



ATTACHMENTS to Council Business Paper



For Council meeting on 6 June 2012





ATTACHMENT 6.2.3



TWA Planning Proposal





7 May 2012

Warwick Bennett
General Manager
Mid-Western Regional Council
PO Box 156
MUDGEE NSW 2850

Dear Mr Bennett,

Please find enclosed our submission to the public exhibition of Mid-Western Regional Council's Planning Proposal on Temporary Workers' Accommodation. This report has been prepared by Urbis and provides a thorough review and analysis of the proposed changes to Mid-Western Regional' environmental planning instruments.

The MAC strongly objects to the objectives and provisions of the proposed amendment to the *Mid-Western Regional Interim Local Environmental Plan 2008* and the Draft Mid-Western Regional Local Environmental Plan 2011, with our primary concerns that:

1. The planning proposal is contrary to the principles of the Standard Instrument Local Environmental Plan template, and broader NSW planning policy;
2. The planning proposal represents a poor use of an environmental planning instrument, incorporating controls and criteria that are better suited either to a development control plan or the development application and assessment process;
3. The planning proposal could create a precedent for planning policy on temporary workers' accommodation facilities across the State, pre-empting any attempt by the State to prepare a comprehensive strategic planning approach to this emerging issue;
4. The planning proposal creates a subzone, whereby additional land use controls are established outside the land use table with unusually and arbitrarily restrictive limitations. This contravenes Ministerial Direction 6.3 under the *Environmental Planning and Assessment Act 1979*;
5. The planning proposal creates a new land use definition outside the Dictionary that does not apply to the land use table, contrary to Standard Instrument practice;
6. The planning proposal is not the result of a strategic planning process or empirical evidence, representing a haphazard response to a single proposal rather than a considered and evidence-based planning method;
7. The planning proposal will not alleviate stress on the Mid-Western Regional housing market, as is implied by the report, but rather further heighten housing demand relative to supply, creating severe housing market implications for both local residents and mine workers;
8. The planning proposal does not provide substantive evidence or argument that workers' accommodation facilities lead to negative social and economic impacts on the local community (and how, in any case, these impacts would or should be mitigated through an environmental planning instrument);



9. The planning proposal argues that an indifference to integration with the local community is sufficient grounds to create a prohibition on a land use, when The MAC's experience and preferred model is to use local employees and suppliers, as well as engage with local community events;
10. The planning proposal argues that traffic impact is sufficient grounds to create a prohibition on a land use, when this should be addressed via DCP controls, negotiation, and assessment of an individual proposal; and
11. The planning proposal argues that infrastructure servicing requirements are sufficient grounds to create a prohibition on a land use, when rather a proposal should be assessed on its merits regarding site servicing. In addition, impacts can be alleviated via necessary service amplification, and any workers' accommodation facility will leave behind legacy infrastructure for use in future urban expansion.

Our enclosed submission provides further information and evidence relating to the above issues. We believe that these concerns are sufficient reason to discontinue the planning proposal process.

Should you wish to discuss this matter any further, please do not hesitate to contact me at any time on 02 8346 9260.

Yours Faithfully,

Geoff Campbell

Development Manager



T: +61 2 8346 9267
F: +61 2 8346 9290
E: Geoff.Campbell@themac.com.au
A: Level 6, 10 Bond St Sydney NSW 2000
P: GPO Box 3930, Sydney NSW 2001, Australia

7 May 2012

Mr Warwick Bennett
General Manager
Mid-Western Regional Council
PO Box 156
MUDGEES NSW 2850

Dear Mr Bennett,

Submission to the Public Exhibition of Mid-Western Regional Council's Planning Proposal on Temporary Workers' Accommodation

Please find enclosed our submission to the public exhibition of Mid-Western Regional Council's Planning Proposal on Temporary Workers' Accommodation, prepared by Urbis on behalf of The MAC Services Group.

This letter provides a brief summary of the issues and discussions raised in the attached report.

On behalf of The MAC, this submission strongly objects to the objectives and provisions of the planning proposal. The concerns raised in this submission relate to three key issues:

- The relationship between the planning proposal and NSW planning policies;
- The poor application of planning technique and practice; and
- The assertions raised in the planning proposals relating to perceived impacts of workers' accommodation facilities.

It is submitted that:

NSW planning policy

1. The planning proposal is contrary to the principles of the Standard Instrument Local Environmental Plan template, and broader NSW planning policy;
2. The planning proposal represents a poor use of an environmental planning instrument, incorporating controls and criteria that are better suited either to a development control plan or the development application and assessment process;
3. The planning proposal could create a precedent for planning policy on temporary workers' accommodation facilities across the State, pre-empting any attempt by the State to prepare a comprehensive strategic planning approach to this emerging issue;

Planning technique and practice

4. The planning proposal creates a subzone, whereby additional land use controls are established outside the land use table with unusually and arbitrarily restrictive limitations. This contravenes Ministerial Direction 6.3 under the *Environmental Planning and Assessment Act 1979*;

5. The planning proposal creates a new land use definition outside the Dictionary that does not apply to the land use table, contrary to Standard Instrument practice;
6. The planning proposal is not the result of a strategic planning process or empirical evidence, representing a haphazard response to a single proposal rather than a considered and evidence-based planning method;

Perceived impacts of workers' accommodation facilities

7. The planning proposal will not alleviate stress on the Mid-Western Regional housing market, as is implied by the report, but rather further heighten housing demand relative to supply, creating severe housing market implications for both local residents and mine workers;
8. The planning proposal does not provide substantive evidence or argument that workers' accommodation facilities lead to negative social and economic impacts on the local community (and how, in any case, these impacts would or should be mitigated through an environmental planning instrument);
9. The planning proposal argues that an indifference to integration with the local community is sufficient grounds to create a prohibition on a land use, when The MAC's experience and preferred model is to use local employees and suppliers, as well as engage with local community events;
10. The planning proposal argues that traffic impact is sufficient grounds to create a prohibition on a land use, when this should be addressed via DCP controls, negotiation, and assessment of an individual proposal; and
11. The planning proposal argues that infrastructure servicing requirements are sufficient grounds to create a prohibition on a land use, when rather a proposal should be assessed on its merits regarding site servicing. In addition, impacts can be alleviated via necessary service amplification, and any workers' accommodation facility will leave behind legacy infrastructure for use in future urban expansion.

This submission argues that, based on the multiplicity of reasons outlined, this planning proposal should be discontinued by either Council or the Department of Planning and Infrastructure.

This submission has also been forwarded to other public agencies involved in this process and the broader planning issue, including the Gateway and Western Region Offices of the Department of Planning and Infrastructure, the Agriculture and Mining and Resources Divisions of the Department of Primary Industries, and the Secretariat of the Joint Regional Planning Panels.

Should you have any further queries, please do not hesitate to contact me.

Yours sincerely,



Helen Deegan
Director



Mid-Western
Regional Council
Temporary Workers'
Accommodation
Planning Proposal

Submission on behalf of The MAC Services Group

May 2012



URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:

Director	Helen Deegan
Consultant	Michael Bishop
Job Code	SA4655
Report Number	Final

Urbis Pty Ltd
ABN 50 105 256 228

All Rights Reserved. No material may be reproduced without prior permission. While we have tried to ensure the accuracy of the information in this publication, the Publisher accepts no responsibility or liability for any errors, omissions or resultant consequences including any loss or damage arising from reliance in information in this publication.

URBIS
Australia Asia Middle East
urbis.com.au

TABLE OF CONTENTS

1	Introduction	1
2	The MAC's Background and the Planning Proposal	3
3	The Planning Proposal	5
4	NSW Planning Policy Interests and Concerns	7
4.1	Relationship with the Standard Instrument LEP Template and NSW Planning Policy.....	7
4.2	Inappropriate Use of an Environmental Planning Instrument	7
4.3	Creation of a Policy Precedence for Workers' Accommodation Facilities	8
5	Planning Technique and Practice	9
5.1	Contradiction of Ministerial Direction	9
5.2	Creation of an Auxiliary Definition	9
5.3	Absence of a Strategic Planning Process or Empirical Evidence	10
6	Perceived Impacts of Workers' Accommodation Facilities	13
6.1	Implications for the Housing Market	13
6.2	Socioeconomic Impact.....	14
6.3	Relationship with the Local Community	15
6.4	Traffic Impact and Management.....	16
6.5	Infrastructure Servicing	16
7	Conclusion	18
Appendix A	Summary of Versions of the Mid-Western Regional Development Control Plan – Temporary Workers' Accommodation	21
Appendix B	Correspondence from the Mayors of Narrabri and Blayney	23
Appendix C	Socio-Economic Report (Western Research Institute) and Peer Review (Urbis) 25	
Appendix D	Submission by The MAC Services Group to the House of Representatives Standing Committee on Regional Australia	27
FIGURES:		
	Figure 1 – Impact of 5km Radius on Ulan	12
TABLES:		
	Table 1 – Timeline of The MAC's Activities in the Mid-Western Regional LGA.....	3

1 Introduction

This submission has been prepared by Urbis on behalf of The MAC Services Group ('The MAC') to the public exhibition of the planning proposal by Mid-Western Regional Council ('Council') for controls on temporary workers' accommodation facilities under the *Mid-Western Regional Interim Local Environmental Plan 2008* (2008 LEP) and the Draft Mid-Western Regional Local Environmental Plan 2011 (Draft LEP). The MAC welcomes the opportunity to comment on the exhibited planning proposal.

The MAC is a leading provider of integrated accommodation, specialising in quality living facilities for people in key resource regions. The MAC develops, owns and operates temporary workers' accommodation facilities for people that work in regional areas of economic significance across Australia. By resolving the challenges of workforce accommodation, as well as other health and wellbeing consideration, The MAC frees clients, typically major mining and construction companies, to focus on their core business.

The MAC currently operates seven workers' accommodation facilities across NSW, Queensland, and Western Australia, with more than 7,200 permanent rooms under its management and 600 staff members in its workforce.

On 21 December 2012, The MAC lodged a development application (DA02172012) with Mid-Western Regional Council for the construction of a workers' accommodation facility including 400 rooms at Black Lead Lane, Gulgong. The development application was placed on public exhibition 27 February-19 March 2012. The proposal is currently under assessment, and is due to be determined by the Western Joint Regional Planning Panel in the coming months. It would appear that the commencement of this planning proposal is in direct response to The MAC's development application.

On behalf of The MAC, this submission strongly objects to the objectives and intent of the planning proposal. The concerns raised in this submission relate to three key issues:

- The relationship between the planning proposal and NSW planning policies;
- The poor application of planning technique and practice; and
- The assertions raised in the planning proposals relating to perceived impacts of workers' accommodation facilities.

It is submitted that:

NSW planning policy

1. The planning proposal is contrary to the principles of the Standard Instrument Local Environmental Plan template, and broader NSW planning policy;
2. The planning proposal represents a poor use of an environmental planning instrument, incorporating controls and criteria that are better suited either to a development control plan or the development application and assessment process;
3. The planning proposal could create a precedent for planning policy on temporary workers' accommodation facilities across the State, pre-empting any attempt by the State to prepare a comprehensive strategic planning approach to this emerging issue;

Planning technique and practice

4. The planning proposal creates a subzone, whereby additional land use controls are established outside the land use table with unusually and arbitrarily restrictive limitations. This contravenes Ministerial Direction 6.3 under the *Environmental Planning and Assessment Act 1979*;
5. The planning proposal creates a new land use definition outside the Dictionary that does not apply to the land use table, contrary to Standard Instrument practice;

6. The planning proposal is not the result of a strategic planning process or empirical evidence, representing a haphazard response to a single proposal rather than a considered and evidence-based planning method;

Perceived impacts of workers' accommodation facilities

7. The planning proposal will not alleviate stress on the Mid-Western Regional housing market, as is implied by the report, but rather further heighten housing demand relative to supply, creating severe housing market implications for both local residents and mine workers;
8. The planning proposal does not provide substantive evidence or argument that workers' accommodation facilities lead to negative social and economic impacts on the local community (and how, in any case, these impacts would or should be mitigated through an environmental planning instrument);
9. The planning proposal argues that an indifference to integration with the local community is sufficient grounds to create a prohibition on a land use, when The MAC's experience and preferred model is to use local employees and suppliers, as well as engage with local community events;
10. The planning proposal argues that traffic impact is sufficient grounds to create a prohibition on a land use, when this should be addressed via DCP controls, negotiation, and assessment of an individual proposal; and
11. The planning proposal argues that infrastructure servicing requirements are sufficient grounds to create a prohibition on a land use, when rather a proposal should be assessed on its merits regarding site servicing. In addition, impacts can be alleviated via necessary service amplification, and any workers' accommodation facility will leave behind legacy infrastructure for use in future urban expansion.

The MAC does not object to the development and establishment of planning controls relating to workers' accommodation facilities *per se*, however such controls should be supported by strong strategic and evidence-based investigations. Unlike other states such as Western Australia and Queensland, New South Wales has not had major experience with planning for workers' accommodation facilities, and the imposition of this planning proposal is not the best approach to commence implementing such controls.

This submission provides information on the planning proposal and the background to The MAC's operations in the Mid-Western Regional local government area (LGA), and addresses each of the above contentions in detail supported by evidence.

This submission argues that, based on the multiplicity of reasons outlined, this planning proposal should be discontinued by either Council or the Department of Planning and Infrastructure (DP&I).

2 The MAC's Background and the Planning Proposal

As detailed in the introduction, The MAC has lodged a development application (DA02172012) to construct a workers' accommodation facility at Black Lead Lane, Gulgong, on the outskirts of the Gulgong urban area. Table 1 provides an outline of key dates and issues that have occurred since The MAC's first entry into the Mid-Western Regional LGA.

As evidenced by Table 1, there is a close correlation between the commencement of the DA for The MAC's Gulgong proposal and the planning proposal process. Further, the planning proposal only applies to the *Mid-Western Regional Interim Local Environmental Plan 2008* and the Draft Mid-Western Regional Local Environmental Plan 2011, and not to other local environmental plans that apply to the Mid-Western Regional LGA.

These factors would imply that the planning proposal is a reactionary move by Council, reflecting an immediate concern without proper regard for the strategic implications of its decision.

TABLE 1 – TIMELINE OF THE MAC'S ACTIVITIES IN THE MID-WESTERN REGIONAL LGA

DATE	EVENT
Mid-2011	The MAC identifies and purchases 60 hectares of land at 2 Black Lead Lane Gulgong, on the fringe of the town. Several meetings were held between The MAC and Council, during which Council stated that 2008 LEP and the Draft LEP do not recognise workers' accommodation facilities as a land use and hence considered defining the proposal as innominate in both LEPs, making it permissible with consent.
7 September 2011	Council resolves to place the Draft Development Control Plan – Temporary Workers Accommodation on public exhibition from 20 September to 30 October. The Draft DCP recognises workers' accommodation facilities as an innominate use in all of Council's LEPs, however it also places locational controls (close to towns, villages or mine sites, at least 20km between facilities) and bed limits (maximum 1,200 beds across the LGA, maximum 400 beds in any workers' accommodation facility).
13 October 2011	The MAC holds a meeting at the Gulgong Chamber of Commerce to discuss the proposal, which leads to significant negative media commentary.
22 November 2011	Council sends a letter to The MAC advising that the Gulgong proposal will now be considered as 'tourist and visitor accommodation' under the 2008 LEP. This would make the proposal prohibited in the Agriculture Zone.
24 November 2011	A pre-DA meeting is held between The MAC and Council, focusing on concept and design issues rather than permissibility. Council raises concerns relating to social impact, location, and anti-mining sentiment in the community.
28 November 2011	An extraordinary meeting of Council is held to consider the Draft DCP. 340 submissions were made, including three petitions with 163 signatures. The report details that WAFs will now be recognised as 'tourist and visitor accommodation' under the 2008 LEP, bed limits will be removed, and proposal will be required to link their feasibility to nearby projects that it claims to be servicing. Council resolved to adopt the amended Draft DCP, which will require re-exhibition until 13 January 2012.
7 December 2011	Council resolves to submit the Draft LEP to the Department of Planning and Infrastructure (DP&I) for gazettal. At the same Council meeting, it is resolved to prepare a planning proposal to amend the 2008 and Draft LEPs that defines 'temporary workers' accommodation' as a land use and places controls on the location of any such proposal.

