panel should provide comments and feedback to the mayor in the week prior to each review session. The result should be reported to a closed meeting of council or a committee of council.

While there may be instances where immediate action is necessary, it is generally expected that termination of a contract on the basis of poor performance would be the last resort.

The panel should maintain the confidentiality of the review process, including the paperwork and content of the review. In some instances the information may be potentially damaging. Local Government NSW can provide an independent facilitator to support the review process.

2.2.3 Relationships between councillors and staff

The general manager is the crucial link between councillors and staff.

Generally, requests for assistance or information should go through the general manager, except where he or she has authorised another council officer to undertake this role.

Similarly, if a staff member needs to talk with a councillor or the mayor, approval should be obtained from the general manager or the appropriate authorised officer. Where authority is given to another council officer, it is the general manager's responsibility to monitor, as far as practicable, that the policy is being observed.

Individual councillors do not have the right to direct council staff in their day-to-day activities.

Councillors must not contact a member of council staff on council-related business unless in accordance with the policy and procedures governing the interaction of councillors and council staff that have been authorised by the council and the general manager.

It is sometimes necessary for councillors and staff to interact and work together so that informed decisions can be made and positive outcomes achieved. Mutual respect, sharing of information and open debate are hallmarks for successful relationships between councillors and staff.

Sharing information	Demonstrating respect	Ensuring open debate
» Regular meetings between the general manager and councillors » Briefing sessions for councillors which are well attended » Clear protocols about councillor contact with staff which are agreed and implemented, including a systematic approach to responding to councillor requests	» Honouring the Code of Conduct » Meeting behaviour which is characterised by respectful language, even in difficult times » Staff and councillors presenting a united front in public forums » Media statements which refrain from personal criticism » Joint participation in community engagement activities » Support for professional development for councillors, managers and staff	» Support for professional development for councillors, managers and staff » Briefing sessions which enable both councillors and staff to contribute freely » Council records which include staff recommendations, council resolutions and a rationale if the two differ

Personal interaction between councillors and staff

The Office of Local Government's *Model Code of Conduct for Local Councils in NSW* together with councils' adopted protocols or procedures govern the interactions between councillors and staff that relate to council business while they are undertaking their public duties.

However, the Model Code of Conduct does not prevent councillors and staff communicating. It is a normal part of community life that council staff and councillors would be, from time to time, present at the same social or community events. However, in such situations both parties should ensure that council business is not discussed.

The Model Code of Conduct is discussed in further detail in .

2.3 Managing external relationships

2.3.1 The importance of community engagement

While participatory democracy is an important part of local government decision-making it is essential that councils have a clear, robust and structured community engagement process in place. This helps ensure that the best decisions are made for the whole community, including 'the silent majority'.

Councillors are the representatives of the community. Therefore, they are accountable to the community. It is important that the community is able to contact and meet with councillors to discuss and contribute their views and ideas. Councillors should therefore spend time undertaking formal and informal community engagement. This helps ensure that a council's policies and programs are acceptable to, and meet the needs of, the community.

When a council is developing important policies, strategies and plans, such as a council's community strategic plan, delivery program or operational plan, it is required by law to put the drafts on public exhibition and consider all the comments or submissions received.

The *Local Government Act 1993* also requires councils to adopt a community engagement strategy to guide its engagement with the local community when developing their plans, policies and programs (other than routine administrative matters).

The Act also contains other important mechanisms to enable a council to more formally engage and consult with its community. For example, a council may conduct a poll on an important issue to get an understanding of the

community's views on a matter, such as whether to impose an environmental levy.

Councils may also hold constitutional referendums on some matters such as whether to increase or decrease the number of councillors, whether to divide an area into wards or abolish wards, or whether to change the method of election of the mayor.

Effective engagement

The community engagement process needs to be robust, collaborative, inclusive and sustainable.

Community engagement is a mechanism to assist councillors to understand and incorporate the public will and community concerns into decision-making. Community engagement should not be viewed as a 'box-ticking' exercise, or something that is only undertaken to pacify the vocal minority.

Good community engagement involves a two-way flow of information. Community engagement can be a very effective way of increasing community understanding of an issue, and a way to increase support for council policies and decisions.

Councils should ensure that the community engagement process is robust, collaborative and inclusive. They can do this by clearly defining the issues in question, identifying all relevant stakeholders and giving them the opportunity to participate, and by allocating sufficient time to the process. Councils should also provide clear feedback to the community on the outcomes of any engagement activities.

This can help councils to ensure the sustainability of community engagement. If community members feel that they have the opportunity to actively participate in engagement activities and that their participation is meaningful, they may be more willing to participate in the process in the future.

More information about effective community engagement is included in *Appendix 6—Tips for effective community engagement*.

Methods for engaging with the community

While councillors are generally constrained by the inherent costs associated with undertaking large-scale engagement activities, the following information is provided as a guide to the various methods of smaller scale community engagement available to councillors.

Community engagement will only provide the views of a sample of the community. When planning engagement activities, consideration should be given to what is the most appropriate form of engagement for the audience and the circumstances.

Different methods of community engagement include:

» **Face-to-face** – Public meetings are the most common method of sharing information. They are a useful way to provide members of the community with direct access to the councillors. However, care must be taken to ensure that meetings are held in public venues appropriate to the size and make up of the audience. Meetings should also be well-facilitated and conducted in a structured and orderly fashion. Options include small, targeted meetings; larger, open public meetings; or a series of ongoing meetings.

» **Surveys** – Surveys can be useful for collecting information from a small sample of the community on specific issues. However, the usefulness of surveys can be limited for community members who have literacy or language difficulties.

» **Letter writing** – Letters can take the form of formal mass mail outs to a broad cross-section of the community or smaller scale personal letters to targeted groups and individuals. Letters should be well-researched and appropriate in content and style. Like surveys, the usefulness of letter writing can be limited

for community members who have literacy or language difficulties.

» **Telephone –** Telephone can be a useful way of directly contacting individual members of the community. It is particularly useful in the case of targeted community engagement, as the more broad-scale telephoning of individuals can be a time consuming exercise. Consideration should be given to the timing and appropriateness of phone contact as many people consider this invasive, particularly evening calling. The usefulness of telephone consultation can also be limited for members of the community who experience language and speech difficulties.

» **Social media** – Most councils have Facebook pages which can be updated continually to reach community members in real-time to share information, seek feedback or answer questions. Some councils and councillors contribute to public information sharing about various issues and events through Twitter. A number of councils also have YouTube channels and produce clips on various topics including local infrastructure projects. Advances in digital technology have also allowed councils to develop smartphone apps to assist residents and ratepayers interact with them on a range of issues. Links to further information about social media can be found in *Appendix 5—Dealing with the media*.

Additional resources on community engagement

The Office of Local Government's Integrated Planning and Reporting webpage contains information and links to additional resources on effective community engagement.

2.3.2 Accountability

Councillors are accountable to the community through community engagement, open and transparent decision-making, as well as regular planning and reporting.

Ultimately, councillors are accountable to the community every four years on election day. However, at all times, council decision-making should be transparent. Fundamentally, community engagement processes are designed to promote a culture of accountability to the local community.

Implicitly, the needs of the community should be reflected in the decisions of council.

Councils must regularly provide information to the public, which demonstrates:

» the council is being administered in accordance with the *Local Government Act 1993*

» the council is allocating resources consistent with its vision and strategic plan as well as the corporate objectives stated in the community strategic plan

» the performance of the council is monitored and reviewed to ensure council objectives are being pursued

» the interests of all the community is served

» each councillor is acting with integrity.

Further information about reporting requirements for councils can be found in *Section 5—Sound planning and reporting.*

2.3.3 Other external relationships

Building and maintaining good working relationships with other organisations helps to sustain an effective council. Councils should foster relationships with key organisations including other councils, other state and Australian government agencies, representative and industry bodies, and local industry and local community organisations.

The contact details for a number of key organisations and a brief description of their roles are contained in *Appendix 2 – Key organisations.*

Strategic collaboration

Strategic collaboration is an umbrella term for how councils work together. Collaboration can take many forms including alliances, partnerships and business clusters.

Its purpose is to reduce duplication of services, provide cost savings, access innovation, enhance skills development and open the way for local communities to share ideas and connect with others. Good collaboration enhances understanding of each other's roles and functions, provides a basis for sharing information and expertise and creates opportunities to work better together. It requires mature relationships based on shared information and a culture of collaboration, negotiation and trust.

Councils often collaborate through regional organisations of councils. In future, Joint Organisations (JOs) would create further opportunities for agreeing shared objectives and collaboration between councils at a regional level.

It is proposed that (JOs) would focus strongly on intergovernmental collaboration, which brings together all levels of government on policy development, service design or service delivery, including infrastructure priority setting. To enable effective intergovernmental collaboration, it is proposed that a Regional Director of the Department of Premier and Cabinet (DPC) in each region be a non-voting member of each JO and that the Executive Officer of each JO would be invited to attend meetings of DPC led Regional Leadership Groups.

2.4 Effective decision-making

The great majority of a councillor's work involves making important decisions about a council's direction and development. It is critical for all councillors to have the skills and information needed to make well-informed decisions that benefit council and the whole community.

To make effective and well-informed decisions, councillors must understand how to evaluate the range of plans, proposals, strategies and other matters that will constantly be before council.

All reports before a council should:

» enable councillors to assess the council's ability to achieve its strategic goals as articulated through its Integrated Planning and Reporting framework
» provide information which is linked to the council's approved strategic or project plans (including community strategic plan, delivery program and operational plan), and the budgets that support those plans
» assist councillors in assessing the merits of a proposal, or any other matter before council, and make well-informed decisions.

Prior to making decisions councillors should ask four key questions:
» What impact will the decision have on the community (including residents and ratepayers) and the environment in both the immediate and long term?
» What impact will the decision have on council's finances both in the immediate and long term?
» How does this decision fit in with the long-term direction of the council?
» Are all of the relevant materials and facts available to make an informed decision?

In addition, specifically in relation to project proposals before the council, the first step in the process is to ensure that the proposal makes sense and that each part is logically supported with sound analysis and actions.

Some additional questions to ask include:
» Will the performance measures contained in the proposal enable council to adequately monitor its progress and measure if it is achieving the desired outcome?
» Does the proposal provide value for money?
» Is the cost-benefit acceptable?

Other important issues relating to decision-making are also covered in *Section 5—Sound planning and reporting* and *Section 6—Financial management*.

2.4.1 Meeting papers

Council papers are the 'tools' used most often by councillors to make decisions. Meeting or business papers should be of sufficient quantity and quality to allow all councillors to do their job properly and effectively.

All the reports councillors receive should contain sufficient information to allow them to be able to assess council's performance and make appropriate, well-informed decisions.

Council meeting papers are likely to include:
» reports from the general manager
» reports from senior staff in charge of the main functional areas of council such as environmental services, corporate services, engineering, community services and strategic and commercial services
» reports on special projects or programs, as well as exceptional events or matters which involve council activities or impact on council business.

The papers may also include copies of minutes from council committee meetings.

Further information about good meeting practice can be found in Section 4—Making the most of meetings.

2.5   Risk management

It is now well established that risk management is an essential part of effective corporate governance. Risk management is a process through which an organisation can systematically identify risks to its operation; analyse, evaluate and treat those risks; and implement a systematic process for the ongoing monitoring and review of the management of risks.
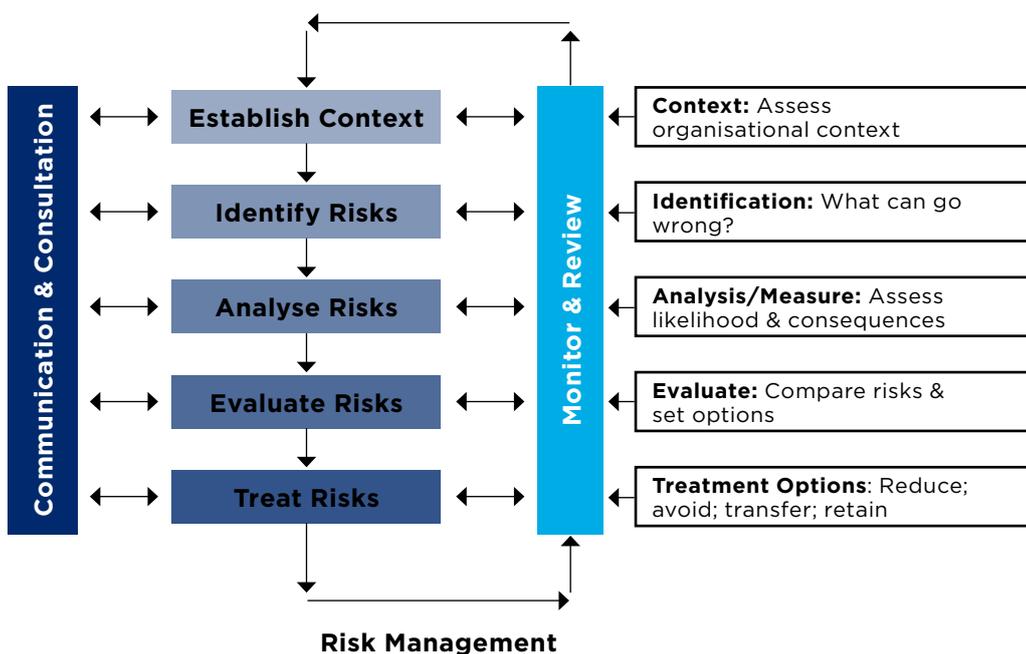
Risk Management

Risk management

The diagram above illustrates the cyclical nature of risk management. Councils should continually monitor and review their risk management strategies and practices, and also ensure that effective consultation is undertaken in all stages of the process.

By understanding the potential risks they face, councils are better prepared to take appropriate action to minimise the impact of adverse risks and maximise opportunities to benefit from positive risks.

Good risk management should be forward looking and assist in making good business decisions.

Through proactive risk management treatment, the following outcomes can be achieved:

- » higher level of service delivery
- » more efficient, effective and economic allocation of resources
- » improved responsiveness and flexibility
- » increased accountability and transparency.

The administrative body of council, led by the general manager, has primary responsibility for the design and operation of the risk management and internal control framework of the council.

However, good governance in local government relies on the robust independent review of management, finances, risks and operations by council's governing body and a properly constituted audit committee which reports regularly to council's governing body.

As members of the governing body responsible for deciding the direction of council, councillors are responsible for determining the amount of risk exposure that the council is prepared to take. By having a risk management process in place councillors are able to make these decisions in a more accountable and transparent way.

Consequently, residents and ratepayers can be better informed about the reasons underpinning council decisions and this will result in greater confidence and trust in council's decisions.

The benefits for councillors of risk management include:

» assistance in assessing proposals and allocating resources

» assurance that the council has appropriate controls in place and is managing its compliance obligations appropriately

» consequently freeing the councillors to focus on the key strategic business of council.

Risk management is a very valuable support to good governance. It provides the community with confidence that council is being managed in a responsible and accountable manner.

2.6   Other resources

The Governance Health Check (GHC) is a self-audit guide to good governance in local government. It is delivered through an online service called eConnect that councils can subscribe to.

The GHC was jointly developed by the Independent Commission Against Corruption and Local Government Professionals Australia, NSW. The GHC is designed to give councils a simple tool to identify key elements of corporate governance in a NSW local government context and to measure their progress in relation to each of these elements.

Councillors should check with their general manager to see if their council has access to the Governance Health Check, which is available to Local Government Professionals Australia, NSW eConnect subscribers.

SECTION 3

CODE OF CONDUCT AND ACTING ETHICALLY

The role of a councillor is a public one.

Local communities rightly expect the highest standards of conduct of those they elect to hold office in a council. Failure to comply with these standards can undermine community confidence in individual councils and the local government sector as a whole. It also erodes the trust the community confers on their elected representatives.

For this reason, councillors—like other council officials such as staff and delegates of councils—are obliged to comply with prescribed ethical and behavioural standards in the performance of their role.

These standards are prescribed under the *Model Code of Conduct for Local Councils in NSW* (Model Code). All councils are required to adopt a Code of Conduct based on the Model Code. Breaches of a council's Code of Conduct are to be dealt with in accordance with the *Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW* which, like the Model Code, is prescribed under the *Local Government (General) Regulation 2005*.

Councillors may face disciplinary action by the Office of Local Government or the NSW Civil and Administrative Tribunal for serious or repeated breaches of these standards under the misconduct provisions of the *Local Government Act 1993*.

Penalties include suspension from office for up to six months or disqualification from holding office in any council for up to five years. Councillors who have been suspended on three or more occasions for misconduct are automatically disqualified from holding office in any council for five years.

Whenever councillors appear in public, even though they may not be doing anything related to their council position, they are usually seen as acting in their councillor role and judged in this light. This means the position of councillor is really a '24/7' one. Councillors therefore need to act at all times in a way that does not bring disrepute to either themselves or their council.

Acting ethically is not just about avoiding or managing conflicts of interests. It also applies to the interactions of councillors with council staff, members of the public, use of resources and any personal benefits councillors might obtain.