DATE	EVENT
16 December 2011	Council's planning proposal is lodged with DP&I for gateway determination,
21 December 2011	The MAC's DA for its proposal at Gulgong is lodged to Council.
3 January 2012	Council acknowledges the DA is received. Council later requests that The MAC submits further information as part of the DA, including assessments relating to potable water, service extensions, and heritage impact. The application will not be placed on public exhibition until this information is supplied.
1 February 2012	A final version of the Draft DCP is adopted by Council, and is scheduled to commence on 10 February.
3 February 2012	DP&I Gateway process determines that Council's planning proposal should proceed, subject to conditions. The approval states that Council should aim to have the planning proposal on public exhibition within four weeks.
27 February 2012	The MAC's DA is placed on public exhibition by council until 19 March 2012.
2 April 2012	The Director General of the DP&I advises Council that it has revised its gateway determination to alter the definition of temporary workers' accommodation.
16 April 2012	The planning proposal is placed on public exhibition until 14 May 2012.

3 The Planning Proposal

The planning proposal was adopted by Council at its meeting on 7 December 2011. It was then lodged with the DP&I on 16 December 2011 for a gateway determination (PP_2012_MIDWR_001_00). This determination was made on 3 February 2012, however council requested a revision to the proposed definition and this was granted by the Director General of the DP&I in a revised gateway determination on 2 April 2012. The exhibited draft amendment to the 2008 LEP and the Draft LEP is as follows:

Temporary workers' accommodation

(1) *The objectives of this clause are as follows:*

(a) To enable development for temporary workers' accommodation if there is a demonstrated need to accommodate employees due to the nature of the work or location of the land,

(b) To ensure that temporary workers' accommodation is appropriately located,

(c) To ensure that the erection of temporary workers' accommodation is not likely to have a detrimental impact on the future use of the land or conflict with an existing land use,

(d) To minimise the impact of temporary workers' accommodation on local roads or infrastructure.

(2) *Development consent must not be granted to development for the purposes of temporary workers' accommodation for works unless the Consent authority is satisfied of the following:*

(a) The development is to be located within 5 kilometres of the site on which the work is being carried out,

(b) There is a demonstrated necessity to provide temporary workers' accommodation due either to the nature of the industry that the workers are employed in or because of the remote or isolated location of the work site,

(c) The development will not prejudice the subsequent carrying out of development on the land in accordance with this Plan or any other applicable environmental planning instrument,

(d) Water and sewerage infrastructure will be provided to adequately meet the requirements of the development,

(e) When the development is no longer in use, the land will, as far as practicable, be restored to the condition in which it was before the commencement of the development.

(3) *In this clause:*

temporary workers' accommodation means any habitable buildings and associated amenities erected on a temporary basis for the purpose of providing a place of temporary accommodation for persons employed for the purpose of carrying out works associated with a large-scale infrastructure project, including development for the purposes of an extractive industry, mining, renewable energy or electricity transmission or distribution works.

A planning proposal under DP&I guidelines and responses to relevant Section 117 Ministerial Directions are included in the exhibited material.

We would note the following grammatical and phrasing anomalies in the proposed clause that would require further clarification:

- Subclause 1(a) refers to the 'location of the land' – this phrase should be reviewed;

- Subclause 1(d) refers to ‘the impact of temporary workers’ accommodation on local roads or infrastructure’ – why temporary workers’ accommodation facilities have a traffic impact distinct to other residential or tourist accommodation developments is unclear; and
- Subclause 2(e) requires a proponent to restore land ‘as far as practicable’ – an environmental planning instrument should not include such an ambiguous or equivocal phrase.

4 NSW Planning Policy Interests and Concerns

4.1 RELATIONSHIP WITH THE STANDARD INSTRUMENT LEP TEMPLATE AND NSW PLANNING POLICY

The planning proposal is contrary to the principles of the Standard Instrument Local Environmental Plan template, and broader NSW planning policy.

In March 2006 the NSW Minister for Planning gazetted the *Standard Instrument (Local Environmental Plans) Order*, which provides a mandatory structure, zones, clauses, and definitions for all principal local environmental plans across NSW. The purpose of the Standard Instrument was to overcome the complexity that had been created by individual planning hierarchies in each LGA. The Standard Instrument is designed to ensure the making and interpreting of planning controls is made simpler, irrespective of the relevant council.

Although the Interim 2008 LEP is not prepared in the template, the current Draft LEP for the Mid-Western Regional LGA is in the Standard Instrument format, and any planning proposal should be considered in terms of current and relevant policy.

The format and content of the planning proposal is contrary to the purpose and objectives of the Standard Instrument. The proposal creates an additional land use definition (within the body of the LEP, as opposed to the dictionary), and places additional land use controls outside the land use table or other recognised avenues for additional controls in the Standard Instrument LEP. As mandated by DP&I (emphasis added):

The key objective is that a particular land use should usually be categorised the same way in every LEP...The standard definitions must be used wherever a land use would fall within an existing land use definition. This includes where terms are within any of the broad land use groups, eg retail premises, business premises, office premises, industry, agriculture, tourist and visitor accommodation, residential accommodation etc.¹

The planning proposal includes a unique clause that does not fit into the Standard Instrument format, nor achieve the objectives of the Standard Instrument. It creates an additional land use definition outside the Dictionary, as well as a land use external to the regular land use categories in the Standard Instrument.

These characteristics create a clause that does not reflect the nature and intent of the Standard Instrument template, or NSW planning policy that advocates simplification and clarity of land use standards.

4.2 INAPPROPRIATE USE OF AN ENVIRONMENTAL PLANNING INSTRUMENT

The planning proposal represents a poor use of an environmental planning instrument, incorporating controls and criteria that are better suited either to a development control plan or the development application and assessment process.

The criteria for considering the permissibility of a workers' accommodation facility under Subclause 2 of the planning proposal are that:

(a) The development is to be located within 5 kilometres of the site on which the work is being carried out,

¹ NSW Department of Planning. 2007, 'Standard instrument for LEPs – frequently asked questions', LEP Practice Note PN 007-01, pp.5-6, <http://www.planning.nsw.gov.au/planningsystem/pdf/pn07_001_slep_faqs.pdf>

(b) There is a demonstrated necessity to provide temporary workers' accommodation due either to the nature of the industry that the workers are employed in or because of the remote or isolated location of the work site,

(c) The development will not prejudice the subsequent carrying out of development on the land in accordance with this Plan or any other applicable environmental planning instrument,

(d) Water and sewerage infrastructure will be provided to adequately meet the requirements of the development,

(e) When the development is no longer in use, the land will, as far as practicable, be restored to the condition in which it was before the commencement of the development.

The types of planning issues that are put forward in these criteria (location, economic and social demand, preservation of land for future uses, provision of infrastructure, and restoration of land) are considerations and controls that do not belong in an environmental planning instrument, particularly in regard to a single development site.

These matters are considerations best taken outside of an environmental planning instrument, and placed either in policy documents, such as a development control plan, or in the conditions of consent for a development application, which should be the result of an assessment of the proposal in relation to an individual site and its surrounds.

4.3 CREATION OF A POLICY PRECEDENCE FOR WORKERS' ACCOMMODATION FACILITIES

The planning proposal could create a precedent for planning policy on temporary workers' accommodation facilities across the State, pre-empting any attempt by the State to prepare a comprehensive strategic planning approach to this emerging issue.

Unlike other states more experienced in planning for the supplementary impacts of mining, such as Western Australia and Queensland, NSW lacks experience and a cohesive strategic planning approach to managing the housing demands of mining projects. For instance, the Queensland Government has prepared comprehensive cross-Department guidelines² on identifying the housing impacts of mining projects, and developing mitigation and management strategies.

As acknowledged by the planning proposal (p. 3), proposals for temporary workers' accommodation are defined and assessed in vastly different manners depending on the relevant LEP. As an example, development applications lodged by The MAC in NSW have variously been defined as:

- 'Tourist and visitor accommodation' (Mid-Western Regional Council);
- 'Motel' (Narrabri Shire Council); and
- 'Innominate use' (Liverpool Plains Shire Council).

Such variation in approach to workers' accommodation facility would suggest that planning systems in NSW lack a clear understanding of defining and assessing such proposals. Our concern is that, despite this planning proposal not being the result of any apparent strategic policy or considered research, it could act as a precedence for other regional or rural councils considering planning policies on workers' accommodation facilities.

In the event that council proceeds with adopting the exhibited planning proposal and DP&I approves its gazettal, other councils would presume that this was an acceptable and appropriate planning instrument. This would represent a poor precedent for planning policy in NSW, and therefore the planning proposal should be refused.

² Queensland Government. 2011, *Major Resource Projects Housing Policy*, <<http://www.deedi.qld.gov.au/cg/resources/Major-Resource-Projects-Housing-Policy.pdf>>

5 Planning Technique and Practice

5.1 CONTRADICTION OF MINISTERIAL DIRECTION

The planning proposal creates a subzone, whereby additional land use controls are established outside the land use table with unusually and arbitrarily restrictive limitations. This contravenes Ministerial Direction 6.3 under Section 117 of the *Environmental Planning and Assessment Act 1979*.

Ministerial Direction 6.3 under Section 117 of the *Environmental Planning and Assessment Act 1979* requires a proponent to ensure that their planning proposal discourages ‘unnecessarily restrictive planning controls’. By establishing an arbitrary radius around mine sites, the planning proposal will create additional land use controls outside land use zones, any other map under the 2008 or Draft LEPs.

However temporary workers’ accommodation facilities may be defined under either LEP, the clause would mean that they would be made prohibited in zones in which otherwise they may, otherwise, be permissible.

The consequences of the creation of subzone is to create uncertainty in the minds of landholders, meaning that rather than their permissible land uses being defined by an LEP and its zoning, potential development is controlled by what is developed around their holding, completely extraneous to the planning controls. It is for this reason that the creation of subzones is not endorsed – it reduces the certainty and transparency of the planning system, and undermines the purpose and implementation of land use zoning.

5.2 CREATION OF AN AUXILIARY DEFINITION

The planning proposal creates a new land use definition outside the Dictionary that does not apply to the land use table, contrary to Standard Instrument practice.

The Dictionary is a mandatory provision for all Standard Instrument LEPs which provides definition for land use and other explanatory terms that are used in the body of the LEP. The Dictionary is a key feature of the application and the consistency of the Standard Instrument to ensure that its planning language is common across NSW.

The planning proposal intends to create a new land use type that is not included in the Standard Instrument, and external to the Dictionary section of the 2008 and Draft LEPs. This is contrary to Standard Instrument practice and instruction.

DP&I provides instructions to councils on using definitions under the Standard Instrument³. According to this Practice Note (p. 1):

The Dictionary is a mandatory provision and will be included in its entirety in all LEPs. To maintain consistency in planning language across the State, councils are not able to alter the standard definitions or directly add definitions to the Dictionary.

Definitions are divided into terms that describe land uses or activities that may be included in Land Use Tables (‘land use terms’), and ‘explanatory terms’ which describe technical, administrative or other land uses that are important to the interpretation of LEPs, but which are not to be included in the Land Use Tables.

However all definitions will appear together in alphabetical order as part of a single Dictionary in each council’s LEP.

³ NSW Department of Planning. 2011, ‘Preparing LEPs using the Standard Instrument: definitions’, LEP Practice Note PN 11-003, <<http://planning.nsw.gov.au/LinkClick.aspx?fileticket=BblRfpABjPM%3d&tabid=247&language=en-US>>

These instructions highlight three problems with the way council has prepared its planning proposal:

- The proposed land use definition is not included in the Standard Instrument template;
- The proposed land use definition has been placed in the body of the LEPs, and not in the Dictionary; and
- The proposed land use definition is not for a term used in a land use table, but instead creates a land use classification external to the zoning table.

In combination, these factors mean that the planning proposal is entirely contrary to the permitted use of definitions in a Standard Instrument LEP. Such an approach to land use definition would create immense uncertainty in interpretation and application. For instance, it could be argued that a definition for workers' accommodation facilities could fall under a 'group term' such as 'residential accommodation' or 'tourist and visitor accommodation'. The Practice Note includes provisions for councils to propose new or altered definitions under the Standard Instrument; however this planning proposal does not reflect the correct avenue or procedure for Council to undertake these investigations.

The planning proposal should not be permitted as its application would be contrary to the clarity and order expected under the Standard Instrument.

5.3 ABSENCE OF A STRATEGIC PLANNING PROCESS OR EMPIRICAL EVIDENCE

The planning proposal is not the result of a strategic planning process or empirical evidence, representing a haphazard response to a single proposal rather than a considered and evidence-based planning method.

5.3.1 LACK OF STRATEGIC PLANNING

Part 3 Section A of the planning proposal guidelines⁴ requires the proposal to state whether the planning proposal is the result of any strategic study or report. Council's response to this question refers to the 'need to specifically define temporary workers accommodation in the LEP', and refers to the public response to Council's Draft DCP on Temporary Workers' Accommodation which saw 300 submissions made to the Council, principally opposing The MAC's proposal at Gulgong.

Although public concern with the development proposal is a valid basis for considering amendments to planning controls, it cannot substitute strategic planning investigations and studies as a way of preparing planning standards and controls. The DCP referred to above was prepared by Council largely in response to The MAC's Gulgong proposal, as opposed to the result of a strategic planning investigation. The DCP went through three draft stages, and as shown in Appendix A and discussed in Section 3, the different versions were, in respect to some issues (especially locational requirements), almost contradictory in their controls. Incredibly, the first version of the Draft DCP (released in August 2011) required a workers' accommodation facility to either be on a mine site or within 1.5km of a town or 500m of a village, representing quite a remarkable policy reversal by Council in the course of less than four months.

Such indecision about the form of planning controls shows that Council has not undertaken the necessary strategic research to make a well-informed DCP, let alone this planning proposal. It is unreasonable to accept that a hastily-prepared DCP without basis in evidence or research is sufficient grounds to prepare a planning proposal.

⁴ NSW Department of Planning. 2009, 'A guide to planning proposals', p. 5, <http://planning.nsw.gov.au/lep/pdf/guide_preparing_preparing_planning_proposals.pdf>

5.3.2 MISREPRESENTATION OF EVIDENCE

The planning proposal refers to a report prepared by KPMG⁵ and commissioned by Isaac Regional Council (IRC) in Queensland on the impacts of fly-in/fly-out (FIFO) and drive-in/drive-out (DIDO) mining employment on small regional and rural communities. In reference to this report, the planning proposal states that (p. 4):

Evidence from Queensland...indicates that a proliferation of temporary workers accommodation has had a negative social and economic impact on existing smaller communities where the temporary population/beds outnumber the permanent resident population.

This is a disingenuous representation of the objective and findings of the KPMG report.

Leaving aside the fact that the resident population at The MAC's proposal would not outnumber the existing population of Gulgong, the purpose of the report, according to the KPMG report itself (p. 8), is:

In order for IRC to meet the desired level of infrastructure and service provision for local residents and non-residents, the IRC commissioned KPMG to develop an Infrastructure and Services Model (ISM)...The objective of the ISM is to assist Council in measuring the accumulative impact stemming from local mining activity. The ISM aims to help Council to work with mining companies to deliver sustainable communities.

In essence, the purpose of the KPMG report is to create a tool for IRC to identify and manage its infrastructure needs to respond to the growth of the mining industry. IRC has acknowledged that it is facing enormous population growth, and has requested KPMG's assistance to better identify and procure the necessary infrastructure upgrades to support such population growth. The report has no objective to analyse or evaluate the impact of FIFO or DIDO workers on the communities in IRC.

A comprehensive review of the KPMG reports finds no reference to the assertion contained in the planning proposal's summary. The report details the approach and function of the tool as a mathematical method of estimating impact on infrastructure'. As the report importantly notes, FIFO and DIDO workers are not counted as residents in Australian Bureau of Statistics figures, and hence important decisions about infrastructure provision, such as roads and hospitals, are made without reference to their presence in the community. This is an important issue that should be addressed by government, but this planning proposal has little to do with overcoming this problem.

In fact, another study participated in by IRC⁶ emphasises the need for a more informed and collaborative approach to managing workers' accommodation facilities is necessary, as opposed to policy being made by perception and a lack of information. This submission discusses a body of academic and industry evidence in Section 6.2 of this report.

The planning proposal's misrepresentation of its only source of empirical evidence shows that this amendment to the 2008 LEP and Draft LEP is unfounded in proper strategic planning or appropriate research. Planning standards and controls require appropriate strategic consideration and research, and this planning proposal has provided neither.

5.3.3 CONSEQUENCE OF DEFICIENCIES IN STRATEGIC PLANNING AND RESEARCH

One such example of the planning proposal's arbitrary and haphazard reasoning is the 5km radius control, which asserts that workers' accommodation facilities can only be constructed within 5km of a

⁵ KPMG. 2011, 'Redefining regional planning: managing change, measuring growth – abridged version', commissioned by Isaac Regional Council, <<http://www.isaac.qld.gov.au/web/guest/social-and-economic-data>>

⁶ Regional Social Development Centre. 2011, 'Social issues relating to permanent and non-permanent residents in the Moranbah mining community', commissioned by Isaac Regional Council, <<http://www.adaptivecommunities.com.au/wp-content/uploads/2011/04/RSDC-FINAL-DRAFT-REPORT-29-Mar-11.pdf>>

mine site. It would appear (though the planning proposal does not make it clear) that the purpose of this clause is keep mining workers away from Mid-Western Regional towns and firmly at the mine site.

The reasoning and justification for the 5km control is never explained in the planning proposal. One is left to presume that this is because it is a randomly selected figure to quarantine mining workers away from local communities. The weakness of this control is particularly evident in its potential impact on the village of Ulan. As shown in Figure 1, the 5km radius from the Ulan Coal mine site office envelops the Ulan village.

FIGURE 1 – IMPACT OF 5KM RADIUS ON ULAN



Ulan, NSW

IMPACT OF 5KM RADIUS CONTROL ON ULAN



The planning proposal would also have similar implications for the following towns and villages in the Mid-Western Regional LGA located nearby to existing and proposed mine sites:

- **Wollar** – operations commenced at the Wilpinjong Coal Mine in October 2006, and an application is currently under assessment by DP&I to increase its coal export. The edge of the mining lease is approximately 3.5km from the centre of Wollar;
- **Bylong** – explorations have confirmed sizeable coal deposits at Mount Penny, and Director-General's Requirements for environmental assessment have been requested from DP&I. The edge of the open cut mine proposed in the Preliminary Environmental Assessment is 3km northwest of the Bylong village; and
- **Lue** – the proposed expansion of the Kingsgate (formerly Bowdens) Silver Mine would bring mining activity within 2km of the Lue village.

Under the ambiguous framework of the planning proposal, it would be possible for workers' accommodation facilities to be constructed in the middle of these villages. This would be an extremely poor urban planning outcome, and indicates that the proposed clause is an ill-considered and inappropriate statutory control.

6 Perceived Impacts of Workers' Accommodation Facilities

The planning proposal raises a number of perceived impacts of unregulated workers' accommodation facilities, including:

- Implications for the housing market;
- Socioeconomic impact;
- Suspected isolation from the local community;
- Traffic impact and management; and
- Infrastructure servicing.

These issues, and our submissions regarding these issues, are discussed below.

6.1 IMPLICATIONS FOR THE HOUSING MARKET

The planning proposal will not alleviate stress on the Mid-Western Regional housing market, as is implied by the report, but rather further heighten housing demand relative to supply, creating severe housing market implications for both local residents and mine workers.

According to the planning proposal (p. 7):

The housing market within the region is undergoing an increasing level of stress due to the high demand and ability to pay being generated from the mining sector. Core community workers (nurses, police, teachers) are competing for housing in an inflated rental market. Further, the tourism sector is also feeling the strain as a result of a decrease in the number of hotel/motel beds available for tourists as the mining workforce absorb these as a short term option for accommodation through permanent bookings.

Therefore (p. 11):

The proposal serves the public interest through reducing the pressure on the existing housing stock as well as tourist and visitor accommodation, stress on Council's infrastructure services and traffic and transport through the locational factors.

The planning proposal asserts that the area's housing market is undergoing housing stress, and that the proposed clause will alleviate this stress. This causation is neither logical nor explained in the proposal.

By restricting the areas in which workers' accommodation facilities can be constructed to certain subzones, the planning proposal reduces the opportunity and likelihood of such facilities being constructed in the area. The proposed clause will restrict (through regulation) the supply of housing for mining workers, even as demand continues to escalate.

The 5km control represents an expectation on the part of Council that mining companies are willing to design, build, and operate workers' accommodation facilities close to their operation sites for their employees. However, in the case of The MAC, they have been responding to a market demand for a service – mining companies are generally not interested in being in the business of operating accommodation facilities. Given that mine operators may not be willing for companies such as The MAC to construct close to their sites, the deficit in supply of workers' accommodation facilities would likely be replaced by existing permanent housing stock in towns and villages.

As mining projects are typically treated as state significant development under the *State Environmental Planning Policy (State and Regional Development) 2011*, the provisions of a local environmental planning instrument are given less weight in the assessment of a mining proposal. Environmental assessments for

mining projects have to respond to Director-General's Requirements as issued by DP&I, and these typically do not require proposals to consider implications for housing. Where they are assessed, estimates of housing availability will count existing rental and hotel/motel accommodations, which in themselves can be double-counted by several mining proposals within the vicinity of a single town. As a result, the planning proposal will have negligible impact on alleviating housing market stress in the Mid-Western Regional LGA, an issue which is only likely to become more severe as nearby mining operations continue to expand.

Council has raised that mining companies should consider building new permanent urban dwellings to alleviate their impact on the local housing argument; however this is a short-sighted and flawed planning consideration that would do more harm than good to towns such as Gulgong. Some outside workers will come to Gulgong, decide that they like the local area and choose to move. However, only a small portion of incoming workforce is likely to take this option, and the outcome would be vast areas of empty houses once the mines shut, causing a debilitating deflation of housing markets in 20 years⁷. Workers' accommodation facilities are an appropriate housing response to absorb a large spike in resident population, as well as give incoming workers an opportunity to get to know the local community, and choose to move permanently if they so desire.

6.2 SOCIOECONOMIC IMPACT

The planning proposal does not provide substantive evidence or argument that workers' accommodation facilities lead to negative social and economic impacts on the local community (and how, in any case, these impacts would or should be mitigated through an environmental planning instrument).

The planning proposal asserts that temporary workers' accommodation has staunchly negative social and economic impacts on the towns they operate in and that, therefore, they need to be located away from existing urban areas and close to the mining projects themselves. The problems with this assertion are threefold:

- The MAC's other facilities have not experienced the greatly negative impacts that the planning proposal asserts;
- An arbitrary land use exclusion is not an appropriate way to mitigate these concerns; and
- The social and economic impacts of workers' accommodation facilities would be far worse if they are confined to within 5km of the mine site office.

The MAC's experiences in other regional and rural communities it operates in has not been as negative as is postulated by this planning proposal. Attached in Appendix B is correspondence from the Mayor of Narrabri Robyn Faber commenting on the positive economic and social impact the workers' accommodation facility has had there since opening. The socio-economic report attached in Appendix C, prepared by the Western Research Institute at Charles Sturt University, and peer-reviewed by Urbis Social Policy, shows that much of the negative anticipated impacts may be based on perception rather than reality. The Urbis peer review provides some suggestions for mitigating measures that can be instituted to minimise this perception. Further, The MAC advises that as part of its agreements with mining companies to provide accommodation, it provides many of the occupational health and safety frameworks associated with adequate rest between shifts, as well as transport and health requirements. It is unlikely that such facilities would be provided if mining employees were accommodated in rented private dwellings, or that adequate rest and recovery could be attained so close to a mine site.

A substantive body of Australian and international evidence shows⁸⁹¹⁰¹¹¹² that there is not a direct correlation between growth in incoming mining workers and negative social and economic outcomes.

⁷ Petkova, V., Lockie, S., Rolfe, J. & Ivanova, G. 2009, 'Mining developments and social impacts on communities: Bowen Basin case studies', *Rural Society*, 19(3), 211-28.

⁸ Freudenburg, W.R. & Wilson, L.J. 2002, 'Mining the data: analysing the economic implications of mining for non-metropolitan regions', *Sociological Inquiry*, 72, 549-575.

Rather, a situation of negative social and economic relations depends on a far broader array of factors than the simple presence of FIFO and DIDO workers, such as the provision of infrastructure, the relationship of miners with the community, the perception of social and economic inequality, and the existence of a stressed housing market arising from insufficient supply. As Hajkowicz et al (2011, p. 37) conclude in their assessment of the socio-economic impact of mining, 'we do not find evidence of a "resource curse" in Australia's mining regions at the whole of local government scale'. All research on the issue argues that the response to any arising problems requires considered and well-informed policy development: not, it can be deduced, the imposition of an arbitrarily-drawn land use barrier.

Irrespective of the merits of locating workers' accommodation facilities close to existing towns, it is certain that a far worse socio-economic outcome would be to locate such facilities on the mine sites. For instance, The MAC has been advised by councils in Queensland that they have an active policy of excluding accommodation facilities from within 8km of mine sites, particularly in relation to environmental (noise and dust) impacts on residential facilities. Such concerns were raised by Ulan Coal Mines Ltd in a submission to the recently-approved proposal (DA0135/2012) for workers' accommodation at 94 Main Street, Ulan.

6.3 RELATIONSHIP WITH THE LOCAL COMMUNITY

The planning proposal argues that an indifference to integration with the local community is sufficient grounds to create a prohibition on a land use, when The MAC's experience and preferred model is to use local employees and suppliers, as well as engage with local community events.

According to the planning proposal (p. 6):

These facilities on the edge of small communities are fully self-sufficient in terms of catering and recreation while placing pressure on physical infrastructure – water, sewer, roads and soft infrastructure in particular health related services.

The MAC's experience with constructing and operating their facilities across Australia show that the opposite is true. The MAC made a submission to the Inquiry into the use of 'fly-in, fly-out' (FIFO) workforce practices in regional Australia by the House of Representatives Standing Committee on Rural Australia, and is included in Appendix D as a good summary of The MAC's efforts to integrate and work with their local communities. In brief, The MAC has:

- Contributed to the amplification of local infrastructure services, including water and sewer, as part of their development applications;
- Worked with local businesses and suppliers to ensure it does not duplicate goods and services already offered in the town;
- Provided sponsorship to sporting clubs and events, business events and committees, major tourist events and festivals, and local school and community groups; and
- Estimated its contribution to the Narrabri economy through its development and operation at \$4,717,450 through to September 2011.

It should be noted that The MAC has already been contacted by local food and services suppliers who are interested in working with the proposal currently under assessment, in line with The MAC's policy on

⁹ Stedman, R., Parkins, J., & Beckley, T. 2004, 'Resource dependence and community well-being in rural Canada', *Rural Sociology*, 69(2), 213-234.

¹⁰ Petkova, V., Lockie, S., Rolfe, J. & Ivanova, G. 2009, 'Mining developments and social impacts on communities: Bowen Basin case studies', *Rural Society*, 19(3), 211-28.

¹¹ Hajkowicz, S., Heyenga, S. & Moffat, K. 2011, 'The relationship between mining and socio-economic wellbeing in Australia's regions', *Resources Policy*, 36(1), 30-38.

¹² Tonts, M., Plummer, P. & Lawrie, M. 2011, 'Socio-economic wellbeing in Australian mining towns: A comparative analysis', *Journal of Rural Studies*, future publication.

avoiding service duplication. Equally, The MAC also makes some of the operations in their facilities, such as gymnasiums, restaurants, and conference facilities, available to the local community where they are not already provided in the town.

By locating the facility on a mine site, it would make it far more difficult for local businesses to operate with the workers' accommodation facilities, and impossible for local residents to make use of services not provided in towns like Gulgong.

We have included correspondence from the mayors of Narrabri and Blayney in Appendix B as evidence that strong economic partnerships are made between The MAC and their local communities, relating to the provision of jobs and the creation of trade. If workers' accommodation facilities were restrained to mining sites, such opportunity would not be made available to the Mid-Western Regional community.

6.4 TRAFFIC IMPACT AND MANAGEMENT

The planning proposal argues that traffic impact is sufficient grounds to create a prohibition on a land use, when this should be addressed via DCP controls, negotiation, and assessment of an individual proposal.

According to the planning proposal (p. 11):

One of the biggest impacts is likely to be traffic and transport and locating the facilities adjacent to mine sites will mitigate this impact.

Irrespective of the existence or location of workers' accommodation facilities, the expansion of mines and the increase of employees in mining operations will have an impact on the road networks in Mid-Western Regional LGA, particularly to and from the mine sites. The advantage of workers' accommodation facilities is that they provide a focal point outside the mine, from which mass transport can be utilised to minimise the number of vehicles travelling directly to the mine site. The statement of environmental effects for the Gulgong DA stated that bus services would operate, as required in response to shift times and other factors, between the facility, the mine sites, Gulgong town centre, and Mudgee Airport.

Above these considerations, however, is the fact that such grounds should not be used to justify the proposed clause. Traffic impact assessment should be considered in development control plans, development application, development assessment, and determination. However, it should not be a factor that determines the permissibility or otherwise of a land use.

6.5 INFRASTRUCTURE SERVICING

The planning proposal argues that infrastructure servicing requirements are sufficient grounds to create a prohibition on a land use, when rather a proposal should be assessed on its merits regarding site servicing. In addition, impacts can be alleviated via necessary service amplification, and any workers' accommodation facility will leave behind legacy infrastructure for use in future urban expansion.

According to the planning proposal (p. 9):

In terms of the location of these facilities, the Council is the water and sewer authority and while strategic asset planning has been undertaken for these services based on urban expansion, there is a real concern that situating temporary workers accommodation adjacent to towns will place un due stress on infrastructure and impact on the ability of Council to service residential subdivision in the short to medium term without significant costs associated in bringing upgrades forward and increasing the cost of development.