3.1 The Code of Conduct

The adoption of a Code of Conduct is an important means of ensuring councillors are responsible for their own conduct, for making decisions ethically and for being accountable to their communities.

Councillors need to make difficult decisions that do not always have unanimous support in the community. In order to maintain the confidence of the community, councillors must ensure that these decisions are made in an ethical and impartial manner.

The Model Code of Conduct provides the foundation for ethical decision-making in local government. All councils must make and adopt a code of conduct based on this document. The Model Code sets the minimum standards of conduct for council officials in carrying out their functions.

The Model Code is prescribed by regulation. It is underpinned by procedures for dealing with breaches of the Code and provisions in the Act to impose sanctions.

The Model Code is necessarily a complex document that has been built as a result of feedback from councils and to tackle risks of corruption or other damaging behaviour.

To help councillors understand their obligations, the Office of Local Government has developed a summary document, explaining the standards of behaviour expected and what happens when these are not met. This is contained in *Appendix 7—Standards of conduct for council officials*.

Councillors are expected to comply with all the provisions in their council's Code of Conduct, which is based on the Office's *Model Code of Conduct* (available on the Office of Local Government's website at *www.olg.nsw.gov.au*).

Following recent changes to the Act and Regulation, the Office of Local Government is currently reviewing the *Model Code of Conduct for Local Councils in NSW* and the *Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW* in consultation with councils and the local government sector in NSW. Once the review is complete, councils will be required to adopt the provisions of the revised Model Code of Conduct and Procedures.

3.1.1 General obligations

The Model Code of Conduct sets the standards of ethical and appropriate conduct for council officials in relation to their general conduct, conflicts of interests and personal benefit, relationships between council officials, access to council resources and information, and maintaining the code's integrity.

The obligations of council officials under the Model Code are informed by eight key principles: integrity, leadership, selflessness, impartiality, accountability, openness, honesty and respect.
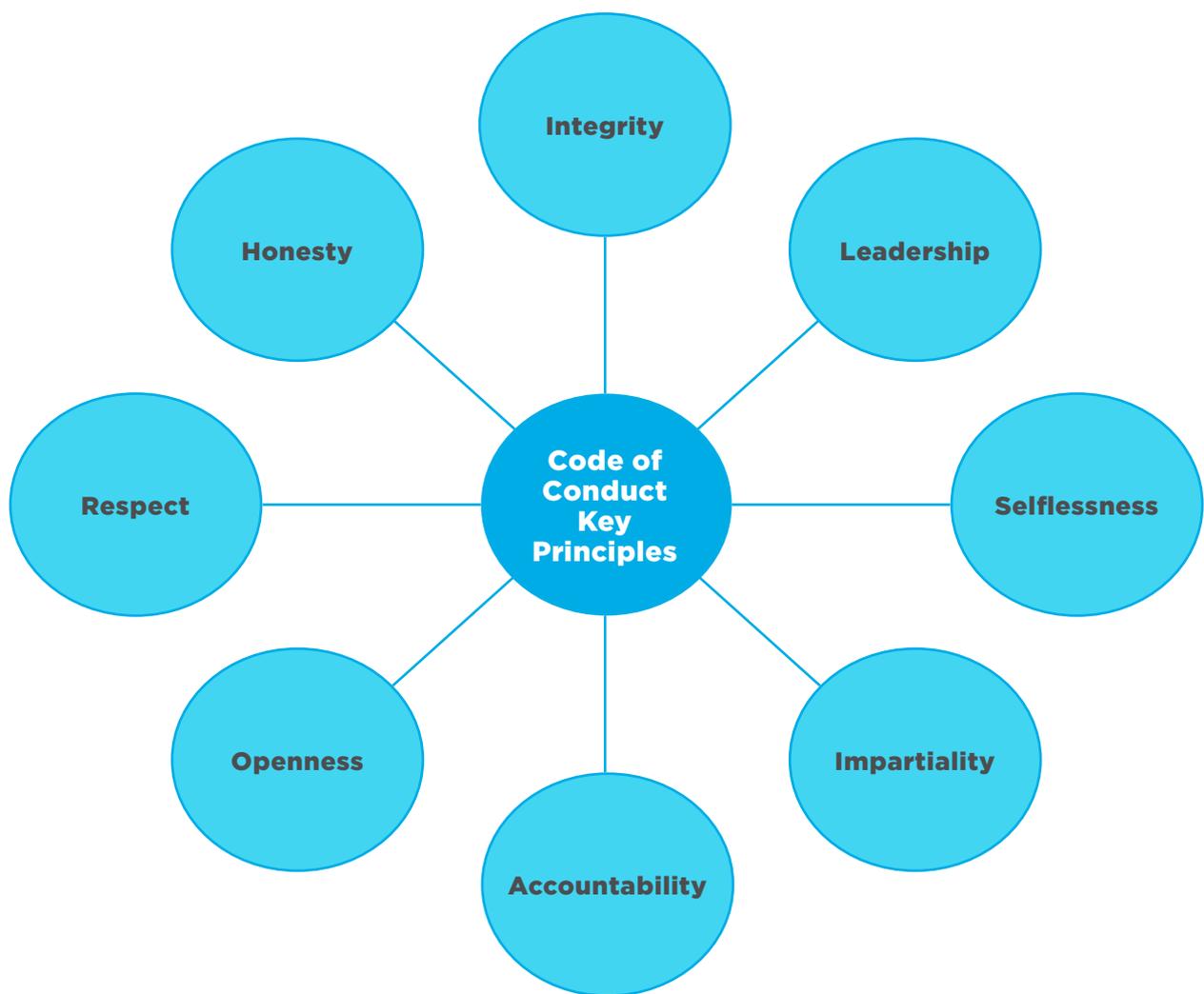
Key principles of the Model Code of Conduct

Key principles of the Model Code of Conduct

Councillors have certain general conduct obligations under the Model Code of Conduct. Specifically, councillors must:

» act lawfully, honestly and with care and diligence in carrying out their functions

» not conduct themselves in a manner that is likely to bring the council into disrepute

» treat others with respect

» consider issues consistently, promptly and fairly

» not harass or discriminate against others

» ensure that development decisions are properly made

» not participate in binding caucus votes except in relation to nominations and elections.

In relation to binding caucus votes, councillors are permitted to discuss a matter before a meeting with other councillors and voluntarily agree to a shared position on a matter. However, they must retain their individual discretion and remain free to determine a matter on its merits.

3.1.2 Ethical decision-making

Key questions that councillors should ask themselves to ensure that their decisions are ethical and sound are:

» Is the decision or conduct lawful?

» Is the decision or conduct consistent with council's policy and with council's objectives and the code of conduct?

» What will the outcome be for the councillor, work colleagues, the council, persons with whom they are associated and any other parties?

» Do these outcomes raise a conflict of interest or lead to private gain or loss at public expense?

» Can the decision or conduct be justified in terms of the public interest and would it withstand public scrutiny?

If councillors are uncertain about an action or decision, they should seek advice from the general manager. They may also wish to seek their own independent legal advice.

Councillors should exercise due care in undertaking their functions by acquainting themselves with the requirements of the *Local Government Act 1993*, their council's Code of Conduct, the details of the matters they are dealing with, and any factors which may affect their involvement in decision-making.

3.1.3 Conflicts of interest (pecuniary, non-pecuniary and political donations)

A conflict of interest exists where a reasonable and informed person would perceive that a councillor could be influenced by a private interest when carrying out their public duty.

The importance of following the principles of ethical decision-making cannot be underestimated. There is significant potential for conflicts of interest to arise in the course of a councillor's role as an elected person, resident of the local area they represent and member of the governing body of council. Conflicts of interest must be managed appropriately.

Councillors must consider how a reasonable person who is informed about the situation would view it.

Pecuniary conflicts of interest

Pecuniary conflicts of interest arise where councillors, or certain persons or entities that are associated with a councillor, are reasonably likely to make or lose money because of a decision the council might make. In such a case the Act requires the councillor to declare the interest and withdraw from the meeting while the matter is being debated and voted on.

Councillors also need to submit an annual written return of interests to the council including information on real property (meaning land and anything attached to it, including buildings), gifts, interests and positions in corporations, sources of income, and debts.

These may give rise to a pecuniary interest at a meeting and are made publicly available to make sure councillors are seen to be acting openly and honestly in the decisions they make.

Non-pecuniary conflicts of interest

Non-pecuniary conflicts of interest commonly arise out of family or personal relationships, through an association a councillor, or someone close to them, may have through involvement in a sporting, social or other kind of group or association. The political views of a councillor do not constitute a private interest.

The greater a councillor's involvement with the club or organisation, the greater the likelihood of a real or perceived conflict of interest.

The Model Code recognises two forms of non-pecuniary conflicts of interest: *significant* and *less than significant.*

An example of a significant non-pecuniary conflict of interest could be where the councillor is an active member and involved in the running of a sporting club that submits a development application to the council for a major extension of its facilities.

In this instance there may be a public perception that the councillor's activities with the club would make it difficult for the councillor to view the matter before the council impartially. When the matter comes before council, the councillor needs to consider whether or not he or she has a significant conflict of interest and, if so, must disclose the nature of the conflict and refrain from participating in the discussion and voting on the matter.

By contrast, if a councillor is merely a member of a large club and utilises its facilities via membership, it is unlikely that this membership alone would conflict with their role as a councillor representing the views of the residents and ratepayers generally.

However, a councillor should still consider if this raises a less than significant conflict of interests and if so, he or she should disclose this, as well as the nature of the interest and a brief explanation of why no further action is required in the circumstances. It always remains open for councillors to take additional steps to manage any perception of a conflict of interests.

Political donations

Councillors should be aware that matters before councils involving election campaign donors may also give rise to a non-pecuniary conflict of interests. The Model Code contains a number of provisions to assist councillors to identify, disclose and appropriately manage conflicts of interests that may arise as a result of political donations they have benefited from.

In particular, where a councillor has received or knowingly benefited from a reportable political donation of $1,000 or more in the last four years, and the donor has a matter before the council, the councillor must declare a non-pecuniary conflict of interests, disclose the nature of the interest, and remove themselves from consideration of the matter. This obligation applies to donations received in relation to council, State and Federal election campaigns.

Donations of under $1,000 may also give rise to non-pecuniary conflicts of interests in certain circumstances (e.g. because of the nature of the relationship between the councillor and the donor) that must be disclosed and managed in accordance with the requirements under the Model Code of Conduct.

3.1.4   Gifts and benefits

Councillors may find they are offered gifts or benefits such as free tickets to major sporting or other events. These gifts could be offered innocently and in good faith or they could be an attempt to influence. The Model Code places an obligation on councillors not to accept gifts or benefits of more than token value. However, these may often be attractive and there are circumstances where they can be difficult to refuse.

Councillors need to think about how the community might perceive their acceptance of these gifts. Feelings of obligation can arise by accepting a gift. Members of the public might think a councillor's ability to make impartial decisions has been compromised.

In circumstances where a gift or benefit cannot reasonably be refused or returned, councillors are required to surrender it to council and ensure that it is recorded in the council's gifts register.

3.1.5   Access to information and resources

Councillors are entitled to such information necessary for the performance of their functions. However, this is counterbalanced by the obligation to use this information appropriately and to maintain the integrity and security of confidential information.

A council's Code of Conduct also discusses how a councillor can get access to information and other council resources such as the expertise of council staff. Access to council staff expertise must happen through the general manager, or in accordance with a system that is put in place to facilitate and coordinate councillor requests for information or action.

3.1.6   Appropriate lobbying

The Model Code of Conduct and the Local Government Act 1993 recognise that appropriate lobbying of councillors is a normal part of the democratic system and that councillors have a representative role in considering the views of their constituents and communicating with them.

Councillors would be aware that at some time they are likely to be lobbied by a wide range of people including individuals, organisations, companies and developers. It is essential that councillors understand the difference between appropriate and inappropriate lobbying, and do not engage in lobbying which could be considered inappropriate or unlawful and likely to undermine community confidence in a council's decision making.

Inappropriate lobbying usually involves an attempt to obtain preferential consideration or treatment based on factors other than the merits of a matter.

The Independent Commission Against Corruption has produced a brochure which contains specific information about all aspects of lobbying local government councillors.

Appropriate vs inappropriate lobbying

Examples of appropriate lobbying behaviours are:

- ✓ keeping records of meetings with lobbyists or objectors
- ✓ holding meetings in appropriate locations such as council offices
- ✓ ensuring other people are present
- ✓ making sure that any information obtained when being lobbied is available to council staff and other councillors.

Examples of inappropriate councillor conduct that could occur during lobbying include:

- ✗ disclosing confidential information while being lobbied
- ✗ accepting a political donation in return for a favourable exercise of discretion during decision-making
- ✗ giving undertakings to an interested party prior to consideration of all the information relevant to a decision.

3.1.7   Reporting breaches

Code of Conduct breaches

Any person may make a complaint alleging a breach of the Code of Conduct.

Suspected breaches of the Code of Conduct by councillors, members of staff of council (excluding the general manager) or delegates should be reported to the general manager in writing. Allegations that the general manager has breached the Code of Conduct should be reported to the mayor in writing.

It is important that alleged Code of Conduct breaches are dealt with appropriately and in accordance with the prescribed procedures for doing so. Councillors must not therefore make allegations of suspected breaches of the Code at council meetings or in other public forums. To do so would constitute a breach of the Code of Conduct.

Pecuniary interest breaches

Complaints regarding non-disclosure of a pecuniary interest may be made by anyone to the Office of Local Government. These may be investigated and referred to the NSW Civil and Administrative Tribunal (NCAT) for decision. Significant penalties may apply to councillors who don't meet their obligations in this area.

Public Interest Disclosures

The *Public Interest Disclosures Act 1994* aims to encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration and serious and substantial waste in the public sector.

The purpose of this Act is to ensure that public officials who wish to make disclosures under the legislation receive protection from reprisals, and that matters raised in the disclosures are properly investigated.

3.1.8 Maintaining the integrity of the Code of Conduct

For a council's Code of Conduct to be effective, people need to have confidence in the integrity of the Code of Conduct, the processes for dealing with allegations of breaches and the outcomes. Certain types of conduct have the effect of undermining this confidence.

Examples of conduct of this type include:

» publicly making allegations without reporting them so they can be properly and fairly considered in accordance with prescribed code of conduct processes

» making complaints for political or improper purposes

» leaking information about an investigation to embarrass someone or to attack the investigation process

» taking reprisal action against the complainant or a person who has dealt with a complaint.

Where respect and confidence in a council's Code of Conduct is lost, it becomes difficult for a council to promote and enforce appropriate standards of conduct. This often results in a council becoming unable to govern itself and the loss of community confidence in the council.

For this reason, the Office of Local Government views conduct that undermines confidence in a council's Code of Conduct seriously. Such conduct would be in breach of the Code of Conduct. Under the prescribed procedures, councils are obliged to refer such conduct by councillors to the Office of Local Government. Such behaviour constitutes misconduct and may result in suspension for up to six months or disqualification from holding office for up to five years.

3.2 Councillors and public comment

It is common for councillors to be asked by journalists to comment on council policy or decisions.

There are certain protocols that councillors must follow when responding to the media on council policy or decisions.

Many councils have a policy which permits only the mayor, the general manager or the public officer to speak on behalf of the council. In such cases individual councillors remain free to make personal comments to the media but not to speak on council's behalf.

When speaking publicly, councillors should ensure that they clarify whether or not they are acting on behalf of council and/or as an individual councillor.

A level of qualified privilege applies to councillors under the law, which recognises that councillors may need to speak freely and publicly in the discharge of their civic duties.

However, this should be treated with caution. Qualified privilege covers only statements made at a council or committee meetings in the discharge of a councillor's duties which are pertinent to the business of local government. Such statements also need to be made in good faith and must not be made maliciously.

Councillors are subject to defamation law and it is contrary to law to injure another person's reputation in the eyes of society through the written word, pictorially or in speech.

If a councillor becomes aware of media interest in a particular aspect of council business that could be contentious, they should consider bringing it to the attention of the general manager.

To help create a positive, safe and harmonious organisational culture, councillors should endeavour to work out any issues or differences of opinion privately, not publicly, and especially not through the media.

Further information about the relationship between councillors and the media can be found in *Appendix 5—Dealing with the media*.

SECTION 4

MAKING THE MOST OF MEETINGS

4.1 How councils debate and make decisions

Council meetings are important because they are the mechanism through which councillors make decisions regarding policies and programs of the council to meet the needs of the community. Decisions of a council can only be made by resolution at a properly convened meeting.

Councillors are expected to attend all council meetings and all meetings of any committee of which they are a member, unless leave is sought and approved. Councillors need to do a good deal of reading in preparation for meetings.

A decision supported by a majority of the votes at a meeting of the council at which a quorum is present is a decision of the council.