The MAC does not deny that its development would not place additional demand on the operation of local infrastructure, including water and sewer. Therefore, as part of the Gulgong DA, The MAC has proposed an extension and amplification of utilities in line with Council's design and operation requirements. As earlier discussed, in other towns where The MAC operates, it contributes to the development of local infrastructure services.

The current state of Council's services should not be sufficient grounds to enforce a land use prohibition on a particular form of development. As with the above issues, this is a matter best addressed through policy controls such as development control plans, and through the development application, assessment, and determination phases.

Subclause 2(d) of the planning proposal states that consent could not be granted to the development of a workers' accommodation facility unless:

water and sewerage infrastructure will be provided to adequately meet the requirements of the development

The planning proposal is therefore requiring proposals to design, construct, and operate an independent water and sewer system operating in isolation close to the mine site. Such an unconsidered control does not acknowledge that:

- There are significant environmental constraints surrounding the operation of such infrastructure within close proximity to a mine site; and
- Stemming from such environmental impacts, there are considerable additional planning and building controls relating to building infrastructure and associated development, unlike the planning proposal's assertion that it 'will deliver a better, more efficient outcome in terms of the development approval process' (p. 4).

The proposed locational requirements also negates any potential for infrastructure created as part of a workers' accommodation facility to be transferred as legacy infrastructure for future urban development. Instead, infrastructure would have to be decommissioned and removed at the conclusion of the accommodation facility's use, representing both a significant expense to the facility operator and a massive waste of infrastructure to the local community and council.

7 Conclusion

This submission has shown that the planning proposal to define and curtail the development of workers' accommodation facilities under the 2008 and Draft LEPs is an ill-conceived and poorly executed attempt to control such development. The proposal contravenes NSW planning policy, including the Standard Instrument template, and it represents a poor application of planning method and controls. The content and criteria of planning proposal are not appropriate for an environmental planning instrument, and the planning proposal does not provide adequate justification for the identified policy issues to be included as part of amendments to the 2008 and Draft LEPs.

To iterate, it is submitted that:

1. The planning proposal is contrary to the principles of the Standard Instrument Local Environmental Plan template, and broader NSW planning policy;
2. The planning proposal represents a poor use of an environmental planning instrument, incorporating controls and criteria that are better suited either to a development control plan or the development application and assessment process;
3. The planning proposal could create a precedent for planning policy on temporary workers' accommodation facilities across the State, pre-empting any attempt by the State to prepare a comprehensive strategic planning approach to this emerging issue;
4. The planning proposal creates a subzone, whereby additional land use controls are established outside the land use table with unusually and arbitrarily restrictive limitations. This contravenes Ministerial Direction 6.3 under the *Environmental Planning and Assessment Act 1979*;
5. The planning proposal creates a new land use definition outside the Dictionary that does not apply to the land use table, contrary to Standard Instrument practice;
6. The planning proposal is not the result of a strategic planning process or empirical evidence, representing a haphazard response to a single proposal rather than a considered and evidence-based planning method;
7. The planning proposal will not alleviate stress on the Mid-Western Regional housing market, as is implied by the report, but rather further heighten housing demand relative to supply, creating severe housing market implications for both local residents and mine workers;
8. The planning proposal does not provide substantive evidence or argument that workers' accommodation facilities lead to negative social and economic impacts on the local community (and how, in any case, these impacts would or should be mitigated through an environmental planning instrument);
9. The planning proposal argues that an indifference to integration with the local community is sufficient grounds to create a prohibition on a land use, when The MAC's experience and preferred model is to use local employees and suppliers, as well as engage with local community events;
10. The planning proposal argues that traffic impact is sufficient grounds to create a prohibition on a land use, when this should be addressed via DCP controls, negotiation, and assessment of an individual proposal; and
11. The planning proposal argues that infrastructure servicing requirements are sufficient grounds to create a prohibition on a land use, when rather a proposal should be assessed on its merits regarding site servicing. In addition, impacts can be alleviated via necessary service amplification, and any workers' accommodation facility will leave behind legacy infrastructure for use in future urban expansion.

The MAC looks forward to the results of this submission and the exhibition period. Copies of this submission have also been forwarded to relevant public agencies:

- DP&I Gateway Panel;
- DP&I Western Region Office;
- Department of Primary Industries – Agriculture Division;
- Department of Primary Industries – Minerals and Petroleum Division; and
- Joint Regional Planning Panel Secretariat.

Appendix A

Summary of Versions of the Mid-Western Regional Development Control Plan – Temporary Workers' Accommodation

The table below provides a summary of the changes between the various versions of Mid-Western Regional Council's Development Control Plan – Temporary Workers' Accommodation as it progressed through drafts to a final adopted form.

ISSUE	DCP – AUGUST VERSION	DCP – DECEMBER VERSION	DCP – FINAL VERSION
<p>Definition of temporary workers accommodation</p>	<p>Defined as <i>'development which remains in place on a temporary basis that provides accommodation for mine-related workers or those associated with large scale infrastructure projects and their dependents (usually employed on a drive in/drive out or fly in/fly out basis) and consists of accommodation units, and associated amenity building.'</i></p>	<p>Amended to <i>'development which remains in place on a temporary basis that provides temporary accommodation for mine-related workers or those associated with large scale infrastructure projects and their dependents (usually employed on a drive in/drive out or fly in/fly out basis) and consists of accommodation units, and associated amenity building.'</i></p>	<p>Changed to <i>'development that provides accommodation and infrastructure for workers associated with mining or other large scale infrastructure projects (the Project) being accommodation of limited intended duration. The accommodation is not intended to be the principle place of residence but is typically of a temporary 'drive-in/drive-out' or 'fly-in/fly-out' basis.</i></p> <p><i>'The accommodation itself typically consists of individual accommodation units without individual kitchen facilities but with associated amenities including food, drink, laundry, and with infrastructure for the disposal of sewerage and other waste. The duration of the development is related to the life of the project.'</i></p>
<p>Permissibility</p>	<p>Temporary workers' accommodation (TWA) is identified as an innominate use in the <i>Mid-Western Regional Interim Local Environmental Plan 2008</i>, hence requiring assessment by the objectives of the relevant zone, and whether the relevant zone is 'open' or 'closed' for innominate uses.</p>	<p>TWA is characterised as 'tourist and visitor accommodation' in the <i>Mid-Western Regional Interim Local Environmental Plan 2008</i>, which is only permissible in the village, business and light and general industrial zones.</p>	<p>'Pursuant to the <i>Mid-Western Regional Interim Local Environmental Plan 2008</i>, Temporary Workers Accommodation by its characterisation falls within the definition of 'tourist and visitor accommodation'.</p> <p>This version also explicitly states that the DCP is to be read in conjunction with the three LEPs in the LGA.</p> <p>Further, 'where there is an inconsistency between this DCP and other DCP that currently apply to the</p>

ISSUE	DCP – AUGUST VERSION	DCP – DECEMBER VERSION	DCP – FINAL VERSION
Locational requirements	<p>Within 1.5km of the edge of the urban zone of a town, 500m of the edge of a village zone of a village, or at the site of a major infrastructure project.</p>	<p>The distance requirements have been removed, though emphasis is placed on discouraging TWAs in areas of scenic value, adjacent to tourist routes, industrial zoned land, or far from mining areas.</p>	<p>local government area than this DCP shall apply in so far as it relates to development for the purposes of temporary workers accommodation.’</p> <p>Distance requirements maintained, however a clause has been added that requires the suitability of legacy infrastructure for later projects to be assessed at the initial DA stage.</p>
Demand	<p>No more than 1,200 TWA beds across the LGA, with a maximum of 400 beds in any one facility and a minimum separation of 20km from any other TWA.</p> <p>Applicants are required to demonstrate the need for the facility.</p>	<p>Bed cap and distance requirements removed.</p> <p>Applicants must include in their statement of environmental effects an expected time of decommissioning for the TWA.</p>	<p>Maintained.</p>
Social impact	<p>No requirement.</p>	<p>Applicants must include a social impact statement, identifying potential impacts and management plans for them, as well as detailing community consultation.</p>	<p>Broadly maintained, with minor alterations to note that GPs and dentists must be consulted in the SIS, and that an SIS should identify and implement provisions to address issues arising from social impacts.</p>
Density	<p>The site density must not exceed 100 beds per square hectare.</p>	<p>Maintained.</p>	<p>Maintained.</p>
Facilities	<p>Facilities are to include:</p> <ul style="list-style-type: none"> ▪ Bathroom in each room; ▪ Communal laundry; 	<p>Maintained.</p>	<p>Maintained.</p>

ISSUE	DCP – AUGUST VERSION	DCP – DECEMBER VERSION	DCP – FINAL VERSION
	<ul style="list-style-type: none"> ▪ Covered entry for each building; ▪ Outdoor activity area; ▪ Secure storage spaces; ▪ Street and walkway lighting; and ▪ Paved internal walkways connecting all buildings and facilities. 		
Car parking	One parking space per room and one parking space per staff member.	Maintained.	Maintained.
Services	Potable water providing at least 140L/person/day. Where connecting to a reticulated system, it must be shown that there is sufficient capacity.	Maintained, with requirements for waste management and on-site first aid included.	Maintained.
Landscaping	Landscape plan is to retain remnant vegetation, provide a buffer to surrounding land, and at least 25% of site is to be open space.	Maintained.	Maintained.
Plan of management	Comprehensive plan of management to be included in DA, including matters such as waste, neighbours, transport, alcohol, medical facilities, emergency response, soil and groundwater management, and complaints.	Maintained.	Maintained.
Decommissioning plan	Decommissioning plan to detail timing, facilities to remain, site rehabilitation, proposed future uses, and the transfer to public ownership of legacy infrastructure.	Maintained.	Maintained.

ISSUE	DCP – AUGUST VERSION	DCP – DECEMBER VERSION	DCP – FINAL VERSION
Developer contributions	<p>For proposals of 50 beds or greater, Council will seek to negotiate a voluntary planning agreement. Smaller proposals will be subject to Council's Section 94 Contributions Plan.</p>	Maintained.	Maintained.

Appendix B

Correspondence from the Mayors of Narrabri and Blayney

Robyn Faber, Narrabri Mayor – Email 28 October 2011

Narrabri was experiencing a MAJOR accommodation crisis when the MAC proposal was suggested. All motels and hotels full, few rentals and rent price rises, tourists unable to gain accommodation on arrival in town and our traditional base of business reps no longer able to obtain rooms. Minimum 3 weeks notice needed for one overnight room! (Still pretty hard even with 264 rooms at THE MAC). Problem combination of mine and gas construction, new hospital construction, extension to Plan Breeding Institute, and 4 major BER projects. Majority of demand was from construction, mine worker demand is yet to really occur. Note close towns of Wee Waa and Boggabri similarly affected so a Shire wide problem. We have a 10 fold increase in homelessness in the Shire due to people no longer able to afford rents. No government support for new affordable housing and community housing reverting to higher rentals for miners.

The MAC operates and is classified as a Motel. it takes any type of person, is not exclusive to 'miners'. Our village has had ARTC workers, hospital construction contractors and stranded airline passengers!

Majority of construction for The MAC was done by local people (except for the units themselves): they used local plumbers, electricians, fabricators and powdercoaters, earthworks providers etc. The local Homemakers Store kitted out all the units. Local airconditioner firm provided the air conditioners.

Majority of daily needs are supplied locally: fruit and veg, meat from Cargill at Tamworth, all workers except Manager are local, two chefs in kitchen are training 8 locals in cookery and hospitality, with TAFE Tamworth providing on site training.

Initial concern from moteliers that their 100% occupancy would be impacted has not occurred. They recently commented that the MAC was full and they were all still full.

Secret to making it work is to ensure the village is as close as possible to town and integrated with the town. The MAC has no other stand alone services except for meal and laundry provision. The patrons use all other town facilities and they DO use them. This includes town pool, gyms, shops, restaurants and some sports.

We have had no social issues with patrons. The MAC undertakes random drug and alcohol control on the mines' behalf. Patrons are accommodated in grouped areas according to their shifts which are 12 hours to make the stay as pleasant as possible.

The MAC supports community functions and events (such as free catering for a childcare school fund raiser) and is so far a good community citizen. They are good operators. The village is well landscaped and maintained.

They presently have DA awaiting approval to expand to 900 rooms as a staged extension. We are expecting 2000 mine workers by 2014!

The real benefit to Narrabri apart from the patronage of local business, is the ability for the village to take the heat out of the rental market and enable us to once again promote our region to tourists. We couldn't do that lately as we had no room for them!

The key thing for communities is you need to be ahead of the demand; it is too late for action once the mines start: inaffordability of housing and inability to obtain trade services for daily needs will really stress your community if alternatives are not put in place.

MAC has not stopped other investment, we presently have 18 DAs awaiting a rezoning to enable medium density development in residential areas.

Mining village worth its metal

BY ERIN SOMERVILLE
28 Nov, 2011 03:00 AM

THE economic benefits from the mining village may not be obvious, but they're certainly there, Blayney mayor Bruce Kingham says.

Cr Kingham said the community had already benefited from the extra 200 residents, and would continue to do so for years to come.

Despite the mining village being self-catered, Cr Kingham said retailers were still benefiting.

"This is a major boost for the economy," he said.

"They buy all their food locally."

Blayney's economy is also receiving an injection from increased fuel, social and small good purchases, said Cr Kingham.

Many Blayney residents have directly benefited from the residential development through the creation of new jobs at the village such as cooking, cleaning and administration.

The town is expected to reap these flow-on cash effects.

"These wages all come back through the town," Cr Kingham said.

Cadia Valley Operations is already getting its money's worth out of the \$5.5 million facility.

The village has been brimming with contractors since its opening in August.

With 350 employees heading to Cadia on Monday for a 10 day shutdown, general manager of Cadia Projects Leigh Cox is relieved to have the village operating for accommodation purposes.

"We are using it all the time, and those coming for the shutdown already have accommodation," Mr Cox said.

"We're very pleased in how it's come about."


[Share on Facebook](#)

[Tweet on Twitter](#)

[Email to a friend](#)

[Allianz Travel Insurance](#)

Get a Quick Quote for Insurance to Suit Your Travel Needs.

www.Allianz.com.au/Travel AdChoices 

comments

No comments yet. Be the first to comment below.

post a comment

Appendix C

Socio-Economic Report (Western Research Institute) and Peer Review (Urbis)



Socio-Economic Report

For Land at 2 Black Lead Lane,

Gulgong, NSW



Prepared for The MAC

16th December 2011

Disclaimer

Any representation, statement, opinion or advice, expressed or implied, in this publication is made in good faith, but on the basis that the Western Research Institute (WRI) or its employees are not liable (whether by reason of negligence, lack of care or otherwise) to any person for any damage or loss whatsoever, which has occurred or may occur in relation to that person taking (as the case may be) action in respect of any representation, statement or advice referred to above.

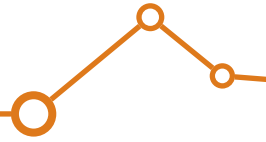
Acknowledgements

WRI would like to acknowledge the assistance of Mid-Western Regional Council and local Mudgee and Gulgong community and business stakeholders.