As all council decisions are made on a majority basis, councillors need to understand the meeting process and the need to work as a team to get the best outcome for the community. For this, councillors need good communication skills to state their position as well as a willingness to listen to diverse views and compromise when necessary.

The success of meetings depends on councillors working as a team, respecting diverse opinions and allowing all points of view to be heard. Meeting success also depends on following good meeting practices.

4.2 How often council meetings are held and how they are conducted

Council meetings must be conducted in accordance with the Local Government Act 1993 and Regulation, and council's Code of Meeting Practice, if it has one.

How and when council meetings are held is up to each council to decide, although the *Local Government Act 1993* requires every council to meet at least 10 times a year, each time in a different month.

Some councils meet only once a month. Many larger councils meet more frequently because they have a higher volume of business. Councillors should be given at least three days' notice of regular meetings, unless there are extraordinary circumstances that make it important to have a more urgent meeting.

All formal council meetings must be held in accordance with requirements in the *Local Government Act 1993*, the *Local Government (General) Regulation 2005* (Regulation) and the council's Code of Meeting Practice, if it has one, and Code of Conduct.

This is because meeting procedures contribute to good public decision-making and increase council's transparency and accountability to its community.

The public has the right to see the agenda and business papers for each meeting, free of charge, and attend all council meetings and council committee meetings except in special circumstances outlined in the Act (see the section below on *closing meetings*).

Role of the mayor or chairperson at meetings

The mayor is usually the chairperson unless he or she is absent or wishes otherwise. The chairperson maintains order at the meeting and keeps discussions to the point and to the agenda, amongst other things. This helps ensure meetings are conducted with decorum and decisions are made in an open, transparent way.

While councillors have one vote each, the chairperson has a casting vote if there is a split decision. Therefore, it is particularly important that the chairperson sees that the debate is conducted in a fair and orderly manner, regardless of his or her own views about the issue under discussion. The chairperson may exercise their second or 'casting' vote as he or she sees fit.

Role of the general manager and staff at meetings

The general manager can attend council meetings but is not permitted to vote. However, the council may resolve to exclude the general manager from a meeting if it is dealing with matters relating to the general manager's employment or standard of performance.

Some councils also have other senior staff attend meetings for the purpose of answering any technical questions that arise out of the council's business papers. This can be an effective way of ensuring that councillors understand the issues before them.

The presence of council staff at meetings should not be used to raise matters that are not on the meeting agenda or that do not reasonably arise from the business papers. Such conduct does not promote a positive and healthy working relationship between the governing body and the administrative arm of council.

The Regulation allows questions to be put to council staff at meetings through the general manager. However, staff are entitled to reasonable notice of the question and sufficient time to respond. A staff member is entitled to refuse to reply to a question. The chair of the meeting is expected to make sure these questions are put succinctly, directly and without debate.

Quorum

There must be a quorum for a council meeting to take place (section 368 of the Act). A quorum is the majority of councillors who hold office at the time of the meeting and therefore does not include councillors who are suspended from office. For example, if a council has nine councillors then the quorum will be five councillors.

Agendas

It is important that meetings only deal with matters listed on the agenda in the order in which they are listed. This allows councillors and members of the public to follow the items being debated and the decisions being made. If the order of the agenda is to be changed it should be done so by a resolution at the beginning of the meeting.

The Regulation requires that the only business to be transacted at a council meeting is the business that is already before the council, business that relates to a matter already before the council and business of which the required notice has been given.

A matter for which required notice has not been given can only be dealt with if a motion is passed to have the matter dealt with and the chairperson rules it is of great urgency.

Motions

A motion is a proposal to be considered by council at a meeting. It is a request to do something or to express an opinion about something. A motion formally puts the subject of the motion as an item of business for the council.

The number of motions put forward by a councillor cannot be limited. As long as notice and other procedures are followed, a councillor can put forward as many motions as they wish.

When putting forward motions councillors need to balance their civic responsibility for representing the interests of the community with their obligation to use council's resources effectively and efficiently.

Voting

In order to vote at a meeting a councillor must be present. There is no available mechanism for proxy voting.

If a councillor is present at a meeting during voting they are taken to have voted whether they intended to or not. Clause 251 of the Regulation states that a councillor who is present at a meeting but fails to vote is taken to have voted in the negative.

The only way for a councillor to abstain from voting is to leave the meeting.

Closing meetings

All meetings of a council are open to the public unless they have been closed in the limited circumstances set out in Section 10A of the *Local Government Act 1993*. It is important that councillors familiarise themselves with the details of this section of the Act. This states that councils may only close their meetings to the public to consider:

» personnel matters concerning individuals—this does not include matters relating to councillors

» personal hardship of residents or ratepayers

» commercial-in-confidence information

» material which if disclosed would prejudice the maintenance of law

» security matters

» legal advice

» information regarding items of Aboriginal significance

» matters considered under the council's Code of Conduct.

Section 10B of the *Local Government Act 1993* further limits the powers given to a council by section 10A to close its meetings to the public.

Section 10B provides that a council meeting should only be closed to preserve the relevant confidentiality, privilege or security. In determining whether the discussion of a matter in an open meeting would be contrary to the public interest, embarrassment to the council, councillors or its employees is irrelevant.

Apart from the circumstances prescribed under section 10A in which it is permissible for councils to close their meetings, all other council decisions must be made in an open and transparent manner. This ensures transparency and accountability of council decision making and encourages community participation in the decision-making process.

Resolutions or recommendations made at a closed part of a council meeting must be made public by the chairperson of the meeting as soon as practical after the closed part of the meeting has ended. For example, the chairperson would read out the resolutions passed in the closed part of the meeting when the meeting is re-opened and the minutes of the ordinary meeting will record the words of the resolution passed in the closed part of the meeting.

A resolution or recommendation should be phrased in such a way as to protect any confidential detail. This allows the public to know what the council or committee has decided at the closed part of the meeting without revealing confidential information.

The committee of the whole

When the rules of debate are suspended while a specific matter is debated, this is referred to as a 'committee of the whole'. Councils will

form a committee of the whole to overcome the limits on the number and duration of councillor speeches referred to in clause 250 of the *Local Government (General) Regulation 2005.*

For example, clause 250 states that a councillor must not speak on a matter for more than five minutes. If a council resolves to move into a committee of the whole to consider a matter, a councillor can speak for more than five minutes on that matter.

Moving into a committee of the whole does not close the meeting to the public. However, where a council closes part of a meeting under section 10A of the Act, the council may also move into committee of the whole if it wants to suspend the rules of debate for that part of the meeting.

Recommendations made by a committee of the whole should be put to the council meeting when the rules of debate are resumed, and included in the council's minutes.

In a closed meeting that has resolved into a committee of the whole, the committee's recommendations as well as the resolutions passed in the closed part of the council meeting must form part of the council's minutes of the meeting.

Mayoral minutes

Clause 243(1) of the Regulation states that the mayor may put to a meeting, without notice, any matter which the council is allowed to deal with or which the council officially knows about. This covers any council function under the Act or other legislation, or any matter that has been brought to the council's attention, for example, by letter to the mayor or the general manager.

The mayor may move that a mayoral minute be adopted without the motion being seconded. Mayoral minutes should not be used to introduce, without notice, matters that need research or a lot of consideration by the councillors before coming to a decision. These types of matters

would be better placed on the agenda, with the usual period of notice being given to councillors.

4.3 Different types of council meetings

There are three main types of formal council meetings which must be conducted in accordance with the *Local Government Act 1993* and Regulation, and the Code of Meeting Practice, if a council has one:

Ordinary council meetings

These meetings are the forum where the governing body conducts its core business. The general manager is responsible for giving each councillor and the public at least three days' notice of the time and place of each meeting as well as the agenda and business papers for that meeting.

It should be noted that if a councillor is absent from three or more consecutive ordinary meetings without leave, their office automatically becomes vacant.

If a councillor is going to be absent from an ordinary meeting of council, that councillor must apply for a leave of absence. Merely offering or accepting an apology is not enough.

Extraordinary council meetings

Extraordinary meetings may be called on occasions to address business that cannot be postponed. Three days' notice is not required for these meetings if the meeting is called in an emergency (section 367 of the Act).

Council committee meetings

In addition to council meetings, councils can establish committees to oversee specific functions, projects or programs and report back to the council on those matters. A council committee is one where all the members of the committee are councillors. The committee must be chaired by the mayor or a Chair elected from

its membership or by the council. The mayor does not have to be the Chair of the committee.

The meetings of council committees should also be conducted in accordance with the meeting rules prescribed under the Act and Regulation and council's Code of Meeting Practice, if the council has adopted one.

Each councillor, whether a member of a committee or not, is entitled to attend and speak at a meeting of a council committee. However, only councillors who are members of the committee are entitled to put business on the committee's agenda, move or second a motion at the committee meeting, or vote at the meeting.

Code of Meeting Practice

Ordinary and extraordinary council meetings and meetings of committees comprising wholly of councillors must be conducted in accordance with the meeting rules prescribed under the Act and Regulation.

Councils may currently choose to adopt their own Code of Meeting Practice. This Code must incorporate the provisions of the Act and Regulation and may not be inconsistent with them (section 360 of the Act). If a council has adopted a Code of Meeting Practice, its meetings must comply with its provisions as well. A Code of Meeting Practice must be developed in consultation with the community and be made publicly available.

Recent amendments to the Act provide for the prescription of a model Code of Meeting Practice comprising of mandatory and non-mandatory provisions. When these amendments commence, all councils will be required to adopt a code of meeting practice that at least incorporates the mandatory provisions of the model meeting code.

Other meeting types

The following meeting types may involve councillors but are not formal meetings. These meetings do not have to be conducted in accordance with the meeting rules prescribed under the *Local Government Act 1993* and Regulation, and a council's adopted Code of Meeting Practice, if it has one:

Advisory committees

These differ from council committees and membership can include non-councillors. While the meeting procedures in the Act and the Regulation do not apply, good meeting protocols should be maintained. Councils should, at minimum, ensure that all committees meet basic accounting and governance standards, as appropriate.

Workshops or briefing sessions

Councils may hold workshops for the purpose of conducting in-depth discussions on certain topics. Formal decisions are not made at workshops but these sessions provide the time needed to explore more important or complex issues in detail. A workshop may involve councillors, council staff and invited participants.

Workshops should not be used for detailed or advanced discussions where agreement is reached and/or a de-facto decision is made. Any detailed discussion or exchange of views on an issue, and any policy decision from the options, should be left to the open forum of a formal council or committee meeting.

The Office of Local Government recognises the value of workshops or information sessions in developing councillor knowledge and expertise, and in assisting them to discharge their role as public officials. However, where briefing sessions are held in relation to development applications or business enterprises, a council needs to remember its obligations and responsibilities under its Code of Conduct, and community perceptions in terms of unfair advantage and transparency of process.

4.4   Other resources

Office of Local Government – Meetings Practice Note No. 16

The Office of Local Government has issued *Meetings Practice Note No. 16* to help councils conduct their meetings appropriately. It is not designed to be a complete guide to meeting procedures but it does cover frequently asked questions.

Meeting procedures contribute to good public decision-making and increase council's transparency and accountability to its community. While legislation sets out certain procedures that must be followed in council and committee meetings, meeting procedures vary between councils. These differences usually reflect local cultural practices and priorities.

The Practice Note is a guide for councils, councillors and members of the public. It does not give legal advice. Councils may seek their own legal advice on any issues of concern.

A copy of the *Meetings Practice Note* is available on the Office's website at *www.olg.nsw.gov.au*.

Office of Local Government—Guidelines on the Closure of Council Meetings to the Public

The Office of Local Government has also issued guidelines to assist councils to meet their statutory obligations when closing their meetings to the public.

The Office recognises there will be occasions where councils are required to consider information which, by its nature, is confidential and ought not to be publicly disclosed. The Act recognises that on such occasions, the public interest in protecting confidential information will outweigh the public interest in ensuring accountability through open meetings.

This publication offers practical guidance on how councils can appropriately weigh these competing public interests and ensure that they comply with their obligations under the Act when closing meetings to the public. They do this by addressing commonly asked questions that have been raised with the Office about the closure of council meetings and provide best practice examples.

These guidelines are also available on the Office of Local Government website.

Other publications

Publications such as *Joske's Law and Procedures at Meetings in Australia* give general guidance on running meetings.

However, councillors should be mindful that such publications may provide information which is different to that outlined in this section.

Where such contradictions exist, the *Local Government Act 1993* and Regulation, and the council's Code of Meeting Practice should be followed.

SECTION 5

SOUND PLANNING AND REPORTING

Planning decisions affect communities, the environment and quality of life and usually have long-lasting consequences.

Councillors are involved in overseeing the development of, carrying out of and reporting on many council plans and activities.

Councils are responsible for different types of planning, including community strategic planning and land use planning. Some council plans and reports have strict legal requirements about what needs to be included in them and how and when a council needs to consult with its community during their development.

5.1   Community strategic planning

Community strategic planning is the process by which a council, with its community, establishes a vision for the future of the local government area, and develops goals, objectives, strategies and actions to achieve that future. To perform their role effectively, councillors need to actively participate in determining the strategic direction for the community and the planning process supporting it.

Councils develop a hierarchy of plans which fall out of the Community Strategic Plan, known as the Integrated Planning and Reporting framework. The Diagram below illustrates the framework:

Community Strategic Plan
10 years +

Community Engagement

Delivery Program
4 years

Operational Plan

Resourcing Strategy
» Workforce Plan
» Long-Term Financial Plan
» Asset Management

Perpetual monitoring and review

Annual Report

Integrated Planning and Reporting Framework

The Integrated Planning and Reporting framework enables councils (with their communities) to ask and answer some key questions. The key planning questions include:

» Where are we now?

» Where do we want to be in the future?

» How will we get there?

» When will we know when we've arrived?

The key reporting questions include:

» How much did we do?

» How well did we do it?

» Is anyone better off as a result? If not, why not?

The plans councils prepare under the Integrated Planning and Reporting framework must adequately address the quadruple bottom line:

» social and community considerations

» economic considerations

» environmental considerations

» civic leadership and governance considerations.

The plans must also prepare councils for a sustainable future, one that ensures that future generations aren't left with an unsustainable legacy as a result of irresponsible decisions made now.

The Integrated Planning and Reporting framework recognises that councils don't exist in isolation, but are part of a larger natural, social, economic and political environment that influences and shapes their future direction. Nor do council plans exist in isolation: land use and infrastructure planning has social, environmental and economic outcomes, and vice-versa.

The Integrated Planning and Reporting framework opens the way for councils and their communities to have important conversations about funding priorities, service levels, preserving local identity and planning in partnership for a more sustainable future.

5.1.1 An overview of the Integrated Planning and Reporting framework

Integrated Planning and Reporting principles

The following principles for strategic planning apply to the development of the Integrated Planning and Reporting framework by councils under the *Local Government Act 1993* councils should:

» councils should identify and prioritise key local community needs and aspirations and consider regional priorities

» councils should identify strategic goals to meet those needs and aspirations

» councils should develop activities, and prioritise actions, to work towards the strategic goals

» councils should ensure that the strategic goals and activities to work towards them may be achieved within council resources.

» councils should regularly review and evaluate progress towards achieving strategic goals

» councils should maintain an integrated approach to planning, delivering, monitoring and reporting on strategic goals

» councils should collaborate with others to maximise achievement of strategic goals

» councils should manage risks to the local community or area or to the council effectively and proactively

» councils should make appropriate evidence-based adaptations to meet changing needs and circumstances.

Community Strategic Plan

The community strategic plan is the highest-level plan that a council will prepare.

The plan identifies the community's main priorities and aspirations for the future (at least 10 years), and plans strategies for achieving these goals.

While councils prepare community strategic plans on behalf of their communities, they are not wholly responsible for implementing the plan.

Other partners such as State agencies, community groups and business may also be engaged in delivering the long-term objectives of the plan.

The community strategic plan is reviewed and updated (or a new version is prepared) by each new council following its election to ensure it remains current and reflects contemporary local and regional priorities.

Community Engagement Strategy

Councils must prepare and implement a community engagement strategy for engagement with the local community in the development and review of the community strategic plan and other plans, policies and programs (other than routine administrative matters). The community engagement strategy must be based on the social justice principles of access, equity, participation and rights.

As a result of recent amendments to the *Local Government Act 1993*, councils will soon be required to adopt a more broadly-based community engagement strategy for engagement with the local community when developing all of their plans, policies and programs and for the purpose of determining their activities other than routine administrative matters.

Delivery Program

The delivery program translates the community strategic plan goals into actions. It is each newly-elected council's commitment to the community, outlining what it intends to do toward achieving the goals of the community strategic plan during its term of office.

It becomes the single point of reference for all principal activities undertaken by Council. All plans, projects, activities and funding allocations must be directly linked to the four-year delivery program.

Operational Plan

The delivery program is supported by an annual operational plan. This document spells out the details of the delivery program, identifying individual projects and activities that will be undertaken in that year to achieve the commitments of the delivery program.

The operational plan is supported by a detailed budget and a statement of revenue policy, which also sets the fees and charges for that year.

Resourcing Strategy

The resourcing strategy resources the implementation of the community strategic plan, delivery program and operational plans. It consists of three components:

» long-term financial planning (see 6.2.1 for further information)

» workforce management planning

» asset management planning (see 6.4.1 for further information).

Long-Term Financial Plan

Each council must prepare a long-term financial plan (at least 10 years), which is used to inform decision-making during the development and review of the community strategic plan and the delivery program.

The long-term financial plan is updated annually as part of the development of the operational plan, and is reviewed in detail as part of the review of the community strategic plan following each local government election.

Workforce Management Strategy

Each council must develop a workforce management strategy to address the human resourcing requirements of its delivery program.

The workforce management strategy therefore has a four-year minimum time frame.

Asset Management Planning

Councils must account for and plan for all the existing assets it owns, and plan for any new asset solutions proposed in the community strategic plan or delivery program.

To achieve this, councils must prepare an asset management strategy, incorporating an asset management policy, as well as asset management plans for each class of assets under the council's control. The strategy and plans must have a minimum 10-year time frame.

Asset management plans must identify service standards, and contain long-term projections of asset maintenance, rehabilitation and replacement costs.

Councils must report on the condition of their assets in their annual financial statements, in line with the *Local Government Code of Accounting Practice and Financial Reporting.*

Annual Report

The annual report is one of the key points of accountability between a council and its community.

It is not a report to the Office of Local Government or the NSW Government; it is a report to the community.

The annual report focuses on council's implementation of the delivery program and operational plan because these are the plans that are wholly the council's responsibility.

The report also includes some information that is prescribed by the *Local Government (General) Regulation 2005*. This information has been included in the Regulation because the NSW Government believes that it is important for community members to know about it—to help their understanding of how council has been performing both as a business entity and a community leader.

The annual report in the year of a local government election also includes a report as to the state of the environment in the local government area, specifically in relation to the objectives established for the environment by the community strategic plan.

An outgoing council will table a report at its final meeting, for inclusion in that year's annual report, which reports on the progress of implementing the community strategic plan.

The annual and end of term reports should each reflect the quadruple bottom line, including reporting on how effective the strategies have been in progressing the social and community, economic, environmental and civic leadership and governance objectives.

5.1.2 Roles and responsibilities of the mayor, councillors and general managers in strategic planning

The success of the planning process relies heavily on the commitment of the mayor and the general manager as well as all councillors. Without strong support and commitment, the council will find it difficult to develop and implement a meaningful suite of plans.

The Act prescribes specific responsibilities for the mayor, the governing bodies of councils, individual councillors and the general manager respectively in the development and implementation of councils' strategic plans and programs.

The mayor, as the leader of the council, is the public face of the planning process. The mayor is responsible for explaining the purpose of the community strategic plan to the community and for encouraging public support for the planning process.

The mayor is responsible for:
» ensuring the timely development and adoption of the strategic plans and programs
» promoting the effective and consistent implementation of the strategic plans and programs
» promoting partnerships between the council and key stakeholders to deliver the council's strategic objectives

» advising, consulting with and providing strategic direction to the general manager in relation to the implementation of the strategic plans.

The governing body is responsible for:

» developing and endorsing the community strategic plan, delivery program and other strategic plans, programs, and strategies of the council

» determining and adopting a rating and revenue policy and operational plans that support the optimal allocation of the council's resources to implement the strategic plans (including the community strategic plan) and for the benefit of the local area, and

» ensuring as far as possible that council acts in accordance with the plans, programs, and strategies of the council.

The ability of the mayor and councillors to capture a vision for the community's future, and to inspire others to participate in that future, will be fundamental to the success of the process.

It is important that all councillors support and are fully committed to the value of strategic planning. For this reason, each individual councillor has a statutory responsibility to participate in the development of the Integrated Planning and Reporting framework.

Similarly, the general manager has a pivotal role to play in mapping out the council's approach to the planning process and ensuring the community receives the information it needs to participate in a meaningful way.

The general manager will also be responsible for guiding the preparation of the community strategic plan and council's response to it via the delivery program.

She or he is responsible for implementing the delivery program and will report regularly (at least six-monthly) on progress and ensure that it becomes a living document with regular updates and reviews, as required.

The general manager's clear understanding of the planning process and the way the various components are integrated will be fundamental to its success.

The general manager has an important leadership role to play in ensuring that each member of council's staff understands how their particular work activity contributes to achieving the objectives of the community strategic plan and what is expected of them in delivering its outcomes.

5.1.3   Assessing strategic plans

One of the most important roles of the governing body of a council is to endorse strategic plans on behalf of its community.

As well as the community strategic plan, councils may prepare other strategic plans which are not required by legislation but which may assist in implementing the community strategic plan. These may include cultural plans, public health plans, economic development plans, environmental management plans and crime prevention plans.

In order to endorse strategic plans, councillors must be able to assess their appropriateness. Councillors should first be satisfied that the plan as a whole makes sense and that each part is logically supported with sound analyses and actions.

The questions in Section 2.4 *Effective decision-making* and in Section 6.2.1 *Long term financial planning* provide a starting point for councillors when assessing strategic plans. However, a framework such as the 'integrity model' may also assist councillors.

5.2   Land use planning

Land use planning refers to the long term development or conservation of an area and the establishment of a relationship between local objectives and regional goals.

The integrity model asks the following questions:

» **Comprehensibility**: Can you understand the plan and explain it to the community?

» **Appropriateness**: Does the plan fit with the council's strategic direction and comply with its legislative and policy framework?

» **Sustainability**: Are the assumptions underlying the plan valid and based on adequate financial, social and environmental analyses?

» **Feasibility**: Is the council able to successfully respond to any challenges contained in the plan? Are council's resources sufficient to support the plan?

» **Accountability**: Does the plan contain adequate performance measures so that management can report on the progress of the plan in a timely manner?

The NSW Department of Planning and Environment is responsible for the administration of the *Environmental Planning and Assessment Act 1979* (EPAA, EP&A Act), which provides the framework for development decisions made by local government in NSW.

The objects of this Act include encouraging "the proper management, development and conservation of natural and man-made resources" and ecologically sustainable development.

In May 2016, the Minister for Planning announced plans to update key areas of land-use planning policy that the NSW Government is looking to improve, including community participation, plan making and development controls, local development, State significant proposals, improving governance and review processes, enforcement and reporting and promoting good design.

These reforms recognise the crucial role that councils play in engaging their communities about long-term planning priorities. Enabling legislation is expected to be introduced into Parliament later in 2017.

Additionally, in August 2017, the Parliament passed legislation introducing mandatory Independent Hearing and Assessment Panels (IHAPs) for councils in metropolitan Sydney and Wollongong City Council. Other councils can continue to use IHAPS if they choose to.

These councils will be required to use IHAPs for assessing DAs between $5 million and $30 million in value, when there is a conflict of interest for the council or developer, or when they are of a sensitive nature. Local council staff will process applications under $5 million, which will include most applications relating to individual houses or alterations to existing houses.

IHAPs will comprise four members: two expert members and one community representative, all chosen by the council, and a chair chosen by the Minister for Planning. The latter is an important anti-corruption measure and will ensure that the chair is appropriately qualified and independent.

The Government introduced these amendments with the intention of bringing additional expertise, transparency and integrity to the assessment of DAs at the local level, and giving communities and ratepayers greater certainty about planning decisions.

IHAP members will be required to adhere to a code of conduct covering matters such as conflicts of interest. Each panel will be accountable to its council, and the council will be required to provide regular reports to the Planning Secretary on the panel's activities.

The establishment of IHAPs is intended to allow councillors to focus on setting the vision and strategy for land use in their local government

area, reflecting the current needs and future aspirations of the local community. This strategic planning then provides the rationale and context for setting the development controls which panels will apply and enforce. This will allow the focus of planning in this State to shift from battles over individual DAs to strategic planning.

State Environmental Planning Policies & Local Environmental Plans

The planning framework in NSW is based on Environmental Planning Instruments. These planning instruments include State Environmental Planning Policies (SEPPs) and Local Environmental Plans (LEPs). SEPP and LEP Instruments are statutory plans made in accordance with Part 3 of the EPPA.

They exist to guide and control development and land use in NSW. Generally, SEPPs specify planning controls for certain areas and certain types of development. SEPPs can also identify the particular development assessment system that must apply to particular types of developments and identify the type of environmental assessment required for developments.

The NSW Government introduced a Standard Instrument for LEPs as part of its ongoing reform of the State's planning system. Councils are able to add to the template to set out detailed local planning rules addressing local issues within their area. More detailed information about LEPs and the planning system for NSW can be found on the NSW Department of Planning and Environment's website at *www.planning.nsw.gov.au*.

All local councils in NSW are planning and consent authorities for the purposes of the EPPA. In this role they are responsible for the development of a standardised LEP for their local government area and any amendments made to those LEPs.

LEPs may be made for all or part of a local government area and they determine the development status and controls to apply to any site within the area over which the LEPs have effect, and will guide and control planning decisions, through the establishment of zoning and relevant development controls.

LEPs provide a framework for the way land can be used in a particular area and are the main planning tool used to shape the future of communities and also ensure local development is done appropriately. Local councils develop and amend their LEPs in consultation with their local government communities and other relevant stakeholders.

LEPs and amending LEPs are made by following the planning proposal and Gateway Determination processes set out in the EP&A Act, which is administered by the Department of Planning and Environment.

Development Control Plans (DCPs)

In addition to SEPPs and LEPs, local councils can adopt and implement development control plans (DCPs) in their local government areas. DCPs provide for more detailed planning and design guidelines and controls to support the objects of a council's LEP.

DCPs typically apply to specific types of development or specific areas of land, and provide detailed development guidelines and controls. DCPs outline controls and parameters for development proposals for these specific activities or areas.

DCPs are also prepared by councils in consultation with their local communities. DCPs provide a detailed guideline that illustrates the controls that apply to particular types of development or particular areas in a council's area. To be valid, DCPs must generally conform to the provisions of the relevant LEP. Similar requirements exist for public exhibition as for LEPs.

Councils may choose to develop DCPs in order to:

» identify development as advertised development, which then allows for notification of the proposal to adjoining owners/occupiers and notice being given in the local newspaper. Submissions on the proposal may then be made to the council prior to consideration of consent

» provide additional notification requirements for certain types of developments

» specify additional matters to be taken into account in making orders.

Environmental Impact Statements (EIS)

A development application for a project, identified as a designated development under the Regulations or a planning instrument, must be accompanied by an environmental impact statement (EIS).

Such projects are usually in the nature of major works such as industrial facilities, extractive industries and the like. In such cases, public exhibition of the application and any accompanying information for at least 30 days is required.

Objections to the proposal may be taken to the NSW Land and Environment Court if consent is granted subsequent to public submissions being received and considered by council as part of the evaluation process. If consent is refused, the applicant may also appeal the decision of the council.

Conditions of consent

A council may choose to allow a development subject to certain conditions. These conditions must generally be imposed for a planning purpose. They should be applied fairly, relate to the development and be reasonable. Conditions imposed in the consent are open to being tested by appeal to the NSW Land and Environment Court.

Regional strategic planning

The NSW Department of Planning and Environment is rolling out Regional Plans outside of the Sydney Metropolitan area, which will provide an overarching planning framework for local councils in regional areas to apply through their LEPs.

Each regional plan will be overseen by a Coordinating and Monitoring Committee, which will be jointly chaired by the NSW Department of Planning and Environment and the relevant Joint Organisation of Councils.

Greater Sydney Commission

The Greater Sydney Commission (GSC) was formed in 2015 to bring best practice planning and governance to Greater Sydney by integrating land use, transport and infrastructure planning and collaborating with State agencies, councils and the Australian Government.

The GSC comprises four Commissioners (including the Chief Commissioner) and six District Commissioners.

The GSC is developing District Plans for each of the six planning districts in consultation with local government and the broader community.

The GSC will also play a significant role in the operation of the Sydney Planning Panels, which will replace Joint Regional Planning Panels from July 2016.

5.2.2 Public land management

Councils have responsibilities under the *Local Government Act 1993* for the management of public land in their areas.

The Act defines public land as "any land (including a public reserve) vested in or under the control of the council". However, public land does not include a road, Crown land, commons (as defined under the *Commons Management Act 1989*), land subject to the *Trustees of Schools of Arts Enabling Act 1902*, or a regional park under the *National Parks and Wildlife Act 1974*.

Public land management is a complex area and council decisions relating to this issue can often be the subject of intense public interest and scrutiny. It is therefore important that councillors have an understanding of the area.

The Office of Local Government has prepared *Practice Note No.1—Public Land Management* to assist councils in their management of public land under the *Local Government Act 1993*. The Practice Note focuses on the requirements of the Act and related issues and covers areas such as the classification and reclassification of public land; plans of management; and leasing, licensing and the granting of other estates over community land.

A copy of the *Public Land Management Practice Note* can be downloaded from the Office of Local Government's website: *www.olg.nsw.gov.au*.

Management of Crown land

Crown land currently comprises approximately half of all land in NSW and is managed primarily by the NSW Department of Industry, Lands and Forestry Division.

The legislative framework under which crown land is managed in NSW has recently been significantly amended, implementing many of the recommendations of the Crown Lands Management Review process undertaken by the Government.

A key finding of the review was that the NSW Government should continue to manage land of State significance. However, land of local importance should be subject to local level decision-making and this is best achieved by transferring these lands to local councils.

The Crown Lands Management Act 2016 (the Act) and the Crown Lands Legislation Amendment Act 2017 have recently passed Parliament and the majority of the legislation will commence in early 2018.

The Department of Industry, Lands and Forestry Division will be conducting information sessions for councils to support the phase in of the new legislation. However, below is a summary of the key components of the framework affecting councils, as provided by the Department of Industry.

The new legislation allows land that is identified as being primarily land of local community value, for example local parks and sporting grounds, to be vested in councils.

The identification of land of local significance will be guided by local land criteria. It will also be detailed in regulations published later this year.

There are a number of safeguards associated with these legislative provisions.

» The new Act explicitly requires council consent to any transfers. There will be no forced transfers of crown land to council ownership – it will be entirely voluntary and by agreement. Councils will have the opportunity to consider the values of the land, including any resourcing implications, before agreeing to any voluntary land transfers.

» Any land subject to an undetermined Aboriginal land claim may only be vested in a local council with the consent of the claimant (either Local Aboriginal Land Council or the NSW Aboriginal Land Council).

» The new Act allows for covenants to be placed on title to land. There may be circumstances where it is appropriate to put covenants on title to land that is vested in councils to restrict how the land is used and managed into the future. This will be considered on a case by case basis, as land is put forward for transfer of ownership, and will be subject to council agreement.

Once land is transferred, it is no longer crown land and is held by council in freehold. Any income generated by that land will then be retained by the council.

Importantly, the new legislation allows councils to manage crown land under the provisions of the Local Government Act 1993 (LGA) for public land. This is intended to reduce the duplication and drain on resources experienced by councils resulting from the current dual legislative frameworks, where some crown land has been managed under the LGA and some under the Crown Lands Act.

Crown reserves managed by councils will generally be classified as community land under the LGA and categorised under the LGA, with the Minister for Lands' approval.

With the Minister's consent, councils may seek to classify crown land which they manage as operational, where the land does not fall within the categories of community land under the LGA or where classification of the land as operational is required to allow the current land use to continue. This may be required in circumstances such as where crown land is being used for long term residential accommodation or cemeteries.

Generally, councils will not need the Minister for Lands and Forestry's approval for dealings on crown reserves. Instead, in most cases local councils will manage these reserves under the requirements for community land under the LGA.

The requirement under the LGA to have plans of management for each reserve will be phased in over time.

Additionally, financial assistance will be available to assist with the costs of preparing plans of management. To support the management and up-keep of reserves, councils will continue to be eligible to apply for grants from the Crown Reserves Improvement Fund (formerly the Public Reserve Management Fund Program).

5.3   Natural Resource Management (NRM)

Natural resource management (NRM) is the management of natural assets including vegetation, land, water and soil in a manner consistent with the principles of ecologically sustainable development. Councils make a significant contribution to the management and protection of natural resources in NSW.

Councils have a range of functions, powers and responsibilities that can influence NRM, on both private and public land. These include:

» **strategic and statutory planning:** including settlement or land use strategies, land use zonings and provisions or clauses in LEPs/DCPs

» **plans of management**: including mapping natural assets or hazards

» **development assessment**: including conditions of consent and development contributions

» **incentive programs**: including rate rebates, free tree giveaways and acquisition programs for environmentally significant lands

» **on-ground works**: including site-based rehabilitation projects, tree planting/ revegetation projects/bush regeneration, roadside vegetation management, noxious & environmental weed control, wetland and/ or water body restoration, water quality monitoring and stormwater management and control

» **community engagement:** including information (brochures, website, and factsheets), community feedback, community focus groups, community standing advisory committees, and partnerships with local community groups.