Contact Details:

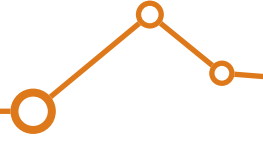
Western Research Institute
ABN 76 090 089 991
c/- Charles Sturt University
Research Station Drive
Bathurst NSW 2795
Telephone: (02) 6338 4435
Facsimile: (02) 6338 4699
Email: wri@csu.edu.au

CONTENTS



1. Introduction	05
1.1 Background	05
1.2 Methodology	05
1.3 Report Outline	05
2. Socio-Economic Profile	07
2.1 Population	07
2.2 Population Projections	07
2.3 Age Structure	08
2.4 Education Qualifications	08
2.5 Industry Structure	09
2.6 Occupation	10
2.7 Unemployment	11
2.8 Housing Affordability	11
2.9 Occupancy Rates	12
2.10 Crime Statistics	13
3. Competitor Analysis	15
3.1 Key Competitor/Related Industries	15
4. Community Impacts/Benefits	19
4.1 Economic Impact	19
4.2 Social Issues	20
5. Conclusion	23
Appendix 1: Literature Review	25
Appendix 2: Modelling Methodology	29
Western Research Institute	33

EXECUTIVE SUMMARY



The MAC is proposing to develop a parcel of land, at 2 Black Lead Lane Gulgong, as an accommodation facility to service the surrounding mine construction and operational workforces. Stage 1 of the development will comprise a 400 room facility. The facility could be extended to 1,500 rooms in the longer term.

Overall Conclusion

There appears to be some negative community perception about the proposed MAC facility at Gulgong. However, much of the negativity revolves around the influx of a large number of drive-in drive-out mine workers rather than being specifically related to The MAC facility. Thus The MAC development has attracted negative perceptions by association.

In summary:

- mining is a key part of the Mid-Western Regional LGA economy;
- the competitor/associated industry analysis shows minimal negative and some significant positive benefits to business;
- the economic impact is modest but significant for the Stage 1 400 room development whilst being larger for the 1,500 room facility;
- most of the anticipated negative impacts may be perception rather than reality or are specific to a large influx of mine workers rather than The MAC development itself; and
- in some instances The MAC development may mitigate some of the negative social impacts of the arrival of a significant number of mine workers.

Socio-Economic Profile

A socio-economic profile shows that:

- At the 2006 census the resident population of Gulgong was 1,906 persons. Gulgong is part of the Mid-Western Regional LGA which had an estimated resident population of 22,860 at 30 June 2010. Between 2001 and 2010 the estimated resident population of Mid-Western Regional LGA grew at an average annual rate of 0.3 percent.
- In 2009-10 the Gross Regional Product (GRP) of Mid-Western Regional LGA was \$1,049 million with the largest contributor

to full time equivalent (FTE) employment, measured by place of employment, being mining. Mining contributed 14 percent of FTE and 30 percent of industry value added.

- At the 2006 Census, the largest industries by total employment (as opposed to FTE employment) of residents of Gulgong were retail trade, mining, accommodation & food services, health care & social assistance and manufacturing.
- In 2008-09 average income in Mid-Western Regional LGA (\$44,202) was higher than North Western Statistical Division (\$40,038) and Regional NSW (\$38,490).
- Median weekly rental as percentage of average weekly taxable income was slightly higher in 2008-09 in Mid-Western Regional LGA compared to Central Macquarie and Regional NSW. Anecdotal evidence suggests rents have risen significantly more recently.

Competitor Analysis

The key competitor analysis was based on face to face and telephone interviews with 15 businesses in Gulgong and Mudgee. Businesses interviewed included those that offer a similar service to the proposed MAC facility. Other businesses interviewed were those likely to be complementary or related to the facility. There were also additional interviews of businesses recommended as having a good overview of the Gulgong economy.

The overall assessment is that:

- the real estate sector would not be negatively impacted by The MAC development;
- licensed premises in Gulgong could benefit significantly;
- cafes/restaurants could also benefit;
- the impact on the accommodation sector is likely to be slightly negative for some but unaffected for others; and
- the fitness centre is likely to be unaffected.

Other concerns and issues raised by business in general included:

- a view that around 70 percent of businesses in Gulgong support The MAC development;
- The MAC facility would free up accommodation for tourists to return to Gulgong, potentially generating increased

- expenditure in the town;
- busyness on roads making it difficult for farmers to move stock and machinery;
- scepticism about the amount residents at The MAC facility would spend in Gulgong;
- The MAC facility, on the gateway to Gulgong from the Hunter Valley, could ruin the heritage image of Gulgong;
- concern about the shortage of skilled labour;
- concern about the capability of Gulgong to step up and supply The Mac facility, although one business is prepared to upscale significantly; and
- a view that Council has constrained development in Gulgong.

The overall assessment is that there are some significant business concerns about the impact of mining in general, but few that relate specifically to the proposed MAC development.

On the positive side, The MAC development is expected to benefit some industry sectors and help alleviate the shortage of temporary accommodation in Gulgong, which is thought to be constraining tourism.

Community Impacts /Benefits-Economic

The proposed MAC development will have an economic impact on Mid-Western Regional LGA in both the construction phase and the operational phase. In the 400 room Stage 1 configuration the construction phase will contribute:

- An additional \$6.6 million in gross regional product
- An additional \$3.5 million in household income
- An additional 59 full-time equivalent jobs

In the 400 bed Stage 1 configuration the operational phase will contribute:

- An additional \$4 million in gross regional product
- An additional \$2.1 million in household income
- An additional 51 full-time equivalent jobs

For a 1,500 bed configuration the construction phase would contribute:

- An additional \$21.3 million in gross regional product
- An additional \$11.2 million in household income
- An additional 191 full-time equivalent jobs

For a 1,500 bed configuration the operational phase would contribute:

- An additional \$14.9 million in gross regional product

- An additional \$8.0 million in household income
- An additional 191 full-time equivalent jobs

It should be noted that the estimates for a 1,500 room facility are measured in total and not in addition to those for a 400 room facility.

Community Impacts /Benefits-Social Issues

The analysis of the social issues associated with The MAC facility was based on face to face and telephone interviews with local government, the police, health services and businesses in Mudgee and a literature review of the social impact of mining on rural and regional communities.

There is concern by some interviewees that a concentration of young men in The MAC facility close to Gulgong could lead to alcohol induced violence and vandalism. The zero tolerance of alcohol and drugs on mine sites, the experience of current accommodation providers, the view of the Mudgee Police Local Area Command and the literature review all indicate that this concern is unwarranted.

Many interviewees referred to the rich cultural heritage value of Gulgong, with some having the view that The MAC development would destroy this value for tourism. Others spoke of the current lack of accommodation constraining tourism in Gulgong and suggested that The MAC facility would alleviate this, thereby helping tourism. Related issues were the increasing busyness in Mudgee and Gulgong which, it was suggested, may result in current residents moving out of the area. The overall assessment is that the influx of mine workers is changing the character of Mudgee and Gulgong, independent of The MAC facility. By easing pressure on accommodation The MAC development may facilitate the return of tourism which, in turn, may help preserve the culture of heritage, arts and music.

The greatest concern for the Mudgee Police Local Area Command resulting from the increase in mine workers in the region is the impact on traffic accidents. Accidents and traffic offences typically rise as traffic volumes increase on 100 kilometre per hour two lane roads. This view was supported by the other interviews and the literature review. The assessment is that this is a problem associated with the increase in mine workers, rather than The MAC facility. However, The MAC facility, by concentrating workers in one place, could facilitate greater use of bus transport to and from the mines thereby reducing car travel by mine workers.

A number of interviewees expressed concern that high rents in the Mid-Western Regional LGA were creating hardship for lower socio-economic groups. Since The MAC development would ease

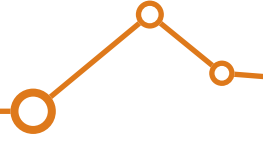
pressure on housing, rents should fall somewhat improving the situation for these groups.

Several interviewees expressed concern that The MAC development would drain already stretched essential services, particularly health and policing. Policing has been discussed above and the Western Health Local Health District (LHD) indicated that, as with most mining towns, the proposed development should not have a major effect on the health services that they provide in Gulgong. There could, however, be additional primary health care needs which the local GPs provide.

The legacy infrastructure left behind after The MAC has removed its buildings could be used for a future housing development on the 2 Black Lead Lane site. The MAC development could also prove to be a stepping stone for labour that is initially drive-in drive-out, but subsequently moves into the Mid-Western Regional LGA permanently.

The proposed MAC development will impact on the immediate neighbours by changing the character, and possibly value, of their properties. The MAC development will have bunds and landscaped gardens which will minimise noise and may mitigate the negative effects for the neighbours, at least to some extent.

1. INTRODUCTION



1.1 Background

The MAC Services Group Pty Ltd (The MAC) was established in 1998 and specialises in the provision and management of accommodation type facilities for the mining and construction industries.

The MAC is proposing to develop a parcel of land, at 2 Black Lead Lane Gulgong, as an accommodation facility to service the surrounding mine construction and operational workforces. The nature of the development is accommodation for "drive in drive out" or "fly in fly out" workers. On site facilities include:

- Laundry
- Gymnasium/Recreation room
- Outdoor recreation areas
- Cafeteria/Dining room
- Shop Kiosk
- Lap Pool

Other features of the development are:

- Only 30% of the available site is to be utilised.
- Rooms are en-suited with variations in size and features.
- Based upon the demand profile there is proposed to be a staged development of the site, with Stage 1 consisting of 400 rooms. The masterplan provides for a capacity of 1,500 rooms to be built if required.
- Large landscaped set back from both the road and property boundaries.
- The road design allows for future residential land subdivision lots.
- Reduced visual impact and physical separation from the township but close proximity for regular visitation.
- Safe road entry access and bus transport to and from the mine.

This report was prepared for The MAC by the Western Research Institute (WRI) in support of a DA pertaining to the above development. The report assesses the economic, social and competitive impacts of the development on the Gulgong community and, where appropriate, the wider Mid-Western Regional Council area.

The report does not constitute either a detailed economic or social impact assessment. Rather it provides a broad assessment of the

likely impacts and identifies and discusses some key issues pertinent to the development that were identified by members of the Mid-Western Regional community and in relevant literature.

1.2 Methodology

The methodology used to prepare this assessment includes:

- Desk research using Australian Bureau of Statistics (ABS) and other data to construct a socio-economic profile of the Mid-Western Regional and Gulgong community.
- Community consultation involving both individual and small group interviews.
- A literature review of research on the social and economic impact of mining and mining accommodation on regional communities (See Appendix 1 for the Literature Review).

1.3 Report Outline

Section 2 provides a socio-economic profile of the Mid-Western Regional LGA and the Gulgong Urban Locality. This material includes tables and graphs, comparing where appropriate between Mid-Western Regional LGA and Gulgong Urban Locality with the North Western Statistical Division and Regional New South Wales.

Section 3 provides a key competitor analysis to determine whether the business performance of any businesses in Mid-Western Regional LGA and Gulgong in particular, is likely to be adversely affected by The MAC development. This section reports the results of interviews with business owners or managers in industries that may compete with services provided by The MAC facility. An assessment of the likely impact of The MAC development for each industry group is included as are broader business concerns raised in the interviews.

Section 4 examines the possible Community Impacts/Benefits of the MAC development on Mid-Western Regional LGA and Gulgong. The first part estimates the economic contribution of The MAC development in terms of full-time equivalent jobs, household income and gross regional product, in both the construction phase and ongoing operational phase. The second part assesses social issues associated with The MAC development. Each identified social issue is examined with reference to interview results and relevant components of the literature review and finally an assessment is made.

A conclusion to the report is provided in Section 5.

2. SOCIO-ECONOMIC PROFILE

Gulgong is located within Mid-Western Regional Local Government Area (LGA) in the North Western region of New South Wales, approximately 270 kilometres from Sydney. As part of the overall socio-economic assessment of the proposed development, a profile of the key demographic and socio-economic characteristics of Gulgong and Mid-Western Regional LGA was undertaken.

As Gulgong is an urban locality within Mid-Western Regional LGA, there is little data outside of the Census provided at this level. Therefore, most of the analysis is provided at the Mid-Western Regional LGA level. A comparison was provided wherever possible with North Western Statistical Division and Regional NSW (NSW excluding Sydney, Hunter and Illawarra Statistical Divisions).

WRI utilised a number of data sources for the profile including the Australian Bureau of Statistics (ABS), the New South Wales Department of Planning and Infrastructure, the Department of Education, Employment and Workplace Relations (DEEWR), the Australian Taxation Office (ATO) and the Bureau of Crime Statistics and Research (BOCSAR).

2.1 Population

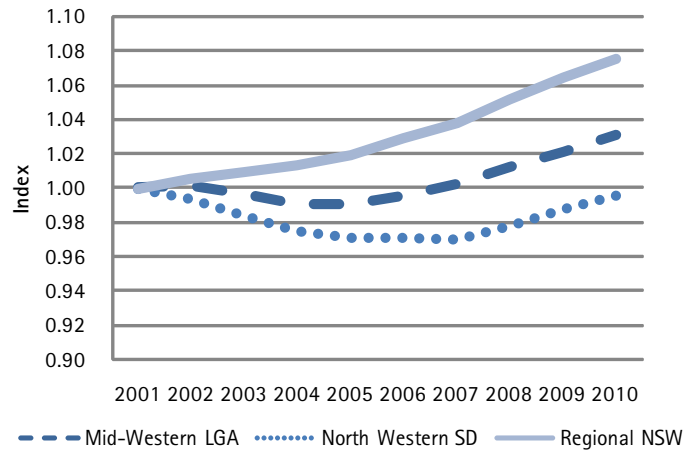
The estimated resident population of Mid-Western Regional LGA at 30 June 2010 was 22,860 persons (ABS Cat No 3218.0).

Between 2001 and 2010 the population of Mid Western LGA increased 3.0 percent at an average rate of 0.3 percent per annum. However, the rate of increase has not been consistent each year. The Index of Population (see Figure 2.1) shows that population levels declined between 2003 and 2005, however, have increased steadily since then.

Over the same time period, the North Western Statistical Division experienced population decline falling -0.4 percent between 2001 and 2010. For the North Western Statistical Division, the Index of Population shows that the population decreased between 2001 and 2007, however, has increased steadily since then.

Regional NSW population levels increased by 8 percent between 2001 and 2010 with population levels increasing steadily each year.

Figure 2.1: Index of population - base year 2001



Source: ABS 3218.0 Regional Population Growth, Australia

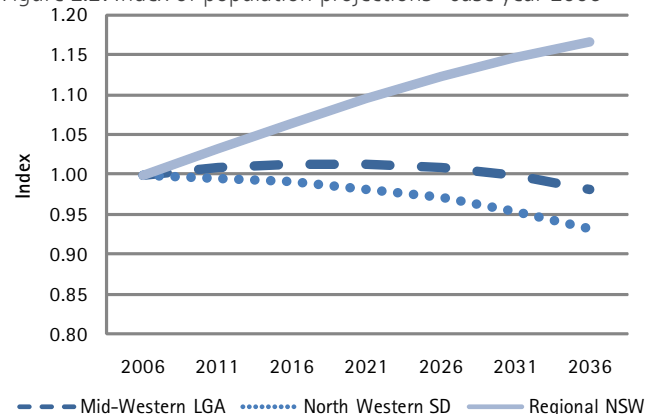
2.2 Population Projections

The New South Wales Department of Planning and Infrastructure released population projections at a local area level in April 2010.

Mid-Western Regional LGA is projected to decrease by -1.8 percent between 2006 and 2036. The Index of Population Projections (See Figure 2.2) shows that the population is projected to increase marginally until 2021, with levels declining after this.