Councils are encouraged to incorporate relevant national, State-wide and catchment priorities and targets into their land use and corporate planning processes in order to deliver an effective and coordinated approach to NRM.

In NSW, NRM is delivered on a regional basis through a variety of stakeholders, including all levels of government, Local Lands Services (which has replaced Catchment Management Authorities), Landcare, Bushcare and Coastcare Networks, landholders, and the general community.

Local lands services (LLS) work in partnership with local councils to ensure best practice management of natural resources, including weed management and pest control in areas under council jurisdiction.

LLS provide guidelines, training and incentive programs and assist councils with weed and pest management plans.

At a State level, Regional Plans are being rolled out by the NSW Department of Planning and Environment, which will provide an overarching planning framework for local councils in regional areas (except the Far West) to apply through their LEPs.

In the Sydney Metropolitan area, the overarching land use planning framework will be the six District Plans being developed by the Greater Sydney Commission in consultation with local government, and the broader community.

SECTION 6

FINANCIAL MANAGEMENT

The responsibility and accountability for the financial management of a council rests with the governing body.

Although councillors are responsible and accountable for the financial management of a council, councillors should not be involved in the detailed assessment of complex financial figures.

Rather, councillors are responsible for making strategic decisions in relation to the financial management of the council that determines or affects the types of services, level of services and the strategic direction of the council.

Councillors need to know:

» How does council get revenue to support its operations?

» Are there restrictions on how this money can be spent?

» What activities does council fund?

» What information is required to assess the financial health of council?

6.1   Principles of sound financial management

Governing bodies of councils have the following responsibilities in relation to the financial management of councils:

» to ensure as far as possible the financial sustainability of the council

» to determine and adopt a rating and revenue policy and operational plans that support the optimal allocation of the council's resources to implement the strategic plans (including the community strategic plan) and for the benefit of the local area

» to keep under review the performance of the council, including service delivery.

The *Local Government Act 1993* prescribes principles of sound financial management. These are intended to guide councils in the exercise of these and other functions in a way that facilitates local communities that are strong, healthy and prosperous.

The following principles of sound financial management apply to councils:

» Council spending should be responsible and sustainable, aligning general revenue and expenses.

» Councils should invest in responsible and sustainable infrastructure for the benefit of the local community.

» Councils should have effective financial and asset management, including sound policies and processes for the following:

> performance management and reporting

> asset maintenance and enhancement

> funding decisions

> risk management practices.

» Councils should have regard to achieving intergenerational equity, including ensuring the following:

> policy decisions are made after considering their financial effects on future generations

> the current generation funds the cost of its services.

6.2   Sources of revenue

As discussed briefly in Section 1, councils obtain revenue from four main sources. These are rates and annual charges, user charges and fees, grants and other sources.
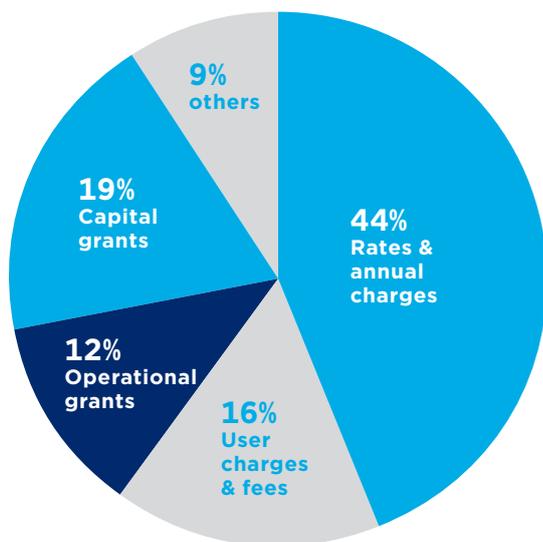
Sources of revenue for NSW Councils for 2014/15

6.2.1   Rates

Generally, a council's main source of revenue is from rates. Rates are local taxes that are levied on the basis of property values, issued by the Valuer General of NSW, within the local government area.

Growth in each council's total rates income is capped to a percentage each year roughly in line with inflation, which is announced by the Independent Pricing and Regulatory Tribunal (IPART).

Council staff will prepare the rates structure on this basis and it will form part of the revenue policy that the governing body will be required to approve.

Special variations

The council may seek to increase the rates above the allowed percentage with IPART approval through an application for a Special Rates Variation under section 508(2) and 508A of the *Local Government Act 1993*.

In considering the decision to apply for a special variation, councillors should consider the purpose of the special variation, the impact that the decision will have on the community and council's finances.

The decision of a council to apply for a special variation should be a strategic decision and should be endorsed by the council prior to application.

Councils should also consider whether the decision fits with the strategic direction of the council and whether all the relevant materials and facts are available to make an informed decision.

When considering an application for a special variation, IPART takes into account issues such as how the variation will assist the council in meeting its long term strategic objectives, the level of community engagement undertaken by council about the proposal, the community's response to the proposal, and the financial position of the council.

6.2.2   Fees and charges

Annual charges

Under section 496 of the *Local Government Act 1993* a council must make and levy an annual charge for the provision of domestic waste management services for every parcel of rateable land for which the service is available.

Under section 496(a) and 496(b) of *Local Government Act 1993* a council may make and levy an annual charge for the stormwater management services and for the provision by the council of coastal protection services.

In addition, under section 501 councils can levy annual charges on each parcel of rateable land for water supply services, sewerage services, drainage services and waste management services. There is also scope to allow annual charges on other services prescribed by the *Local Government (General) Regulation 2005*.

Fees

Councils can get additional income from fees for the use of publicly owned facilities like swimming pools, halls and other user-pays services. Fees can also be charged for giving information, supplying products or processing applications.

Setting of fees and charges

The amount of fees and charges are set by the council each year through the approval of the revenue policy, contained in the operational plan, by the governing body of the council.

Fees and charges should generally be set at a level that reflects the cost to council of providing those services.

A council cannot make and implement a rate or charge until: it has given public notice in its draft operational plan that it has considered any submissions on the draft operational plan and resolved to adopt the plan.

6.2.3   Grants

Each year all councils receive a Financial Assistance Grant, which is paid by the Australian Government through the State Government's Grants Commission.

For 2016-17 the NSW Grants Commission will make recommendations on the distribution of an estimated $712.09 million in grant entitlements to councils in NSW. The amount of the grant varies from council to council. The Financial Assistance Grant may be used for any council purposes.

Councils receive grants from other sources from time to time and may apply for specific grants for specific purposes or programmes. These grants are usually through the State and Australian Governments. For example, the NSW Roads and Maritime Services may make a grant for work on a particular road.

6.2.4   Other revenue sources

Other sources of income include interest on investments, contributions and any gains made from the sale of assets.

Investments

Section 625 of the *Local Government Act 1993* allows councils to invest money that is not, for the time being, required by the council. Investments must be in line with the current Ministerial Investment Order and any guidelines issued by the Office of Local Government.

Each month an investment report must be presented at a council meeting by the responsible accounting officer (RAO). The RAO must take a 'prudent person approach' to investing council's money.

Given the responsibilities of the governing bodies of councils under the Act in relation to the oversight of the financial management of the councils, councillors should ensure that the council:

» has an appropriate investment policy that guides the investment of ratepayers' funds in accordance with the council's charter
» approves the investment policy by resolution
» ensures that the policy is reviewed each year
» ensures that there is open and transparent reporting of the council investments to council and ratepayers.

Borrowings

Section 621 of the *Local Government Act 1993* allows council to borrow at any time for any purpose allowed. Borrowings can take the form of an overdraft or loan and a council may give security for borrowings. Councils are required to adhere to the Ministerial Borrowing Order when borrowing. The borrowings are set by the governing body of the council each year through the approval of the revenue policy, contained in the operational plan.

6.3 Financial planning

A council's operational plan contains its revenue policy, which sets out how a council plans to pay for its activities. It gives details of council's estimated income and expenditure for the next year; sets out the rates, charges and fees; outlines council's pricing policy; and announces proposed borrowings.

It is very important that councillors are aware of what they are approving when they adopt the revenue policy.

Councillors should encourage the general manager to recommend options for cost-effective service delivery and strategies for raising revenue. Similarly, councillors should make suggestions and ask the general manager to report on their viability.

6.3.1 Long term financial planning

A long term financial plan is an important part of council's strategic planning process. This is where long term community aspirations and goals are tested against financial realities.

The strategic planning and reporting system reinforces the importance of the long term financial plan as a key decision-making and problem-solving tool for councillors.

The modelling that occurs as part of the long term financial plan provides information for councillors to consider financial issues at an earlier stage and to gauge the effect of these issues in the longer term, when making financial decisions for the council.

The following is an overview of the long term financial planning component of the proposed strategic planning and reporting system:

What are the general requirements for long term financial planning?

» Each council must prepare a long term financial plan.
» The long term financial plan must be used to inform decision making during the finalisation of the Community Strategic Plan and the development of the Delivery Program.

What is the minimum time frame for the long term financial plan?

» The long term financial plan must be for a minimum of 10 years.

How often must the long term financial plan be reviewed?

» The long term financial plan must be updated at least annually as part of the development of the Operational Plan. The long term financial plan must be reviewed in detail as part of the four yearly review of the Community Strategic Plan.

What is the basic structure of the long term financial plan?

» The long term financial plan must include:
» projected income and expenditure, balance sheet and cash flow statement
» service standards to be provided
» planning assumptions used to develop the plan
» sensitivity analysis—highlights factors/assumptions most likely to affect the plan
» financial modelling for different scenarios e.g. planned/optimistic/conservative
» methods of monitoring financial performance.

6.4 Allocation of revenue

While the general manager is accountable to the governing body for the council's financial performance, as members of the council's governing body councillors are accountable to the residents and ratepayers for the appropriate allocation of council monies.

In order to discharge this responsibility, it is essential that councillors receive adequate financial reports from the general manager so they can assess the financial health of council and ensure that finances have been properly accounted for.

Similarly, in making decisions and assessing the sustainability of the council, it is essential that councillors are provided with sufficient information to determine if the council can afford to undertake the activity, assess the cost-benefit of any proposed activity or project, and monitor that council activities and projects are being undertaken within budget.

Key questions for councillors when assessing plans and projects

» Is the strategy in the best interests of the community?

» How does it address community wants and needs?

» How does it fit with council's vision and goals?

» What would be the impact of demographic, social or environmental change on the proposal?

» Will the performance indicators contained in the proposal enable council to adequately monitor the progress of the plan and measure if it is achieving the desired outcome?

» Does it provide value for money? Is the cost-benefit acceptable?

6.5 Asset management

When making investment decisions about assets, councillors need to consider their full lifecycle cost, not simply the immediate construction/ purchase price.

An asset is defined as "a resource controlled by a council as a result of past events and from which future economic benefits are expected to flow to the council".

NSW local government is the custodian of approximately $89 billion of community infrastructure assets. These assets include roads, water and sewerage assets, drains, bridges, footpaths, public buildings, recreational facilities and parks and gardens. They enable councils to provide services to the community.

As custodians, councils are responsible for effectively accounting for and managing these assets and having regard to the long term and cumulative effects of their decisions.

The term 'asset management' describes the process for 'whole of life' asset management from planning, purchase, operation, maintenance to disposal of assets. It also encompasses integration of asset and service outcomes.

6.5.1 Asset management planning

A strong and sustainable council requires a strong asset management planning process to ensure that its assets are managed in the most appropriate way to deliver the services that the community needs.

To ensure that this is achieved council's asset management planning must be integrated with all of its strategic planning processes.

Asset management decisions should be informed by the evaluation of alternative means of service provision, full lifecycle costing, and performance measurement and monitoring.

Informed decision making recognises the long-lived character of infrastructure assets and the need to plan and budget for them on a full lifecycle basis beginning with the identification of a service need and the means to meet that need.

The strategic planning and reporting system reinforces the importance for councillors to consider all aspects of their council's services and programs when undertaking asset management planning. Asset management planning should not be done in isolation.

The following is an overview of the asset management planning component of the strategic planning and reporting system:

What are the general requirements for asset management planning?

» Each council must account for and plan for all of the existing assets under its ownership, and any new asset solutions proposed in its community strategic plan and delivery program.

» Each council must prepare an asset management strategy and asset management plan/s to support the community strategic plan and delivery program.

What is the minimum time frame for the asset management strategy and plan/s?

» The asset management strategy and plan/s must be for a minimum time frame of 10 years.

What is the basic structure of the asset management strategy?

» The asset management strategy must include an overarching council endorsed asset management policy.

» The asset management strategy must identify assets that are critical to the council's operations and outline risk management strategies for these assets.

» The asset management strategy must include specific actions required to improve council's asset management capability and projected resource requirements and timeframes.

What is the basic structure of the asset management plan(s)?

» The asset management plan(s) must encompass all the assets under a council's control.

» The asset management plan(s) must identify asset service standards.

» The asset management plan(s) must contain long term projections of asset maintenance, rehabilitation and replacement costs.

How should councils assess the condition of their assets?

» Councils are encouraged to adopt the following five-category model for assessing the condition of their assets.

Level	Condition	Description
1	Excellent	No work required (normal maintenance)
2	Good	Only minor work required
3	Average	Some work required
4	Poor	Some renovation needed within 1 year
5	Very poor	Urgent renovation/upgrading required.

Asset management condition assessment model

What asset management reporting must councils do?

» Councils are encouraged to use the five-category assessment model for reporting on the condition of their assets in their annual financial statements in line with the *Local Government Code of Accounting Practice and Financial Reporting*.

6.6   Capital expenditure

As councils are responsible for the prudent management of community resources, it is important that they undertake a capital expenditure review as part of their normal planning processes before committing to any major capital projects.

The council will need to consider the following before commencing any capital expenditure that is expected to cost in excess of 10 per cent of the council's annual ordinary rate or $1 million, whichever is the greater (GST exclusive):

» Is the need for the additional facilities identified in the council's delivery program and asset management strategy?

» Capacity of council to conduct the project: does the Long-Term Financial Plan indicate financial capacity?

» Priority of the project in relation to existing capital commitments and future works: does it achieve an objective of the community strategic plan?

» Alternatives to the proposed works.

» All financial implications of the project.

» Community support for the project: does it achieve a desired community outcome?

» Accountability for project through regular reporting to the council.

Councillors are required to vote on capital projects and they should make sure that they are satisfied that the above requirements have been reported adequately to enable them to make an informed decision.

In addition to the minimum requirements for capital expenditure projects, projects forecast to exceed $10 million council will also be required to complete a:

» business/management project plan
» risk management plan
» probity plan
» tender evaluation.

For more information, councillors can read the *Capital Expenditure Projects Guidelines* on the Office of Local Government website: *www.olg.nsw.gov.au*.

Further information on effective decision making can be found in *Section 2—Roles, responsibilities and relationships*.

6.7   Financial reporting

Council's governing body should regularly receive a number of financial reports including:

» budget: with a comparison to the actual results on a quarterly and yearly basis
» forecasts: projections of council's financial position into the future
» balance sheet: statement of financial position showing the current value of council's assets, e.g. cash, receivables (debtors), inventory (stock), any prepayments, and the current state of council's liability i.e. creditors, borrowings, provisions, and unearned income
» profit and loss: statement of financial performance detailing council's income and expenses
» cash flow: showing cash receipts and cash payments to enable councillors to assess council's ability to pay its debts as and when they fall due and as such is a good measure of council's solvency.

These reports might be accompanied by commentary advising the governing body of any exceptional or unexpected items and explaining any anomalies that might be evident in the reports, as well as ratio analysis of council's performance.

There are three types of ratios commonly used to analyse and assess financial performance:

1. Liquidity ratios that allow assessment of the organisation's ability to pay debts: current ratio and quick ratio.

2. Operating ratios that help assess efficient management of working capital and assets— 'days debtors' and 'days creditors'—which respectively measure the number of days on average that accounts receivable are owing and the average time it takes to pay creditors.

3. Financing ratios that help in assessing comfortable use of liabilities compared with level of equity i.e. interest cover, debt to equity.

It is important that councillors are able to understand the financial reports presented to them in the council meeting papers so that they can properly monitor council's performance and discharge their responsibilities as members of council's governing body.

It is not sufficient for councillors to solely rely on the assurances of the staff.

While the general manager is accountable to the governing body for council's financial performance, councillors must feel appropriately informed and comfortable before signing off financial reports or agreeing to financial commitments.

Councillors must make sure that they ask enough questions to enable them to understand the financial situation of council. If the council's governing body feels that it has insufficient information on which to base a decision or monitor or assess a project or proposal it is important that the general manager is asked to provide further information.

Important questions to ask when evaluating financial reports include:
» Are the council's results above or below the benchmarks?
» Are the results improving or declining?
» If they are declining:
» What are the reasons for this?
» What is council doing to improve this in the future? What does the long term financial plan show?

The financial ratios discussed above can provide councillors with valuable information to assist them in assessing one aspect of council's financial health.

The Office of Local Government has a number of benchmarks for various indicators that it uses to assess the financial health of councils.

6.8 Other financial management issues

6.8.1 Goods and Services Tax (GST)

Councils are required to submit a GST compliance certificate to the Office of Local Government every year.

The council is required to sign the GST compliance certificate for the period 1 July to 30 June and forward it to the Office of Local Government by 31 July each year. The statement is to be signed by the general manager and responsible accounting officer.

6.8.2 Formation of companies

Section 358 of the *Local Government Act 1993* allows for the formation of corporations and other entities by councils, but only with the Minister's consent.

An entity for the purposes of section 358 means any partnership, trust, joint venture, syndicate or other body (whether or not incorporated). It does not include any such entity that is of a class prescribed by the *Local Government (General) Regulation 2005* as not being within this definition. To date, the Regulation has not prescribed any class.

In applying for the Minister's consent under section 358, the council must demonstrate that the formation of, or the acquisition of the controlling interest in, the corporation or entity is in the public interest.

Applications are assessed by the Office of Local Government and referred to the Minister for approval. As part of the Office's assessment of a council's application, regard is given to the following:

» Is the proposal consistent with the functions of the council or an existing service that the council provides? Councillors should ensure that the application is consistent with the functions of the council or an existing service that the council provides.

» Will the proposed entity be legally separated from the council?

» Is the council currently financially viable?

Further details on the formation of companies can be found on the Office of Local Government website at the link below:

http://www.olg.nsw.gov.au/news/circular-07-49-criteria-applications-under-s358-formation-corporations-or-other-entities

6.8.3   Public Private Partnerships (PPP)

A public-private partnership (PPP) is defined as an arrangement between a council and a private person for the purposes of providing infrastructure or facilities, or delivering services in accordance with the arrangement or both. Legislative provisions relating to PPP are set out in section 400B to 400N of the *Local Government Act 1993*.

A council must not enter into a PPP unless the council has provided the Office of Local Government with an assessment of the project to be carried out.

If the project is a significant project (defined as where the cost is more than $50 million or council's contribution is more than 25 per cent of the council's annual revenue that is available for such projects) or if the Office of Local Government considers the project to have a high risk, the project will be referred to the Project Review Committee. The Minister may also refer any project to the Project Review Committee.

If their council is considering a PPP, councillors should consult the Office of Local Government's guidelines on the processes that councils are to follow. The *PPP guidelines* are available on the Office's website: *www.olg.nsw.gov.au*.

Section 7

SUPPORT FOR COUNCILLORS

7.1 Annual fees paid to councillors

Being a councillor is an important commitment to the local community but in NSW it is not a full time job. As such, councillors are not entitled to wages, workers compensation, sick pay etc.

However, under the *Local Government Act 1993* councillors are entitled to receive an annual fee for carrying out their duties. This is paid in monthly instalments in arrears.

The fee paid will depend on the size of the council, the number of people it serves and the assets it manages. A councillor in a small rural council will generally get paid less than a councillor in a big city council.

For 2016/17 the fees range from $ 8,540 per year to $ 37,640 per year. The mayor gets an additional fee for the additional duties he or she carries out.

The Local Government Remuneration Tribunal decides each year what councillor fees will be. Councils are not allowed to pay councillors more than the set councillor fee.

The fee is subject to tax, so councillors need to consider how it might affect their assessable income for tax purposes.

Councillors can request that they are paid below the fee fixed by the Tribunal if the full fee will adversely affect their entitlement to a pension, benefit or other allowance.

The Australian Tax Office (ATO) has made a definitive ruling (ATO ID 2007/205) that allows for councillors to redirect their annual fees into superannuation on a pre-tax basis. Councils need to determine for themselves, by council resolution and/or within an appropriate council policy, whether and how councillors may do this. Further information about this ruling can be obtained on the ATO's website: *www.ato.gov.au* or by calling 13 28 65.

A council may decide to reduce or withhold fees from a councillor if they do not attend meetings for more than three months. Councillors are not entitled to receive a fee if they are suspended from office.

Further information about fees can be found in the latest determination on fees from the Remuneration Tribunal, contact details for which are contained in *Appendix 2 – Key organisations*.

Councillors are also encouraged to seek independent financial advice about issues relating to the fees they are paid.

7.2 Expenses and facilities

The *Local Government Act 1993* allows councils to cover some of the expenses that councillors incur in carrying out their duties. This includes training, travel and telephone expenses.

Councils must also provide some facilities to assist councillors to carry out their duties such as access to cars, computers, internet, fax machines, mobile phones, stationery or administrative assistance.

Councillors may only use the facilities provided to them for performing official duties. For example, a councillor cannot make personal calls from the mobile phone that the council gives them unless there is a mechanism for declaring and reimbursing private usage.

The range of expenses and facilities provided to councillors varies between councils. The council decides what expenses it will cover and what facilities it will provide as well as limits on these. This must be set out in a councillor expenses and facilities policy that is adopted at an open council meeting.

Council policies on the provision of expenses and facilities to councillors should ensure that councillors are not left out-of-pocket for performing their civic duties.

They should also ensure that expenses and facilities are reasonable, appropriate and provided in a transparent and accountable way.

There are guidelines about what councils can include in their policies. Councillor expenses covered by councils may include:

» training courses

» conferences

» travel to and from meetings, conferences and training

» accommodation, meals and refreshments

» phone calls or internet use associated with councillor duties

» the cost of providing care for children or other dependants while performing council duties

» facilities such as mobile telephones, laptops, facsimile machines, stationery etc.

Councils are also encouraged to provide equipment and facilities to assist councillors with disabilities and special needs to access the services and information they need in order to perform their roles.

Further information about this issue can be found in the *Guidelines for the payment of expenses and the provision of facilities for Mayors and Councillors in NSW* available on the Office of Local Government's website: *www.olg.nsw.gov.au*.

Councillors should acquaint themselves with their council's councillor expenses and facilities policy.

7.3 Training and professional development

The roles and responsibilities of councillors are wide and varied, and there is a lot to learn. Councils should identify the training needs of their councillors and ensure that they have access to ongoing training and professional development throughout their term.

Under the Act, councillors have an obligation to make all reasonable efforts to acquire and maintain the skills necessary to perform their role.

It is the responsibility of individual councils to identify the training and professional development needs of councillors, and to plan and deliver this training.

The Office of Local Government and Local Government NSW also provide a wide range of support for councillors, including training and induction programs. Councillors have a responsibility to participate in the training and professional development opportunities offered to them.

7.3.1 Councils

As soon as possible after the elections councillors should be briefed by council staff on the key tasks to be undertaken by the new council at its first meeting.

All councils should prepare and deliver an induction program that introduces new councillors to the council, its main policies and protocols and key staff.

Individual councils are strongly encouraged to develop and implement induction and continuing professional development programs for councillors based on a systematic training needs analysis. The nature of these programs will vary from council to council, as the analysis will identify different needs.

New councillors are encouraged to tell their council about their personal training needs.

7.3.2 Office of Local Government

The Office of Local Government is implementing the Councillor Development Strategy to assist councillors. Elements of this strategy include:

» "Hit the Ground Running" workshops delivered by the Office of Local Government. All councillors, including councillors who have served a previous term, are strongly encouraged to attend a councillor workshop after the local government elections

» a guide to assist councils in the development of a council-based induction and ongoing professional development program.

7.3.3 Local Government NSW)

As a service to their members, Local Government NSW provides professional development and training specifically catering to the needs of councillors. Local Government NSW's Councillor Professional Development Program includes the following modules:

» Community and Stakeholder Engagement
» Chairing and Meeting Procedures
» Elected Life—An Induction Program for Councillors
» Executive Certificate for Elected Members
» Financial Issues in Local Government
» Good Governance Forum
» Internal Audit
» Know your Planning
» Mayor's Weekend Seminar
» Media Skills
» Model Code of Conduct
» Preventing Bullying and Harassment

Local Government NSW also provides a free mentoring service for mayors and councillors. These mentors provide confidential advice to support councillors in their role as elected representatives.

Information on these programs can be obtained by contacting Local Government NSW via the contact details provided in Appendix 2.

7.3.4 Local Government Professionals Australia (NSW)

Local Government Professionals Australia, NSW is a leading association representing the professionals in NSW local government.

Local Government Professionals Australia, NSW helps to strengthen the professional capability of its members by providing access to resources and support through events, networks, training and council services. It provides Local Government Induction Online Training courses as well as eConnect, an on-line information portal covering strategic management information on integrated planning and reporting, long term financial planning, and strategic asset management and workforce planning.

7.4 Other information and resources

New councillors may also benefit from establishing informal support networks and informal mentoring arrangements with more experienced councillors either in their council or in other councils. Many experienced councillors are often happy to mentor new councillors and share their knowledge and experience and provide advice.

Publications, such as *Bluett's Local Government Handbook NSW* by David Clark (17th edition, Lawbook Company, 2012) may also provide a handy reference for new councillors. It explains in detail how councils operate in NSW, their services and regulatory functions and gives an overview of relevant local government and planning laws. Many councillors have found it to be a valuable resource.

APPENDICES

APPENDIX 1

SKILLS AND KNOWLEDGE CHECKLIST

The most important attribute for you to possess in your role as a councillor is a desire help people and meet the current and future needs of your local community as a whole.

While you do not require any special formal qualifications to be a councillor, having or being able to develop certain skills, knowledge and attributes will help you to be effective in your role.

Councillor Skills

You may wish to use this checklist to identify areas where you require training or assistance. However, it is also important to recognise that many of these skills can be learned and developed over time.

✓ Good communication skills

This includes good listening and interpersonal skills, public speaking skills, the ability to accept alternative points of view as well as the ability to negotiate, mediate and resolve conflict.

✓ Ability to engage with the community

Effective councillors inform residents about important local issues or council policies and seek their views. Councillors should also have an understanding of why this is important and the various ways to consult, such as through meetings, the media, the Internet, public forums, debates and surveys.

It is important for councillors to consult with as wide a cross-section of the community as possible. Developing networks within the local community can provide a sounding board against which the impact of council policies can be assessed.

✓ Problem solving and analytical skills

This includes being able to get to the bottom of an issue and to think of different ways to resolve it, including advantages and disadvantages of each. It is also important for councillors to be able to think strategically and consider the long term impacts of council policies.

✓ Teamwork skills

This includes being able to work with others in meetings and on committees, and being able to complete any tasks on time that councillors agree to do.

Other councillors can be a valuable resource. Assuming they are not also newly elected, other councillors will already have a good idea of the main issues in the area and should have contact with key groups and individuals. They can show new councillors the ropes and introduce them to useful people.

✓ Organisational skills

This includes being able to plan and manage time, keep appointments and deadlines, make priorities and manage stress. Practical ways to do so include:

» developing a filing system for paperwork and emails

» learning to use existing council record keeping systems so as to prevent the duplication of information

» prioritising what is needed to be read and responded to

» having an effective diary management system

✓ Leadership qualities

This includes, for example, attributes such as energy and optimism, motivation, resilience, confidence, assertiveness, strategic thinking, advocacy, networking, active listening and negotiating.

✓ Working collaboratively

This includes understanding how to work with colleagues, organisations and the community to solve problems, gather resources and build alliances

✓ Ethical accountable behaviour

This includes being able to follow a code of conduct that involves, amongst other things, acting in the best interests of the community as a whole, transparent decision-making and accountability.

Councillor knowledge

Effective councillors understand the broader local government picture. It is important that councillors understand the structure of their council and its responsibilities to the community. This handbook is a useful reference tool for building that knowledge.

You should also remember that specialist council staff can provide information and advice on a wide variety of issues, but this must happen through the general manager, except where he or she has authorised another council officer to undertake the role.

✓ Knowledge or understanding of strategic planning and financial reporting processes

This includes an understanding of the importance and role of strategic planning and a comprehensive understanding of budgets, the budgetary process and financial reports.

✓ Knowledge or understanding of social justice principles

This includes having an understanding of why it is important to make sure all people in the community are treated equitably, have the right to be heard and are able to participate in public forums and events if they choose to. Groups of people whose voices are not always heard include Aboriginal people, people with a disability, people from culturally and linguistically diverse backgrounds, older people, women and young people.

✓ Knowledge and understanding of local government functions

This includes, for example, land use planning, environmental management and community development and services.

✓ Understanding of relevant State Government legislation

This includes, for example, the *Local Government Act 1993* and the *Environmental Planning and Assessment Act 1979*. For further relevant legislation see *Appendix 2 – Key legislation*.

To develop your skills, take the opportunity to attend the various training opportunities offered by your council, the Office of Local Government, Local Government NSW and other bodies.

This further development can be in the form of face-to-face training, conferences and seminars on councillor interest topics, industry webinars, and eLearning modules.

TIPS FOR DEVELOPING SKILLS AND KNOWLEDGE

(adapted from: Improvement and Development Agency (I&DEA) UK – Councillor Guide 2011-12)

» Talk to the mayor and other councillors.

» Talk to the general manager.

» Take up training courses offered by the council or other training bodies.

» Read the council's strategic and operational plans to gain an overview of the council's agenda and priorities.

» Learn how the council makes decisions and how you can influence these on behalf of the people you represent.

» Take on new responsibilities with care— don't take on too much too soon.

» Learn to manage the paperwork—learn what you need to read and what you don't, and don't hoard outdated or irrelevant material.

» Set up a good filing system.

» Concentrate on matters that interest you and learn them thoroughly.

» Set up a schedule for visiting the key groups in your area over your first year— including faith groups, voluntary groups, major employers, schools, youth centres, tenants' and residents' associations.

APPENDIX 2

KEY ORGANISATIONS

Further information on local government can be obtained from the following organisations or their websites.

OFFICE OF LOCAL GOVERNMENT

Street address: (Nowra Office)
Level 1, 5 O'Keefe Avenue
NOWRA NSW 2541

Postal address: (Nowra Office)
Locked Bag 3015
NOWRA NSW 2541

Phone: (02) 4428 4100
TTY: (02) 4428 4209
Fax: (02) 4428 4199
Email: *olg@olg.nsw.gov.au*
Website: *www.olg.nsw.gov.au*

LOCAL GOVERNMENT NSW

Street address:
Level 8, 28 Margaret Street
SYDNEY NSW 2000

Postal Address:
GPO Box 7003
SYDNEY NSW 2001

Phone: (02) 9242 4000
Email: *lgnsw@lgnsw.org.au*

Fax: (02) 9242 4111
Website: *www.lgnsw.org.au*

Councillor Professional Development Program:

Phone: (02) 9242 4181/4081
Email: *learning@lgnsw.org.au*

Fax: (02) 9242 4188
Website: *www.lgnsw.org.au*

LOCAL GOVERNMENT PROFESSIONALS AUSTRALIA, NSW

Street/Postal address:
Level 10, 22 Market Street
SYDNEY NSW 2000

Phone: (02) 8297 1200
Email: *nsw@lgprofessionals.com.au*

Fax: (02) 9262 6705
Website: *www.lgprofessionals.com.au*

UTS CENTRE FOR LOCAL GOVERNMENT

UTS Centre for Local Government
(Part of UTS: Institute for Public Policy and Governance)

Street address:
Level 21, UTS Tower Building
15 Broadway
Ultimo NSW 2007

Postal address:
PO Box 123
BROADWAY NSW 2007

Phone: (02) 9514 7884
Email: *clg@uts.edu.au*

Fax: (02) 9514 2274
Website: *www.clg.uts.edu.au*

The UTS Centre for Local Government (UTS:CLG) is an autonomous unit within the University of Technology, Sydney, and is part of the UTS Institute for Public Policy and Governance (UTS:IPPG). UTS:CLG was established in 1991 and promotes a cooperative approach to local government education, research and development. The Centre's activities are diverse and include professional development programs for local government personnel and associated professionals, research into various aspects of local government and governance, and international programs and projects.

COUNCIL WEBSITES

Council website may be accessed by searching by the council's name, or via the website of the Local Government and Shires Associations (under 'Council websites') or from the Office of Local Government's website (under '*Local Government Directory*').

INDEPENDENT COMMISSION AGAINST CORRUPTION

Street address:
Level 7, 255 Elizabeth Street
SYDNEY NSW 2000

Postal Address:
GPO Box 500
SYDNEY NSW 2001

Phone: (02) 8281 5999
TTY: (02) 8281 5773
Email: *icac@icac.nsw.gov.au*

Fax: (02) 9264 5364
Toll Free: 1800 463 909
Website: *www.icac.nsw.gov.au*

The Independent Commission Against Corruption (ICAC) was established by the *Independent Commission Against Corruption Act 1988* to promote the integrity and accountability of public administration in NSW by:

» investigating, exposing and preventing corruption involving or affecting public authorities or public officials, and

» educating public authorities, public officials and members of the public about corruption and its detrimental effects on public administration and on the community.

The ICAC is a public authority, but is independent of the government of the day, and accountable to the people of NSW through the NSW Parliament.

NSW OMBUDSMAN

Street address:
Level 24, 580 George Street
SYDNEY NSW 2000

Postal Address:
As for street address.