The North Western Statistical Division is also projected to decline (-6.7 percent) between 2006 and 2036. The Index of Population Projections shows that the population is expected to decline from 2011. Regional NSW is expected to grow 16.6 percent between 2006 and 2036, and at a steady rate.

Figure 2.2: Index of population projections- base year 2006



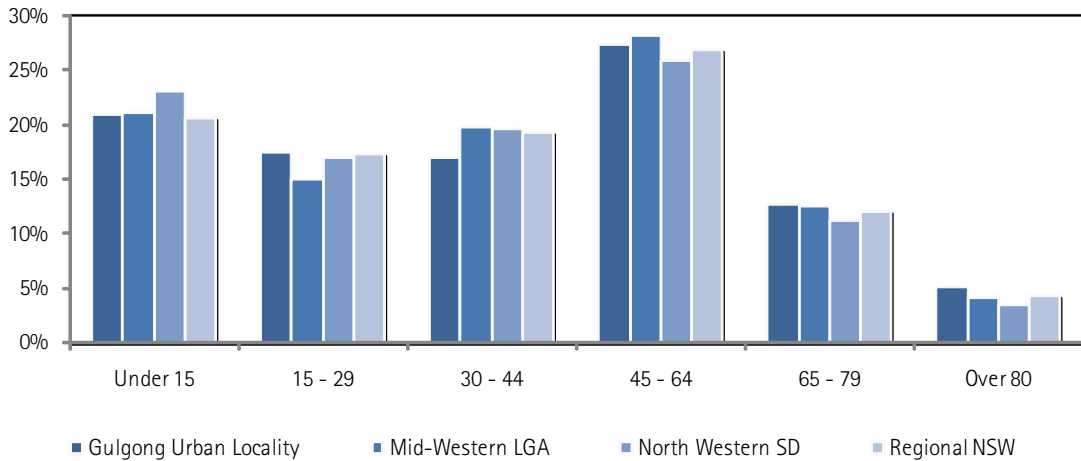
Source: Department of Planning and Infrastructure, NSW Statistical Local Area Population Projections, April 2010

2.3 Age Structure

The age structure of Gulgong Urban Locality and Mid-Western Regional LGA largely reflects the age structure across Regional NSW (see Figure 2.3). Overall, Gulgong and Mid-Western Regional LGA have a lower proportion of the population in the working age bracket and higher proportions in the dependent age brackets (Under 15 and over 65).

This breakdown is typical of many regional locations throughout Australia in which younger people leave the local community to seek employment or education options in larger centres.

Figure 2.3 Age structure



Source: ABS 2006 Census

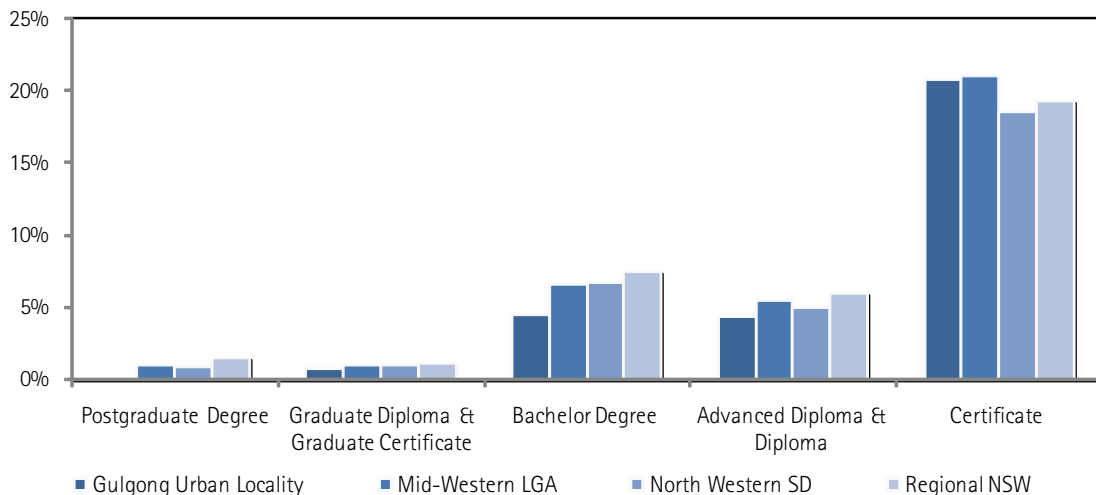
2.4 Education Qualifications

In Gulgong, 31 percent of the population aged over 15 years have a post-school qualification. This is lower than for Mid-Western Regional LGA (36 percent) and Regional NSW (35 percent).

However, both Gulgong and Mid-Western Regional LGA have a lower proportion of the population aged over 15 years with a Bachelor degree than Regional NSW. This may be attributed to the lack of a University located in either centre.

Gulgong and Mid-Western Regional LGA have a higher proportion of the population over 15 years with a Certificate level qualification than Regional NSW overall (see Figure 2.4).

Figure 2.4 Proportion of population over 15 years of age with post school qualifications



2.5 Industry Structure

In 2009-10 the Gross Regional Product (GRP) of Mid-Western Regional LGA was \$1,049 million, representing approximately \$135,000 per full-time equivalent (FTE) job in the region. This compares to \$145,000 per full-time equivalent for New South Wales.

In 2009-10, the top five contributors to FTE employment in the Mid-Western Regional LGA were:

- mining;
- retail trade;
- manufacturing;
- agriculture, forestry and fishing; and
- education and training.

Together, these sectors accounted for just over half (53 percent) of FTE employment. However, there are considerable variations in the contribution to employment and value added as shown in Figure 2.5.

Mining is the largest contributor to industry value added in Mid-Western Regional LGA representing 14 percent of FTE employment and 30 percent of industry value added. This sector is dominated largely by coal mining which represents almost 11 percent of FTE employment and 23 percent of industry value added in Mid-Western Regional LGA.

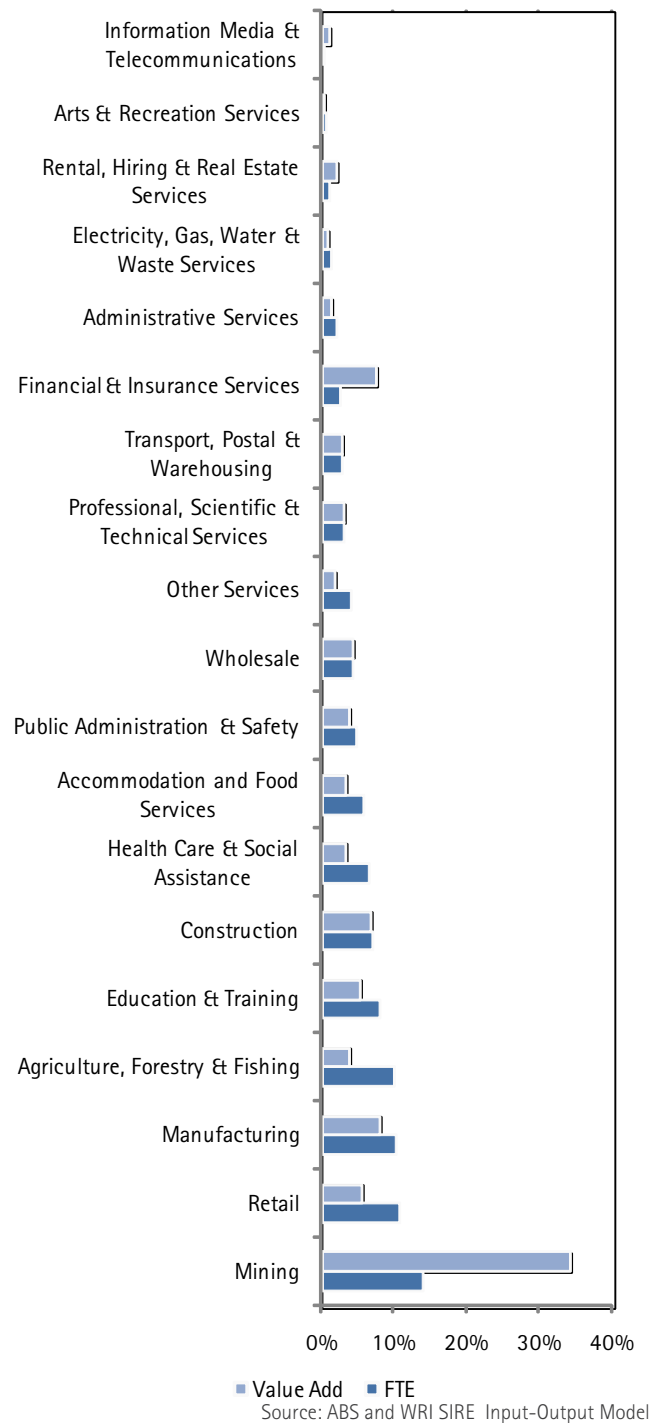
Manufacturing is the second largest contributor to industry value added in Mid-Western Regional LGA representing 7 percent of industry value added and 10 percent of FTE in 2009-2010. Within this sector, the largest contributors are food and beverage manufacturing and non-metallic mineral product manufacturing.

At the 2006 Census the largest industries by employment for Gulgong were:

- retail trade;
- mining;
- accommodation and food services;
- health care and social assistance; and
- manufacturing.

Note: WRI SIRE Input-Output model uses employment figures that are based on place of employment and full-time equivalent employment.

Figure 2.5 Percentage contribution to GRP and FTE employment by industry



2.6 Occupation

The largest occupation by employment in the Mid-Western Regional LGA is machine and stationary plant operators representing 6.4 percent of the workforce. Based on the 2006 Census, the majority of these are employed in the mining sector. This is significantly higher than for both North Western Statistical Division and Regional NSW (see Table 2.1). This occupation classification attracts the highest average income in the Mid-Western Regional LGA and also again, is significantly higher than for both North Western Statistical Division and Regional NSW overall (see Table 2.).

Education professionals is the second largest occupation classification in the Mid-Western Regional LGA, a lower proportion than for both the North Western Statistical Division and Regional NSW overall. However, this occupation classification attracts the tenth highest average income in Mid-Western Regional LGA.

Table 2.1 Top 20 occupations by employment

	Mid-Western LGA	North Western SD	Regional NSW
Machine and Stationary Plant Operators	6.4%	2.7%	1.4%
Education Professionals	5.3%	6.1%	5.7%
Sales Assistants and Salespersons	4.9%	4.5%	4.9%
Farm, Forestry and Garden Workers	4.6%	4.3%	2.9%
Automotive and Engineering Trades Workers	4.1%	3.1%	2.9%
Health Professionals	3.7%	4.2%	4.6%
Carers and Aides	3.6%	4.7%	4.3%
Construction and Mining Labourers	3.4%	2.8%	2.2%
Other Clerical and Administrative Workers	3.3%	3.7%	3.8%
General Clerical Workers	3.2%	4.0%	4.2%
Hospitality Workers	2.9%	2.4%	2.8%
Road and Rail Drivers	2.8%	3.4%	3.3%
Cleaners and Laundry Workers	2.7%	2.6%	2.6%
Chief Executives, General Managers and Legislators	2.6%	2.1%	2.6%
Hospitality, Retail and Service Managers	2.5%	2.5%	2.6%
Other Labourers	2.5%	2.7%	2.2%
Specialist Managers	2.3%	2.6%	3.4%
Design, Engineering, Science and Transport Professionals	2.3%	2.0%	2.2%
Office Managers and Program Administrators	2.2%	2.4%	2.9%
Skilled Animal and Horticultural Workers	2.0%	1.9%	1.4%
Numerical Clerks	2.0%	2.2%	2.2%

Source: ABS 5673055003_8A Wage and Salary Earner Statistics for Small Areas, Time Series, 2008–09

Overall, the average income in Mid-Western Regional LGA (\$44,202) was higher than North Western Statistical Division (\$40,038) and Regional NSW (\$38,490).

Nine of the ten highest average income occupation classification groups in Mid-Western Regional LGA are higher compared to the same occupation group in the North Western Statistical Division and Regional NSW overall (See Table 2.2).

Table 2.2 Top 20 occupations by average income

	Mid-Western LGA	North Western SD	Regional NSW
Machine and Stationary Plant Operators	\$108,364	\$87,299	\$64,988
Design, Engineering, Science and Transport Professionals	\$84,218	\$69,786	\$64,708
Electrotechnology and Telecommunications Trades Workers	\$77,637	\$63,362	\$59,687
Engineering, ICT and Science Technicians	\$74,460	\$64,746	\$53,893
Specialist Managers	\$74,419	\$65,694	\$66,104
Automotive and Engineering Trades Workers	\$63,880	\$53,566	\$48,101
Mobile Plant Operators	\$62,098	\$49,145	\$46,575
Protective Service Workers	\$61,227	\$61,655	\$60,187
Construction and Mining Labourers	\$60,186	\$44,912	\$39,165
Education Professionals	\$50,833	\$52,477	\$51,686
Business, Human Resource and Marketing Professionals	\$50,793	\$49,015	\$52,779
Road and Rail Drivers	\$47,660	\$46,459	\$45,647
Health Professionals	\$46,915	\$54,426	\$53,880
ICT Professionals	\$46,820	\$59,900	\$65,885
Office Managers and Program Administrators	\$46,411	\$48,283	\$48,718
Chief Executives, General Managers and Legislators	\$46,333	\$52,796	\$61,465
All Occupations	\$44,202	\$40,038	\$38,940
Health and Welfare Support Workers	\$43,061	\$46,805	\$42,561
Hospitality, Retail and Service Managers	\$42,666	\$44,692	\$43,218
Legal, Social and Welfare Professionals	\$41,115	\$47,093	\$45,401
Storepersons	\$40,956	\$35,061	\$34,525
Total	\$44,202	\$40,038	\$38,940

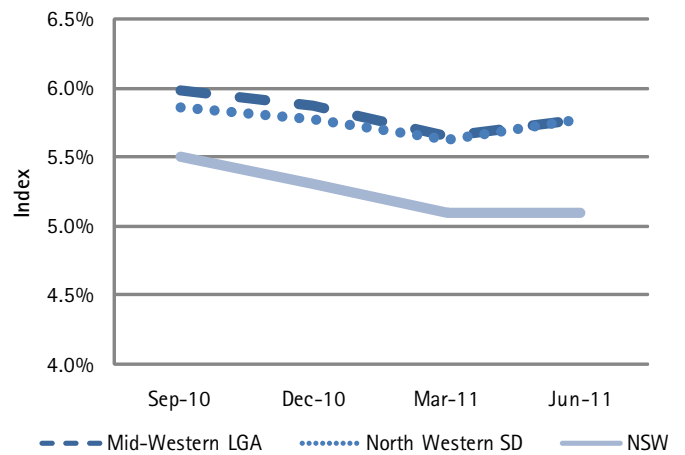
Source: ABS 5673055003_8A Wage and Salary Earner Statistics for Small Areas, Time Series, 2008–09

2.7 Unemployment

Over the last four quarters, both the Mid-Western Regional LGA and the North-Western Statistical Division have recorded higher unemployment rates than NSW overall (see Figure 2.6).

The unemployment rate for Mid-Western Regional LGA in the June quarter of 2011 was 5.8 percent, a similar figure to the North Western Statistical Division. However, this is a higher rate than for NSW overall at 5.1 percent.