Phone: (02) 9286 1000
TTY: 1300 555 727 then ask for 02 9286 1000
Email: *nswombo@ombo.nsw.gov.au*

Fax: (02) 9283 2911
Toll Free: 1800 451 524
Website: *www.ombo.nsw.gov.au*

The NSW Ombudsman is an independent and impartial watchdog whose job is to make sure that the agencies they watch over fulfil their functions properly and improve their delivery of services to the public. The Ombudsman helps agencies to be aware of their responsibilities to the public, to act reasonably and to comply with the law and best practice in administration. The Ombudsman is independent of the government of the day and accountable to the public through the NSW Parliament.

NSW DEPARTMENT OF PLANNING AND ENVIRONMENT

Street address:
320 Pitt Street
SYDNEY NSW 2000

Postal address:
GPO Box 39
SYDNEY NSW 2001

Toll Free: 1300 305 695
Email: *information@planning.nsw.gov.au*

Website: *www.planning.nsw.gov.au*

The Department of Planning and Environment is responsible for the administration of the *Environmental Planning and Assessment Act 1979* and the *Heritage Act 1977*.

OFFICE OF ENVIRONMENT AND HERITAGE (OEH)

Street address:
Level 14, 59–61 Goulburn Street
SYDNEY NSW 2000

Postal address:
PO Box A290
SYDNEY SOUTH NSW 1232

Phone: (02) 9995 5000
Email: *info@environment.nsw.gov.au*

Fax: (02) 9995 5999
Website: *www.environment.nsw.gov.au*

OEH is responsible for the administration of the *Protection of the Environment Operations Act 1997* and the *Waste Avoidance and Resource Recovery Act 2001.*

ROADS AND MARITIME SERVICES (RMS)

Street address:
20-44 Ennis Road
MILSONS POINT NSW 2061

Postal address:
Locked Bag 928
NORTH SYDNEY NSW 2059

Phone: 131 782
Website: *www.rms.nsw.gov.au*

Fax: (02) 8588 4105

The RMS is responsible for the administration of the *Roads Act 1993* and the *Road Transport (Safety & Management) Act 1993.*

DEPARTMENT OF PRIMARY INDUSTRIES (DPI)

Street address:
161 Kite Street
ORANGE NSW 2800

Postal address:
Locked Bag 21
ORANGE NSW 2800

Phone: (02) 6391 3100
Website: *www.dpi.nsw.gov.au*

Fax: (02) 6391 3336

DPI is responsible for the administration of the *Noxious Weeds Act 1993, The Crown Lands Act 1989* and various other pieces of legislation relevant to local government.

Other Key Bodies

LOCAL GOVERNMENT GRANTS COMMISSION

Postal address:
Locked Bag 3015
NOWRA NSW 2541
Phone: (02) 4428 4131
Fax: (02) 4428 4199
Email: *olg@olg.nsw.gov.au*
Website: *www.olg.nsw.gov.au*

The primary function of the Local Government Grants Commission is to make recommendations to the Minister for Local Government on the allocation to local governing bodies in NSW of general-purpose grants under the provisions of the Commonwealth *Local Government (Financial Assistance) Act 1995*.

The Commission may also report on any matter referred to it by the Minister.

LOCAL GOVERNMENT BOUNDARIES COMMISSION

Postal address:
PO Box R1772
ROYAL EXCHANGE NSW 1225

Phone: (02) 9289 4000   **Fax:** (02) 9289 4099
Email: *boundaries@olg.nsw.gov.au*   **Website:** *www.olg.nsw.gov.au*

The Local Government Boundaries Commission is a statutory authority constituted under section 263 of the *Local Government Act 1993*. It has the function of examining and reporting on any matter referred to it by the Minister for Local Government regarding the boundaries of local government areas and the areas of operation of county councils. Section 263(3) specifies factors that the Boundaries Commission must have regard to when considering amalgamation or boundary alteration proposals.

NSW CIVIL AND ADMINISTRATIVE TRIBUNAL (NCAT)

Postal address:
NCAT Occupational Division
Level 10, John Maddison Tower
86-90 Goulburn Street   PO Box K1026
SYDNEY NSW 2000   HAYMARKET NSW 1240

Phone: 1300 006 228
Email: **Website:** *www.ncat.nsw.gov.au*

NCAT was established on 1 January 2014 in response to the recommendations of the Legislative Council's Standing Committee on Law and Justice Inquiry into opportunities to consolidate tribunals in NSW. NCAT is empowered under the *Local Government Act 1993* to consider allegations of councillor misconduct and pecuniary interest breaches referred to it by the Office of Local Government. It is empowered to take disciplinary action against councillors with respect to such breaches including suspension from office and disqualification for up to five years.

LOCAL GOVERNMENT REMUNERATION TRIBUNAL

Postal address:
Level 14, Bligh House
4 – 6 Bligh Street
SYDNEY NSW 2000

Phone: (02) 9272 6006
Email: *sarah.bradshaw@psc.nsw.gov.au*   **Website:** *www.remtribunals.nsw.gov.au*

The Local Government Remuneration Tribunal is constituted under Chapter 9, Division 4 of the *Local Government Act 1993*. The member of the Tribunal is appointed by the Governor for up to three years and is assisted by two Assessors. It is responsible for categorising councils, county councils and mayoral offices to determine the range of annual fees to be paid to mayors, councillors, members of county councils and chairpersons in each category.

The Tribunal is required to make a determination by no later than 1 May each year and make a report to the Minister within 7 days of making that determination. The Report is to be published in the Government Gazette and also tabled in each House of Parliament.

Greater Sydney Commission

Postal address:
PO Box 257
PARRAMATTA NSW 2124
Phone: (02) 8289 6200
Website: *www.greater.sydney*

The Greater Sydney Commission is constituted under the *Greater Sydney Commission Act 2015*. Its functions include to:

» Advise and make recommendations to the Minister for Planning on matters relating to planning and development in the Greater Sydney Region

» Report to the Minister on the implementation of plans or proposals relating to development in the Greater Sydney Region

» Provide advice and make recommendations to the Minister on any impediments to plans or proposals relating to development in the Greater Sydney Region

» Provide advice to the Minister on the application of any development fund created under section 129 of the *Environmental Planning and Assessment Act 1979*, relating to the acquisition of land in the Greater Sydney Region. This includes advice regarding the improvement of public open space, infrastructure and facilities at a regional or local level.

» Assist local councils in the Greater Sydney Region, as well as state and Commonwealth agencies, to implement plans or proposals relating to development in the Greater Sydney Region.

APPENDIX 3

KEY LEGISLATION

1.1 Key Legislation

It is important that councillors have an understanding of the legislation under which councils have responsibilities. The following legislation falls within the portfolio responsibilities of the Minister for Local Government:

Local Government Act 1993

This is the primary piece of legislation governing councils and county councils in NSW. The purpose of the Act is to:

» Provide the legal framework for the system of local government for New South Wales.

» Set out the responsibilities and powers of councils, councillors and other persons and bodies that constitute the system of local government.

» Provide for governing bodies of councils that are democratically elected.

» Facilitate engagement with the local community by councils, councillors and other persons and bodies that constitute the system of local government.

» Provide for a system of local government that is accountable to the community and that is sustainable, flexible and effective.

The *Local Government (General) Regulation 2005* supports the powers of councils under the Act.

Section 23A of the Act provides that the Chief Executive of the Office of Local Government may prepare, adopt or vary guidelines relating to the exercise by a council of any of its functions. A council must take any relevant guidelines issued under section 23A into consideration before exercising any of its functions.

The following guidelines have been issued by the Chief Executive or their delegate under section 23A:

» *Model Asbestos Policy, November 2012*

» *Guidelines for the Appointment and Oversight of General Managers, July 2011*

» *Capital Expenditure Guidelines, December 2010*

» *Internal Audit Guidelines, September 2010*

» *Investment Policy Guidelines, May 2010*

» *Guidelines for the payment of expenses and the provision of facilities for Mayors and Councillors in NSW, October 2009*

» *Tendering Guidelines for NSW Local Government, October 2009*

» *Guidelines for Council When Notification of an Intention to Use Fireworks is Received, October 2008*

» *Stormwater Management Service Charge Guidelines, July 2006*

Companion Animals Act 1998

The principal object of this Act is to provide councils with powers to ensure the effective and responsible care and management of companion animals (cats and dogs).

The Act also requires councils to promote awareness within its area of the requirements of this Act with respect to the ownership of companion animals, and to take such steps as are appropriate to ensure that it is notified or otherwise made aware of the existence of all dangerous and restricted dogs that are ordinarily kept within its area.

The *Companion Animals Regulation 2008* supports the powers of councils under the Act.

Swimming Pools Act 1992

This Act applies to swimming pools (both outdoor and indoor) that are situated, or proposed to be constructed or installed, on premises on which a residential building, a moveable dwelling or tourist and visitor accommodation is located. It does not apply to swimming pools that are situated, or proposed to be constructed or installed, on any premises occupied by the Crown or by a public authority.

The Act also provides the framework for swimming pool inspections, compliance and non-compliance certificates associated with swimming pool barriers.

The Act requires councils to take such steps as are appropriate to ensure that it is notified of the existence of all swimming pools to which the Act applies that are within its area. The Act also requires councils to promote awareness within their area of the requirements of this Act.

The *Swimming Pools Regulation 2008* supports the powers of councils under the Act.

Impounding Act 1993

This Act empowers councils and other authorised persons to impound and deal with animals and articles in public places and places owned or under the control of certain public authorities if, in the case of animals, they are unattended or trespassing or, in the case of articles, they have been abandoned or left unattended. It also provides for the release of impounded animals and articles that are claimed by their owners, and for the disposal of impounded animals and articles that are not claimed by their owners and, if they are disposed of by sale, to provide for the disposal of the proceeds of sale.

The Act also allows councils and impounding authorities to 'opt in' to take impounding action against boat trailers parked for more than 28 days. In any area where the provisions are applied, boat trailers must move at least every 28 days at least as far as a different block section of the same street. A Council must provide notice of at least 15 days before impounding a trailer.

The *Impounding Regulation 2008* supports the powers of councils under the Act.

1.2 Other key legislation under which councils have responsibilities

Environmental Planning and Assessment Act 1979 (EPAA) – Minister for Planning

Councils have a responsibility under the EPAA to encourage the proper management, development and conservation of natural and artificial resources for the purpose of promoting the social and economic welfare of the community and a better environment. The Act also requires councils to promote and co-ordinate the orderly and economic use and development of land.

Under the EPAA councils also have responsibility for:

» consulting with relevant bodies in land use plan preparation

» assessing and weighing the interests and demands of different sections of the community with those of the development applicant in the determination of planning policies and development applications

» ensuring that Local Environmental Plans (LEPs) and development control decisions are related to the sound management of the environment and its resources

» identifying local planning needs

» developing policies addressing issues in the LEP

» ensuring that responsibilities for Environmental Impact Assessment are met.

In May 2016, the Minister for Planning announced plans to update key areas of land-use planning policy that the Government is looking to improve, including: community participation, plan making and development controls, local development, State significant proposals, improving governance and review processes, enforcement and reporting and promoting good design.

Enabling legislation is expected to be introduced into Parliament later in 2016.

The *Environmental Planning and Assessment Regulation 2000* supports the powers of councils under the Act.

Protection of the Environment Operations Act 1997 (POEO) – Minister for the Environment

This Act provides councils with powers to protect, restore and enhance the quality of the environment, while having regard to the need to maintain ecologically sustainable development. The POEO Act also provides increased opportunities for public involvement and participation in environment protection, and to rationalise, simplify and strengthen the regulatory framework for environment protection.

The Act also aims to reduce risks to human health and prevent the degradation of the environment by the use of mechanisms that promote pollution prevention and improve the monitoring and reporting of environmental quality on a regular basis.

The *Protection of the Environment Operations (General) Regulation 2009, Protection of the Environment Operations (Clean Air) Regulation 2010, Protection of the Environment Operations (Noise Control) Regulation 2008* and *Protection of the Environment Operations (Waste) Regulation 2005* support the powers of councils under the Act.

Waste Avoidance and Resource Recovery Act 2001 – Minister for the Environment

This Act provides councils with powers to achieve integrated waste and resource management planning, programs and service delivery. The overall aim of the Act is to encourage the most efficient use of resources and to reduce environmental harm in accordance with the principles of ecologically sustainable development. The Act also aims to minimise the consumption of natural resources and the final disposal of waste by encouraging the avoidance of waste and the reuse and recycling of waste.

Threatened Species Conservation Act 1995 – Minister for the Environment

This Act protects threatened species in NSW. It places significant obligations on local councils due to cognate provisions in the EPAA in relation to councils assessing impacts of development proposals on listed threatened species, populations and ecological communities and their habitats. The *Threatened Species Conservation Regulation 2010* and the *Threatened Species Conservation (Biodiversity Banking) Regulation 2008* support the powers of councils under the Act.

Noxious Weeds Act 1993 – Minister for Primary Industries

This Act provides councils and county councils with powers to assist in reducing the negative impact of weeds on the economy, community and environment of NSW by establishing control mechanisms to prevent the establishment of significant new weeds, restrict the spread of existing significant weeds, and reduce the area of existing significant weeds. It also provides for the monitoring of and reporting on the effectiveness of the management of weeds.

The *Noxious Weeds Regulation 2008* supports the powers of councils and county councils under the Act.

The Biosecurity Act 2015 is due to commence in 2017 and this framework will replace the existing Noxious Weeds Act framework. For more details on this framework please refer to *http://www.dpi.nsw.gov.au/content/biosecurity/biosecurity-act-2015*.

Road Rules 2014– Minister for Roads, Maritime and Freight

This is the primary piece of legislation relating to parking control, including signage and road markings.

Road Transport Act 2013 – Minister for Roads, Maritime and Freight

This Act includes provisions for issue, service and payment of penalty notices; the liability of vehicle owners in relation to offences (including parking) and allows for the making of regulations regarding the parking of vehicles and parked or stopped vehicles on roads and road-related areas, including pay parking and parking offences.

Road Transport (General) Regulation 2013 – Minister for Roads, Maritime and Freight

This Regulation provides for the use of pay parking schemes including meters, tickets and coupons, parking permits and mobility parking scheme authorities. It also gives councils the ability to reach agreement with other councils in relation to common pay parking schemes and pass a resolution in relation to fixed fees in accordance with guidelines set by the RMS.

The application of monies raised from parking may be applied by councils at its discretion, but it is also subject to the requirements of the Local Government Act 1993. The parking authority must also meet all costs associated with administering and maintaining a pay-parking scheme.

The offences relating to parking are also contained in this Regulation. The Regulation also defines different classes of persons as authorised persons within the meaning of the Local Government Act 1993 for the purposes of s679 of the LGA (Penalty notices for certain offences).

Roads Act 1993 – Minister for Roads, Maritime and Freight

Local councils derive their powers as roads authority from the *Roads Act 1993*. In this capacity, they are responsible for the management of all public roads within their area, other than freeways, Crown roads or public roads controlled by another public authority, and private roads.

The *Roads Regulation 2008* supports the powers of councils under the Act.

Transport Administration Act 1988 – Minister for Roads, Maritime and Freight

This Act includes the power to delegate functions of Roads and Maritime Services and powers to regulate traffic management and safety, including traffic control devices and special event parking schemes, as well as the interrelationship with laws relating to local government.

Multicultural NSW Act 2000 – Premier jointly with the Minister for Multiculturalism

This legislation requires councils to implement the principles of multiculturalism. This is reinforced in the principles that apply to council decision making under the Local *Government Act 1993*. These require councils to recognise diverse local community needs and interests and to consider social justice principles when making decisions.

Coastal Management Act 2016 – Minister for Planning

When proclaimed, this legislation will introduce a modern legal framework with the tools needed to plan for and protect the coast, while balancing property owners' rights with free public access to beaches. The Act will commence in late 2016 after further public consultation on the new Coastal State Environmental Planning Policy and maps of the coastal management areas is finalised.

A Coastal Management Manual will also be released by Office of Environment and Heritage to assist councils in managing the coast under the new Act.

1.3 Legislation under which councillors have personal responsibilities

Councillors also have personal responsibilities to comply with the requirements of other Acts and Regulations. The following are only some of the legislation with which councillors must comply. The Local Government NSW can provide more detailed support to assist councillors meet their compliance obligations. Councillors should also seek advice and be guided by their general manager in compliance matters.

State Records Act 1998

This Act regulates the manner in which councils are required to manage their records. All correspondence received by a council and councillors in their official capacity could be considered records under this legislation.

It is unlikely that correspondence to councillors about a councillor's personal affairs would be included in the definition of a record. However, correspondence to councillors from residents and ratepayers about the personal matters of the residents and ratepayers as they relate to a council's business may be included.

Councils should have policies in place for the good management of council's records to assist councillors comply with this legislation. Compliance with the State Records Act 1998 will also assist in complying with related legislation such as the Government Information (Public Access) Act 2009 and the Privacy and Personal Information Protection Act 1998.