Figure 2.6 Unemployment rates
September Quarter 2010 - June Quarter 2011



Source: DEWR Small Area Labour Markets

2.8 Housing Affordability

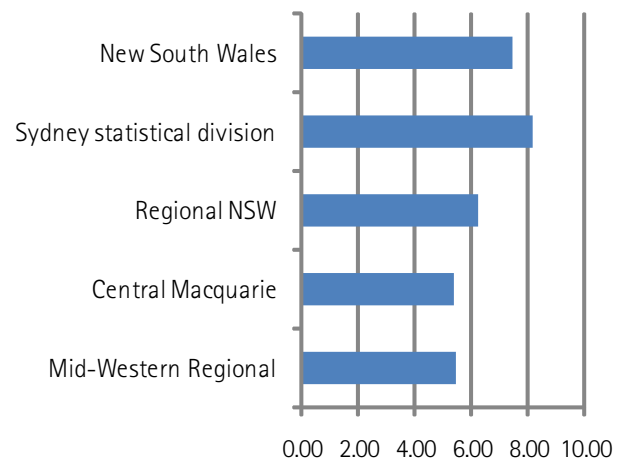
Housing affordability was examined using a ratio of median house prices to average annual taxable income and median weekly rental as a percentage of average weekly taxable income.

On average, housing is more affordable in the Mid-Western Regional LGA compared to Regional NSW, Sydney statistical division and NSW overall (see Figure 2.7). However, Mid-Western Regional LGA is less affordable on average than the Central Macquarie region.

Median weekly rental as a percentage of average weekly taxable income is slightly higher in Mid-Western Regional LGA compared to Central Macquarie, Regional NSW and NSW overall (see Figure 2.8).

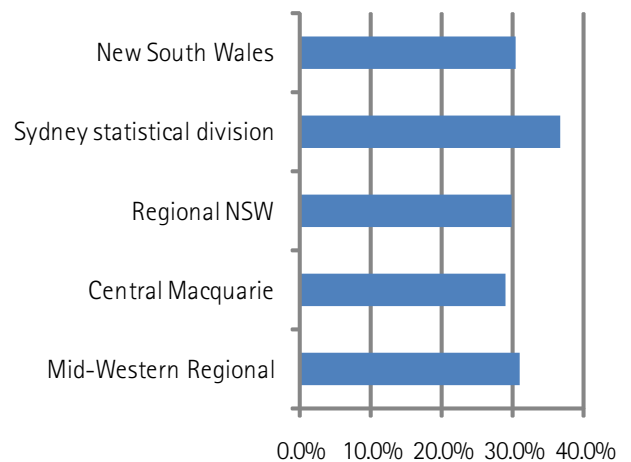
Note: data is not provided for North Western Statistical Division so the Central Macquarie region has been used as a comparison.

Figure 2.7 Ratio of median house price to average taxable income



Source: NSW Department of Housing June Qtr 2011 and ATO 2008/09

Figure 2.8 Median weekly rental as percentage of average weekly taxable income



Source: NSW Department of Housing June Qtr 2011 and ATO 2008/09

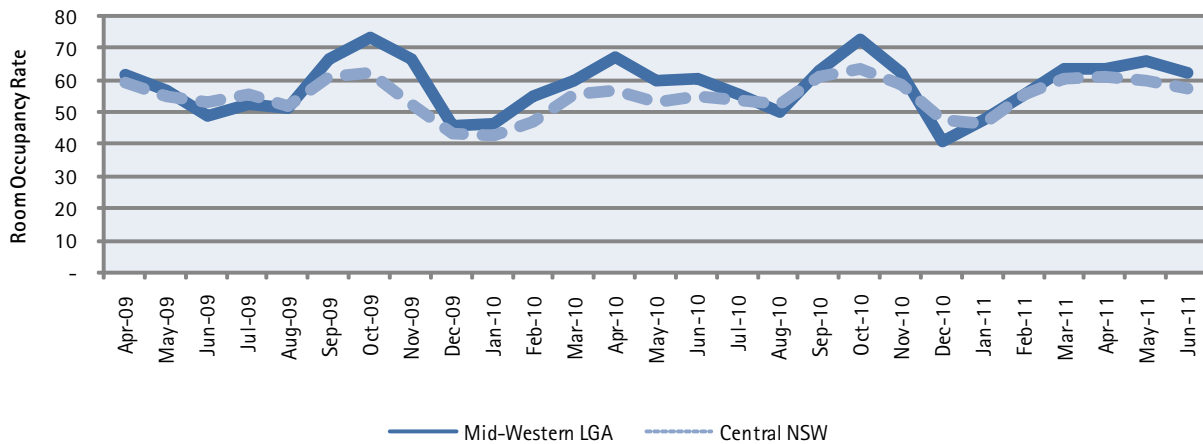
2.9 Occupancy Rates

The latest Tourist Accommodation data released by the ABS shows that Mid-Western Regional LGA has 11 hotels, motels and serviced apartments with 15 or more rooms. Central NSW Tourism Region (formerly Explorer Country) consists of 16 LGAs¹ in central NSW has 126 establishments with 15 rooms or more.

¹ LGAs - Orange, Cabonne, Blayney, Bathurst, Dubbo, Wellington, Narromine, Warrumbungles, Gilgandra, Coonamble, Lachlan, Parkes, Weddin, Forbes, Cowra, Mid-Western,

The room occupancy rate for Mid-Western Regional LGA over the last two years has mostly recorded a higher rate than for the Central NSW Tourism Region overall. The occupancy rate for the first half of 2011 was generally higher than for the same period in 2010. Peak occupancy rates are in April/May and October/November. The lowest occupancy rates are in December/January.

Figure 2.9 Room occupancy rate April 2009 - June 2011



Source: ABS: 8635155001D0001_201106 Tourist Accommodation, Small Area Data, NSW



Gulgong Urban Locality

Gulgong Urban Locality is located in Mid-Western Regional LGA approximately 30 kilometres north of Mudgee. At the 2006 Census, the following key characteristics were recorded.

Population

- The population of Gulgong was 1,906 persons.
- 51% of the population were female.
- 21% of the population were aged under 15 years and 18% over 65 years.

Education

- 31% of the population aged over 15 years had a post-school qualification.
- 22% of the population aged over 15 years had a certificate level qualification.

Employment

- Unemployment rate was 5.8%.
- Participation rate was 52.7%.

Occupation

- The largest occupation groups were:
 - technicians and trades workers;
 - labourers; and
 - machinery operators and drivers.

Industry

- The largest industries by employment were:
 - retail trade;
 - mining;
 - accommodation and food services;
 - health care and social assistance; and
 - manufacturing.

Income

- Median individual income was \$341 per week.
- Median family income was \$894 per week.
- Median household income \$661 per week.

2.10 Crime Statistics

Between 2006 and 2010 the most prevalent offence recorded within Mid-Western Regional LGA was a malicious damage to property (see Table 2.3). Additionally, the rate per 100,00 population for malicious damage to property in Mid-Western Regional LGA was higher than for NSW overall in 2010 (see Figure 2.10). However, the number of incidences in this category has fallen since 2008.

Of the top 10 recorded incidences in Mid-Western Regional LGA, breach bail conditions recorded the largest increase between 2006 and 2010. Half of the top 10 recorded incidences showed a fall

between 2009 and 2010.

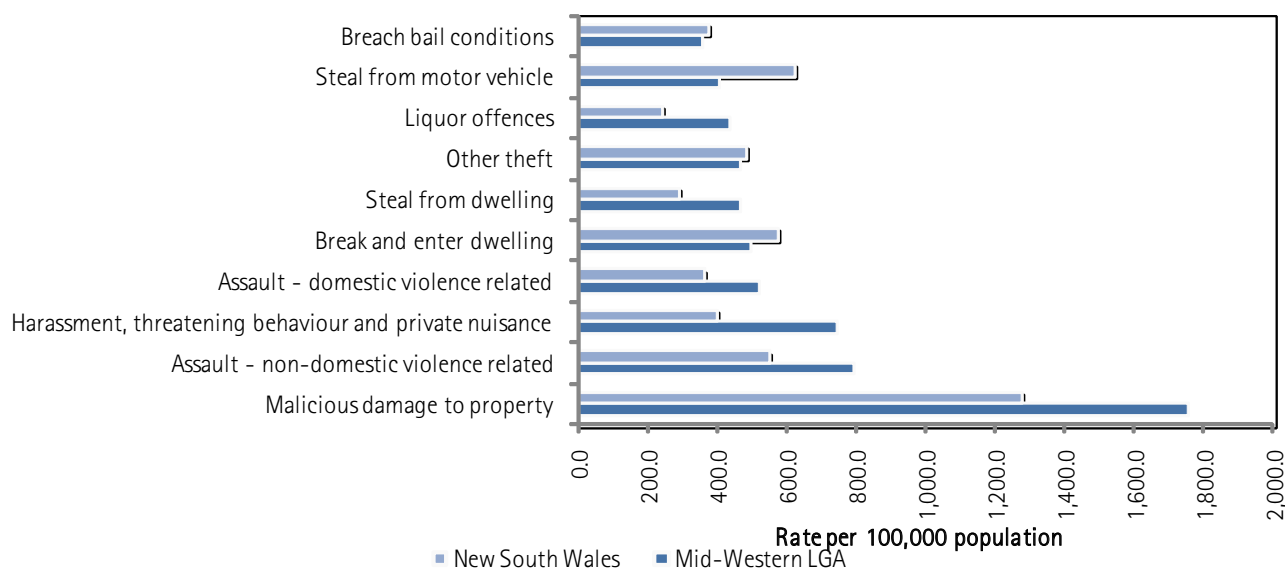
Of the top 10 incidences for Mid-Western Regional LGA in 2010, six of the 10 recorded a higher rate per 100,000 population than for NSW overall (see Figure 2.10). The four highest rates of incidence in Mid-Western LGA had a higher rate per 100,000 per population than NSW overall.

Table 2.3 Incidences of crime - Top 10 - Mid-Western LGA 2006-2010

Mid-Western LGA	2006	2007	2008	2009	2010	% change
Malicious damage to property	384	411	469	466	399	0.3%
Assault - non-domestic violence related	128	139	157	153	180	1.1%
Harassment, threatening behaviour and private nuisance	120	124	159	156	169	1.2%
Assault - domestic violence related	75	125	125	98	118	2.1%
Break and enter dwelling	81	93	99	140	113	1.7%
Steal from dwelling	107	90	86	123	106	0.9%
Other theft	93	113	125	118	106	1.2%
Liquor offences	84	104	108	89	100	1.4%
Steal from motor vehicle	74	114	96	94	93	1.7%
Breach bail conditions	36	58	90	65	81	6.3%

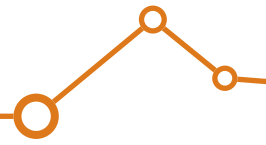
Source: Bureau of Crime Statistics and Research

Figure 2.10 Rate of crime incidences per 100,000 population



Source: Bureau of Crime Statistics and Research

3. COMPETITOR ANALYSIS



The key competitor analysis was based on face to face and telephone interviews with 15 businesses in Gulgong and Mudgee. Specifically, business owners and managers were asked questions about their current business performance and the likely economic impact of the establishment of a 400 room facility by The MAC in Black Lead Lane Gulgong on their business. They were also asked their opinion about the wider economic impact on other businesses and any other economic or social issues that they believe should be addressed. The wider social issues are discussed in the Community Impact/Benefit section of the report while the specific business impacts are discussed in this section.

3.1 Key Competitor/Related Industries

The accommodation services provided by the proposed development by The MAC are unique within Gulgong and the wider Mid-Western Regional LGA. As such they are unlikely to compete directly with any local businesses. However, businesses that offer a similar service may be impacted. These include accommodation providers and the existing fitness centre. In addition, The MAC development could have an indirect impact on complementary or related businesses including licensed premises, cafes/restaurants and real estate agents. Businesses in each of these categories were interviewed, as well as businesses that had been recommended as having a good overview of the Gulgong economy.

3.1.1 Real Estate

Three real estate agents were interviewed. Two agents believed that The MAC development would not impact on their business. The third suggested that its business would be 30 percent larger if houses were built for miners rather than The MAC facility. The reasons for expecting The MAC development to have little impact on the real estate sector included, that people will still want houses rather than the facility, and that the two markets are separate. It was argued that in Gulgong there is currently a critical shortage of land for development and building of new houses.

Other comments provided by the real estate agents included:

- Property market is reportedly very busy with rent becoming unaffordable for non-mine workers. It was also reported that houses in the three hundred to four hundred thousand dollar price range have all been bought by miners recently

- Sales are spasmodic with peaks occurring as mines put on new workers.
- Mudgee is now much busier than it used to be and this is allegedly causing some people to consider moving out of Mudgee.
- Businesses are facing difficulties in attracting employees because the mines have tightened the labour market.
- Serviced apartments work well in Mudgee but not in Gulgong.
- Development costs are similar for Mudgee and Gulgong but the value of a developed block is less in Gulgong and not as easy to sell.

The overall assessment is that the real estate sector should not be negatively impacted by The MAC development. However, it is possible that a major housing development, if it occurred, would boost the real estate businesses in Mudgee and Gulgong.

3.1.2 Licensed Premises

The operators of two licensed premises were interviewed in Gulgong. Both considered that The MAC development would be very positive for their business and suggested that other licensed business owners had a similar view. Specifically, there was reference to the experience of the Narrabri RSL where the establishment of The MAC development reportedly led to its repaying debt and earning a strong profit. There was also reference to the lack of accommodation in Gulgong for tourists, as virtually all accommodation is taken up by mine workers. The lack of accommodation is perceived to have resulted in fewer visitors and fewer customers for licensed premises. The MAC could free up accommodation and potentially improve their business. Interviewees expressed no concerns about the behaviour of existing mine workers in Gulgong, and expressed the belief that alcohol-related bad behaviour, for the most part, came from non mine workers.

Other comments provided by the operators of the licensed premises included:

- A large proportion of patrons at many premises are pensioners. The MAC development may bring a younger crowd which could improve business.
- There are investment opportunities for accommodation in licensed premises to complement The MAC development.

- Miners are believed to monitor their alcohol intake to ensure that they will be able to attend work the following day.
- Business operators are prepared to work with The MAC to provide buses between The MAC development and their premises.
- Labour is in short supply.

The overall assessment is that the licensed premises in Gulgong are likely to benefit significantly from The MAC development. Key factors included increased custom from The MAC residents and the freeing up of accommodation in Gulgong which could result in increased tourist visitation. There is no concern from the operators that were interviewed about behavioural issues and they are prepared to work with The MAC on bus transport in and out of the township.

3.1.3 Cafes/Restaurants

Operators of three café/restaurants were interviewed in Gulgong. All believed that The MAC development would be positive for their business. Specifically, they indicated that current business is not strong so every additional customer would help. Generally it was perceived that mining was crowding out part of their business through a lack of available accommodation for tourists and that, by alleviating the accommodation shortage, The MAC could help bring back tourist custom and provide potential business opportunities to The MAC village itself.

The overall assessment is that the café/restaurant sector could benefit from The MAC development.

3.1.4 Accommodation

Operators of three accommodation venues were interviewed in Mudgee and Gulgong. Operators were generally uncertain about the likely impact on their business although the expectation was for minimal or slightly negative impact in the short run. It was considered that there are different market segments in accommodation. Two of the three respondents believed their market was sufficiently different from that patronised by miners, to leave them unaffected. One operator, whose clients were mine workers, thought there would be loyalty from existing clientele but that it would be harder to attract new people in the future.

Other comments provided by accommodation operators included:

- Contractors and older mine workers (aged in their thirties and above) would be unlikely to be interested in living in The MAC facility.
- The facility is some distance from Mudgee and there is no night life in Gulgong.
- Tourism in the Mid-Western Regional LGA has been down by 30 percent or more in recent years and demand from the

mining sector has helped fill the gap.