The State Records Regulation 2010 prescribes councils as State collecting institutions in relation to private records in a local studies or similar collection.

Government Information (Public Access) Act 2009

The *Government Information (Public Access) Act 2009* (the GIPA Act) establishes a proactive, more open approach to gaining access to government information. It:

» authorises and encourages the proactive release of information by NSW public sector agencies including councils

» gives members of the public a legally enforceable right to access government information

» ensures that access to government information is restricted only when there is an overriding public interest against releasing that information.

The guiding principle of the GIPA Act is public interest. It is generally presumed that all government agencies will disclose or release information, unless there is an overriding public interest against doing so. Under the GIPA Act it is compulsory for agencies to provide information about their structure, functions and policies, and agencies are encouraged to proactively and informally release as much other information as possible.

An access application (also known as a formal application) should only need to be lodged as a last resort. Where access applications are needed, the GIPA Act outlines the process that applicants and agencies should follow, as well as the options for reviewing decisions about an access application.

Privacy and Personal Information Protection Act 1998

The *Privacy and Personal Information Protection Act 1998* (PPIP Act) outlines how New South Wales public sector agencies including councils manage personal information.

The PPIP Act prescribes 12 Information Protection Principles. These are legal duties that describe what NSW public sector agencies (including councils) must do when they handle personal information. They detail how personal information must be collected, stored, used and disclosed as well as rights to access personal information.

Work Health and Safety Act 2011

It is important that councillors ensure that they are familiar with the key provisions of the *Work Health and Safety Act 2011* (WHS Act). Councillors have the following duties under the WHS Act:

» take reasonable care for their own health and safety

» take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons

» comply, so far as they are reasonably able, with any reasonable instruction that is given to them to ensure compliance with the WHS Act.

It is potentially an offence under the WHS Act to fail to comply with these duties.

Councillors must comply with the local WHS arrangements at council and have an WHS induction. Councils should have local policies dealing with arrangements for accessing workplaces and building sites.

Anti-Discrimination Act 1997

This legislation prohibits discrimination against any person on the basis of their race, gender, disability, religious beliefs, age, marital status, sexuality and carer's responsibilities.

These obligations are also reflected in the Model Code of Conduct for Local Councils in NSW.

1.4 Further information about NSW legislation

The *Local Government Act 1993* and all other NSW Acts and regulations may be accessed on the website of the Parliamentary Counsel's Office at *www.legislation.nsw.gov.au*.

APPENDIX 4

USEFUL RESOURCES

1.1   Roles, responsibilities and relationships

» _Office of Local Government's Directory of Policy Advice for Councils_

This contains policy advice provided to councils by the office through circulars, guidelines and practices notes. It covers a variety of common topics and also includes answers to Frequently Asked Questions. It is aimed primarily at council staff, but may serve as a useful information tool for councillors.

1.1.1   Personal responsibilities of councillors

» **Work Health and Safety Act 2011**

It is important that councillors ensure that they are familiar with the key provisions of the Work Health and Safety Act 2011 (the WHS Act). For more information about the WHS Act visit the _SafeWork_ NSW Website.

» **Social justice**

As leaders of the community it is essential that councillors promote the social justice principles of equity, access, participation and rights for all people. This is consistent with the requirement in the _Local Government Act 1993_ for councils' Community Strategic Plans and Community Engagement Strategies to be based on social justice principles.

To promote social justice councillors also need to be aware of and comply with personal responsibilities in relation to the following matters:

» **Anti-Discrimination**

A Fact sheet for local government councillors – August 2011 is available to assist councillors to understand their responsibilities under anti-discrimination legislation. More detailed _Anti-Discrimination Guidelines for Local Councils – August 2011_ have been prepared for councillors and council managers to assist councils comply with anti-discrimination legislation. These resources were prepared by the Anti-Discrimination Board in conjunction with the Office of Local Government. For further information about the Anti-Discrimination Act 1997 visit the _Anti-Discrimination Board website_.

» **Equal Employment Opportunity**

There are Equal Employment Opportunity (EEO) requirements specifically included in the Local Government Act 1993. For further information about EEO see the Department of Premier and Cabinet's _Equity and Diversity_ webpage.

» **Principles of multiculturalism**

Councillors should also be aware of their council's responsibility to implement the principles of multiculturalism set out in the _Multicultural NSW Act 2000_. For further information about this Act see Multicultural NSW's website at _www.multicultural.nsw.gov.au_.

» **Ecologically Sustainable Development**

The _Local Government Act 1993_ states that council decision-making should consider the principles of ecologically sustainable development. This requires the integration of economic and environmental considerations in decision-making processes.

A number of principles underpin ecologically sustainable development and can be used to guide our decision making and actions. They include:

» the precautionary principle

» intergenerational equity

» biodiversity and ecological diversity

» improved economic valuation including environmental factors.

1.1.2 Relationships

» *Criteria for applications under section 358 of the Local Government Act 1993 – Formation of corporations or other entities*

This circular sets out the criteria for applications by councils under section 358 of the *Local Government Act 1993* to obtain the consent of the Minister for Local Government to form a corporation or other entity.

1.1.3 Managing performance

» **Local Government Professionals Australia, NSW resources:**

Local Government Professionals Australia, NSW produces a number of 'health check' documents which are available to councils who subscribe to these services. Councillors should check with their general manager to see if council has access to the following documents:

» *Governance Health Check*

The Governance Health Check (GHC) is a self-audit guide to good governance in councils that was jointly developed by Local Government Professionals Australia, NSW and ICAC. It is designed to give councils a simple tool to identify key elements of corporate governance in a NSW local government context and to measure their progress in relation to each of these elements. The GHC is delivered through an online service called eConnect that councils can subscribe to.

» *Sustainability Health Check*

The Sustainability Health Check can be used to provide a robust assessment of council performance and organisational systems and is compatible with the Governance Health Check.

1.1.4 Appointment of general manager and senior staff

» *Standard Contract of Employment for General Managers of Local Councils in NSW* and *Standard Contract of Employment for Senior Staff (other than General Managers) of Local Councils in NSW*—Office of Local Government

Standard contracts of employment were approved to ensure consistency and certainty in employment relationships at the management level in local government and reflect community expectations by providing greater transparency and accountability.

» *Guidelines-for-the-Appointment-and-Oversight-of-General-Managers*—Office of Local Government

The purpose of these Guidelines is to assist councillors to be aware of their obligations under the *Local Government Act 1993* and the *Local Government (General) Regulation 2005* when recruiting, appointing, reappointing and overseeing general managers. It provides a summary of the essential matters that must be addressed by councils when engaging in these processes.

1.2 Code of Conduct and acting ethically

» *Model Code of Conduct for Local Councils in NSW*—Office of Local Government

The Model Code of Conduct is prescribed under section 440 of the *Local Government Act 1993* and the *Local Government (General) Regulation 2005*. It prescribes the ethical and behavioural standards that all council officials, (including councillors, staff, members of council committees and delegates of council) are required to comply with.

All councils are required to adopt a code of conduct that incorporates the provisions of the Model Code.

» *Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW*—Office of Local Government

These procedures are prescribed for the purposes of the administration of the Model Code of Conduct for Local Councils in NSW.

They are made under section 440AA of the *Local Government Act 1993* and the *Local Government (General) Regulation 2005*.

Section 440AA requires every council to adopt procedures for the administration of their code of conduct that incorporate the provisions of the Model Code Procedures.

» *Pecuniary Interest Guidelines*—Office of Local Government

These guidelines assist councillors to comply with their obligations under the pecuniary interest provisions of the *Local Government Act 1993*.

» *Self-Help Guide for the Completion of Returns Disclosing Interests of Councillors and Designated Persons Required Under Section 449 of the Local Government Act 1993*—Office of Local Government

This self-help guide has been developed to assist in completing the section 449 return of interests form in order to comply with the provisions of the *Local Government Act 1993* and the *Local Government (General) Regulation 2005.*

1.3 Making the most of meetings

» *Practice Note No. 16: Meetings*—Office of Local Government

This Practice Note was issued to provide guidance to councils on how to run their meetings. It is not meant to be a complete guide to meeting procedures, but it does include frequently asked questions.

» *The Closure of Council Meetings to the Public*—Office of Local Government.

This publication provides guidance to assist councils to comply with the *Local Government Act 1993* when closing their meetings to the public.

1.4 Financial Management – Integrated Planning and Reporting

Further information about financial management, long-term financial planning and asset management can be found at the *Office of Local Government's Integrated Planning and Reporting* webpage. Local Government Professionals Australia, NSW also provides *e-connect*, an on-line information portal covering strategic management information on integrated planning and reporting, long term financial planning and strategic asset management (check if your council subscribes).

1.5 Support for councillors

» *Councillor Induction and Professional Development – A Guide for Councils*

The guide provides information to assist councils develop and implement councillor induction and continuing professional development programs, including their content. Councils are strongly encouraged to implement such programs.

» *Guidelines for the payment of expenses and the provision of facilities for Mayors and Councillors for Local Councils in NSW 2009*—Office of Local Government

These guidelines assist councils review and prepare their policies on the payment of expenses and the provision of facilities for mayors and councillors.

APPENDIX 5

DEALING WITH THE MEDIA

The following information has been developed by Local Government NSW.

The Local Government NSW's Local Government Learning Solutions team also presents 'handling the media' and 'social media' training courses, which are highly recommended for both new councillors and as a refresher for returning councillors.

Dealing with the media

Media regularly contact councils for comment on local issues, and councils rely on media to promote upcoming events and projects, and to voice their views on certain issues.

The media and councils need each other, but it is a sensitive relationship fraught with risk.

Most councils have media guidelines and the mayor is often the official spokesperson.

There are, however instances where a councillor is best placed to comment– either because the mayor isn't available, or it is an issue of particular interest/expertise to the councillor.

Below are some tips on getting the most out of the media and avoiding the pitfalls.

General

✓ Be accessible and responsive – journalists are simply doing their job and are the gateway to communicating council views, events and projects.

✓ Follow council policies and guidelines on media contact.

! Nothing is really 'off the record' so be prepared for everything you say to a journalist to be used.

! Only say 'no comment' if you have a reasonable excuse (like the issue is in court). It is better to provide a general statement than nothing at all.

! Stick to matters of official council business— avoid personal comments about other issues and individuals.

If you are approached for an interview

✓ Know your subject and have an understanding of the likely questions and angle of the journalist's story.

✓ Ask yourself who the audience is and what you want to communicate to them.

✓ Devise a set of key messages that are short and precise and get your messages across.

✓ Practice! Even the most seasoned media performers have to prepare to get it right.

✓ If you don't know the answer to a question, do not make something up or guess. Simply say "I will have to get back to you", "I'll have to confirm" or repeat one of your key messages.

✓ Don't be afraid to pause while you think of the correct, and best, answer.

✓ Don't be persuaded to say something that isn't true, isn't your view or isn't appropriate for you to comment on.

For TV

✖ Avoid wearing dark or very bold colours – keep your outfit simple.

✖ No sunglasses!

✖ Don't fidget or shift your eyes.

✔ Keep your sentences short and sharp.

✔ Don't be afraid to show passion or some emotion, but control it.

✔ Repeat your key messages as much as possible.

Press releases

✔ Keep them to one page.

✔ Make the heading catchy and interesting.

✔ Make sure the first sentence captures the most newsworthy information.

✔ Keep sentences and paragraphs short and to the point.

✔ Make sure there are contact numbers for further comment at the bottom of the release.

✔ Ensure that spelling and grammar are accurate.

Social media

Most councils now use Twitter, Facebook©, LinkedIn©, Pinterest© and other social media to engage local communities. As an elected member you will need to find out what social media policies and guidelines exist for your council, and apply them accordingly.

Connected Councillors (Local Government Group, UK 2011) is a general guide for councillors in the United Kingdom and sets out the benefits of social media to support local leadership, how to get started using social media and on-line etiquette.

APPENDIX 6
TIPS FOR EFFECTIVE COMMUNITY ENGAGEMENT

The following checklist has been adapted from the NSW Government Regional Communities Consultative Council's *A summary guide to consulting with rural and regional communities*.

Identify the issue	» What is the nature of the issue? » What needs to be discussed? » What are the possible options or contentious issues?
Identify the objective of the engagement activity	» What are you aiming to achieve? » Why are you talking to the community? » What information do you need to find out?
Identify who you need to talk to	» Who is affected by the issue? » Can target groups be identified? » What are the particular needs of different groups? » What particular activities should be included to ensure that all relevant stakeholders are able to be included (e.g. Aboriginal community members, young people, families, and people with disabilities)?
What techniques will be needed	» Are the techniques appropriate for the audience? » What other methods could be utilised to reach the target audience?
Allocate sufficient resources to the process	» Would a neutral facilitator assist? » Is consensus decision making a goal? » Has sufficient time been allocated to the engagement activity?
Involve participants in the process	» Has sufficient information been provided to participants to enable informed participation? » Is written information concise and jargon free? » Are there appropriate aids to assist communication (e.g. interpreters and hearing loops), are special interests respected, and is the process understood?

Maximise the ability of the community to participate	» What are the most appropriate methods to contact participants?
	» Is the activity resourced sufficiently to take into account distance, travel time etc.?
	» Is the location appropriate for the participants (not just the council)?
	» Is childcare, aged care and disabled access provided?
	» Has adequate notice been given?
	» Have participants been encouraged to participate through personal contact?
	» Have cultural protocols been observed (eg: welcome to country)?
	» Can the expenses of low income participants be met?
	» Is a meeting the best way to achieve the desired outcome?
Realistic timetables	» Is the community engagement activity a one-off or ongoing?
	» Is the timetable practical and realistic?
	» What are the time barriers and what strategies are in place if they cannot be met to the community's satisfaction?
Resource management	» What resources are needed?
	» Is training or are external personnel needed?
	» Are existing community resources being used?
	» Can this engagement activity or meeting be undertaken within an existing community meeting process?
Outcomes	» Are the desired outcomes clear to everyone?
	» Are the outcomes agreed?
	» How will the outcomes be documented?
	» How will the information be used?
	» How will decisions be reached?
	» How will the community be informed of the outcomes?
Evaluation	» How will success be defined and measured?
	» How can the community participate in the evaluation process?
	» How is the evaluation recorded?
	» How are the results of the evaluation provided back to the community participants and wider community?

APPENDIX 7

STANDARDS OF CONDUCT FOR COUNCIL OFFICIALS

Council officials play a vital role in serving local communities.

To do this effectively you will want to uphold the highest standards of behaviour to ensure the public has trust and confidence in local government.

What are the expected standards of behaviour?

The following standards of behaviour are expected of council officials. You must:

» not conduct yourself in a manner that is likely to bring the council into disrepute

» act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions

» treat others with respect at all times

» consider issues consistently, promptly and fairly

» not harass, discriminate against, or support others who do so

» ensure that development decisions are properly made and that parties involved in the development process are dealt with fairly

» not participate in binding caucus votes

» disclose and appropriately manage any conflict of interests

» disclose and appropriately manage conflicts of interest arising from reportable political donations

» not accept money or gifts of value and avoid situations that give rise to the appearance of securing favourable treatment

» in the case of councillors, not direct council staff or influence staff in the exercise of their role

» in the case of staff, ensure efficient and effective operation of the council's organisation and ensure the implementation of the decisions of the council without delay

» use and secure information appropriately and do not disclose confidential information

» use council resources ethically, effectively, efficiently and carefully in the course of official duties

» not make complaints improperly, take detrimental action in response to complaints about standards of behaviour or disclose information about code of conduct matters.

Council officials include councillors, members of staff of council, administrators, members of council committees, conduct reviewers and delegates of council.

These standards are described in detail in the Model Code of Conduct for Local Councils in NSW. The code is a legal document that all officials are obliged to understand and follow. The Model Code forms the basis of each council's own Code of Conduct.

What happens if the standards are not met?

In the very small number of cases where council officials fail to follow this code, this will be dealt with in accordance with the procedure for administration of the Model Code.

Complaints about a breach of these standards by anyone other than the general manager are to be made at first instance to general manager. Complaints about the general manager are to be made to the mayor. Non-serious complaints will be resolved informally. Where the complaint cannot be resolved informally, a complaint may be formally investigated by an independent conduct reviewer.

Breaches of these standards by delegates or council committee members may result in the following action:

» censure

» requirement of apology

» prosecution

» removal or restriction of delegation.

Breaches by council staff may result in disciplinary action, termination or such other penalty permitted under the relevant industrial award.

Breaches by the general manager may result in the following action:

» requirement for training

» counselling

» requirement for apology

» findings of inappropriate conduct made public

» action under the general manager's contract.

Breaches by councillors may result in the following action:

» requirement for training

» counselling

» requirement for apology

» findings of inappropriate conduct made public

» censure

» referral to the Office of Local Government for disciplinary action including but not limited to suspension for up to three months

» referral by the Office of Local Government to the NCAT for suspension of up to six months or disqualification from holding civic office

» automatic disqualification for five years on a third suspension for misconduct.