- There is concern that The MAC facility will create additional burdens on infrastructure, services and skilled labour with each already stressed.
- Any reduction in accommodation bookings related to mining would be made up by tourism-related bookings.
- Development of The MAC facility will have a negative impact on accommodation providers, including those renting property to tenants in Gulgong, but it would ease cost pressures for locals.
- If the mines need up to 4,000 additional workers something like The MAC facility is needed.
- Utilisation of the services of local providers by The MAC would be a benefit .
- There had only been two noise complaints from shift workers in 8 years.
- The MAC development could strengthen the perception that Mudgee is a mining town thereby reducing the region's appeal to tourists.

The overall assessment is that the accommodation sector is uncertain about the effect of The MAC facility but the expectations revolve around a minimal to marginally negative impact on business. This expectation is based on a belief that tourist business will replace any fall in mining business coupled with the view that The MAC accommodation is unlikely to suit all mine workers.

3.1.5 Fitness Centre

The owner of the Fitness Centre in Mudgee was interviewed. He believed that a gym in the proposed facility would not affect his business in Mudgee. Furthermore, he would be prepared to offer his services to a gym established in The MAC development.

The overall assessment is that the Mudgee Fitness Centre would be unaffected by The MAC development.

3.1.6 Other Businesses

In addition to the key competitor/related industries, WRI also interviewed four business people recommended locally for an overview of expectations of the impact on Gulgong /Mudgee business of The MAC development. These included an accountant, two retailers and a farmer. Concerns raised tended to be more about the impact on Gulgong/Mudgee of the mining industry in general, rather than The MAC development specifically.

In relation to agriculture, there was concern that roads were now too busy to move stock and farm machinery along or across them. Concern was also raised about the loss of farm land to mines which reduced demand for farm supplies in Gulgong and Mudgee with a consequent reduction in available stock and service.

With regard to the retail sector, opinions varied from positive to sceptical about whether spending in Gulgong will be significant. There was also concern that such a large facility at the Hunter Valley gateway to Gulgong, could ruin the heritage image of Gulgong with a consequent reduction in tourism. There was also apprehension about possible skilled and even unskilled labour shortages as a consequence of mining. However, it was acknowledged that the retail sector in Gulgong already suffers from being in the shadow of Mudgee retail and it is generally recognised that most businesses in Gulgong are struggling at present.

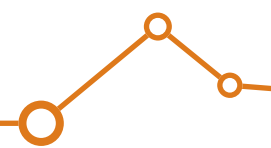
A general concern is about the capacity and capability of both Gulgong and Mudgee to supply goods and services to The MAC facility. It was suggested that businesses in Gulgong could only provide small scale services although at least one business would be prepared to significantly upscale to meet any new demand.

Other comments provided by the respondents:

- Around 70 percent of businesses in Gulgong are purported to support The MAC development but are not prepared to announce this publicly.
- The view that Council has constrained development in Gulgong through lack of infrastructure investment, restricted land development and disallowing another shopping area outside the heritage-listed centre of town.
- A belief by some that more people creates increased demand resulting in growth.
- The MAC facility would free up more accommodation for tourists in Gulgong, generating increased expenditure in the town.

The overall assessment is that there are some significant business concerns about the impact of mining in general, but fewer that relate specifically to the proposed development by The MAC. There are also concerns about the ability of the Gulgong business community to grasp business opportunities that may arise from The MAC facility. On the positive side, The MAC development would help alleviate the shortage of temporary accommodation in Gulgong, which is thought to be constraining tourism locally.

4. COMMUNITY IMPACTS/BENEFITS



4.1 Economic Impact

The proposed MAC development will have an economic impact on the Mid-Western Regional LGA in both the construction phase and in the operational phase. Assessing the impact of the construction phase is relatively unproblematic in that the associated construction expenditure would not occur in the Mid-Western Regional LGA if The MAC facility is not built. (It is acknowledged that if The MAC development did not go ahead, something else may be built but that is by no means certain.)

Assessing the economic impact of the operational phase is slightly more problematic in that mine workers residing in Gulgong or Mudgee will generate some expenditure locally no matter where they are housed. However, in the absence of The MAC development, some mine workers may reside outside the Mid-Western Regional LGA so their associated expenditure would then occur elsewhere. This report provides an estimate of the economic impact of the operational phase of The MAC facility although it is acknowledged that some of this expenditure would likely occur even in the absence of The MAC development.

4.1.1 400 room facility

Economic Impact of Construction Phase

WRI has been advised by The MAC that direct expenditure in the Mid-Western Regional LGA on construction of the facility is likely to be in the order of \$6.75 million. This figure has been applied to an input-output table constructed for the Mid-Western Regional LGA to estimate the overall impact of the construction phase on the

local economy when flow-on effects are taken into account. The results are outlined in Table 1 below.

When flow-on effects are taken into account, it is estimated that construction of The MAC facility will contribute the following to the local economy:

- An additional \$6.6 million in gross regional product;
- An additional \$3.5 million in household income; and
- An additional 59 full-time equivalent (FTE) jobs. Other than the construction sector, the sectors estimated to benefit most in terms of FTE employment are non-metallic mineral product manufacturing; agriculture, forestry & fishing and retail trade.

Economic Impact of the Operational Phase

The economic impact of the operational phase of The MAC facility has been calculated using two sources of information. Firstly, WRI has been advised that expenditure of approximately \$2 million per annum will be made locally by the operators when the facility is fully functional. Secondly, it has been assumed that the mining employees living in the facility have a similar expenditure pattern locally as that found by Rolfe et al (2007a). It has been assumed that half of that expenditure is retained within the Mid-Western Regional LGA. Data from that study has been inflated to current values. The overall impact of the operations phase when flow-on effects are taken into account are outlined in Table 2 below.

Table 1: Economic Impact of the construction phase of a 400 room facility on Mid-Western Regional LGA

	Value added \$m	Household Income \$m	Employment FTE
	6.6	3.5	59
% of region	0.7%	0.8%	0.8%

Table 2: Economic Impact of the operations phase of a 400 room facility on Mid-Western Regional LGA

	Value added \$m	Household Income \$m	Employment FTE
	4.0	2.1	51
% of region	0.4%	0.5%	0.7%

When flow-on effects are taken into account, it is estimated that construction of The MAC facility will contribute the following to the local economy:

- An additional \$4.0 million in gross regional product;
- An additional \$2.1 million in household income; and
- An additional 51 FTE jobs. The sectors which will benefit most from the operations phase in terms of FTE employment will be accommodation & food services and retail trade.

4.1.2 1500 room facility

Economic Impact of Construction Phase

If the development was constructed to incorporate 1,500 rooms, The MAC has advised that direct expenditure in the Mid-Western Regional Council area on construction of the facility is likely to be in the order of \$22 million. The impact of construction of a 1,500 room facility on the local economy, when flow-on effects are taken into account is outlined in Table 3. It should be noted that these results are for a total of 1,500 rooms and are not additional to the results for 400 rooms outlined above.

Table 3: Economic Impact of the construction phase of the a 1,500 room facility on Mid-Western Regional LGA

	Value added \$m	Household Income \$m	Employment FTE
	21.3	11.2	191
% of region	2.3%	2.6%	2.5%

When flow-on effects are taken into account, it is estimated that construction of The MAC facility at 1,500 rooms will contribute the following to the local economy:

- An additional \$21.3 million in gross regional product;
- An additional \$11.2 million in household income; and
- An additional 191 full-time equivalent (FTE) jobs.

Economic Impact of the Operational Phase

The economic impact in the operational phase of a facility of 1,500 rooms has been estimated by pro rating the assumed expenditure

for a 400 room facility. The overall impact of the operations phase of a 1,500 room facility when flow-on effects are taken into account is outlined in Table 4 below. Once again, it should be noted that these results are for a total of 1,500 rooms and are not additional to the results for 400 rooms outlined above.

Table 4: Economic Impact of the operations phase of a 1,500 room facility on Mid-Western Regional LGA

	Value added \$m	Household Income \$m	Employment FTE
	14.9	8.0	191
% of region	1.6%	1.8%	2.5%

When flow-on effects are taken into account, it is estimated that the operations of The MAC facility at 1,500 rooms will contribute the following to the local economy:

- An additional \$14.9 million in gross regional product;
- An additional \$8.0 million in household income; and
- An additional 191 full-time equivalent (FTE) jobs.

4.2 Social Issues

The broad analysis of social issues associated with The MAC facility was based on face to face and telephone interviews along with a literature review of the social impact of mining on rural and regional communities. Interviews were conducted with representatives of local government, the police and health services. Additionally, comments on social issues were drawn from key competitor/related industry interviews. Some caution should be taken in the interpretation of the literature review studies as most are based on "community perception" rather than "statistical evidence" and most are based on west Queensland communities, some of which have less social and economic diversity than the Mid-Western Regional LGA.

The social issues raised in interviews were:

- The impact of a concentration of single men.
- Changing the character and culture of Gulgong.
- Impact on roads.
- Impact on non-mine worker residents.
- Impact on already stretched infrastructure and services.
- Facilitating a drive in drive out approach rather than relocation of families.
- The impact on immediate neighbours.

4.2.1 Concentration of Single Men

Interviews

A number of interviewees were concerned that a concentration of young men in The MAC facility close to Gulgong could lead to alcohol-induced violence and vandalism, as well as local residents feeling less safe or even less comfortable in the community. On the other hand, other interviews suggested that the zero tolerance of alcohol and drugs on mine sites means that this is unlikely to be a problem. One accommodation provider said that in eight years of hosting mine workers he had experienced a noise problem on only one occasion. The Mudgee Police Local Area Command did not believe that The MAC village would create any particular problem with crime.

Literature Review

According to the literature, police report that any increase in crime is proportional to the increase in population growth and is not linked directly to mining employees who are typically subject to surveillance and sanctions against anti-social behaviour. Nevertheless, the literature does refer extensively to negative perceptions concerning non-resident workers, "a them and an us" attitude and tensions between non-resident workers and the community. The literature also indicates that mine workers are blamed for a disproportionate share of crime and anti-social behaviour.

Assessment

The concentration of predominantly young men in The MAC facility is unlikely to result in any significant increase in anti-social behaviour or crime. However, the facility may make some residents feel uncomfortable or even fearful. This could be mitigated by making considerable effort to establish links between the facility and the Gulgong community. Efforts could include open days where local residents are invited to inspect the facility, establishing a facility liaison officer, and encouraging residents of The MAC facility to support and participate in Gulgong cultural and sporting events.

4.2.2 Changing Character and Culture of Gulgong

Interviews

Many interviewees referred to the rich heritage value of Gulgong and its strong culture of arts and music as evidenced, for example, by the folk festival conducted in the main street. Some interviewees felt that this cultural character could be threatened by The MAC development because of the increase in young men and the imposition of a large facility on the gateway to Gulgong from the Hunter Valley, a major source of tourist visitors. In terms of tourism, others spoke about a current lack of accommodation constraining tourism in Gulgong and the belief that The MAC facility may alleviate this.

Some interviewees suggested that the character of Gulgong/Mudgee was changing in terms of busyness, an increasing proportion of "drive in, drive out" workers with no interest in or connection with the community and a declining proportion of families in the population. The establishment of a topless bar was cited as one example of the change. One real estate agent reported some of the above changes have led to at least one family considering leaving the Mid-Western Regional LGA. Other interviewees however, suggested that the change in character due to the increase in mine workers has been welcomed by young people.

Literature Review

The literature suggests that an increasing number of new residents and population turnover can undermine community stability and an increased proportion of employees who work but do not live in the community makes it difficult to build and maintain social fabric. These conclusions are based on the idea that mine workers have little time for anything other than work-eat-sleep, returning to their permanent home (outside the region) during their leave, thus reducing participation in any community sport or leisure activities locally.

Assessment

Changes in the character of Mudgee and Gulgong are occurring as a consequence of the influx of mine workers and will occur independently of whether or not The MAC development proceeds. By easing the pressure on accommodation, The MAC development could facilitate the return of tourism which may in turn strengthen the culture of arts and music. It is acknowledged that some of this benefit could be offset if the facility were not aesthetically appealing and if local businesses did not take up the opportunities that the release of competition would bring.

4.2.3 Impact on Roads

Interviews

The greatest concern for Mudgee Police Local Area Command resulting from the increase in mine workers in the region is the impact on traffic accidents. Accidents and traffic offences typically increase as traffic volumes increase on 100 kilometre per hour two lane roads. This concern is a result of the increase in mine workers generally, with no judgement at this stage, as to whether The MAC facility would make the situation worse or better. However, on the one hand if The MAC development concentrated traffic volumes the situation may worsen. On the other hand a shortening of the distance travelled between the mine and the residence could improve the situation. Traffic was mentioned as a concern by many of the interviewees. A specific concern was that buses currently provided to take workers to and from the mines are usually empty, with mine workers taking their own cars resulting in additional traffic.

Literature Review

A number of studies have highlighted problems with shift work in terms of sleep disorders, fatigue and irritability. Fly-in- fly-out operations have been shown to have a relationship to accidents.

Assessment

Increased traffic volumes will occur with increased numbers of mine workers. The MAC facility has the potential to improve the traffic situation if it encourages more mine workers to travel to and from work by bus, as well as reducing the length of the journey to and from the mines. However, this benefit could be at least partially offset if the facility led to a greater concentration of traffic on particular roads at particular times as a consequence of facility residents using their own vehicles rather than buses.

4.2.4 Impact on non-mine worker residents

Interviews

A number of interviewees expressed concern that high rents in the Mid-Western Regional LGA were creating hardship for lower socio-economic groups in the region.

Literature Review

The literature notes that mining employment typically polarises income levels and can cause tension between the permanent residents and the new arrivals.

Assessment

By easing pressure on the housing rental market The MAC development could improve the situation for lower socio-economic groups in the Mid-Western Regional LGA.

4.2.5 Impact on Already Stretched Infrastructure and Services

Interviews

Several interviewees expressed concern that The MAC development would drain already stretched essential services (particularly health and policing) and infrastructure such as water, sewerage and power. Of particular concern was the health service which has recently been downgraded in Gulgong.

However, one interviewee expressed the opinion that young people in The MAC village would be unlikely to generate much additional demand on the health service. The Western Health Local Health District (LHD) indicated that as with most other mining towns, the proposed development should not have a major effect on health services that they provide in Gulgong. There could however be

additional primary health care needs which the local GPs provide.

Some interviewees referred to "legacy infrastructure" which is infrastructure built by The MAC for the facility but which would remain after The MAC has left. Whilst the buildings themselves would be removed, the remaining infrastructure could be used for a housing development on The MAC site. A bike path between the facility and Gulgong was mentioned as one possibility.

There was frequent reference to labour shortages, particularly skilled labour.

Literature Review

The literature suggested that rural and regional communities do not typically have the hard and soft infrastructure to cope with a rapid increase in population. Of particular note is the burden on counselling services, emergency services, and physical infrastructure such as water, sewerage, waste, housing, roads and transportation. A further complication is the difficulty for these communities in attracting and retaining qualified professionals in health, education and community services. The literature suggested that fly-in-fly-out, drive-in drive-out was a way to secure the services of skilled professionals that are not prepared to permanently move to a region.

Assessment

The drain on services and infrastructure is the consequence of the increase in mine worker population and would occur no matter how the additional mine workers are housed. There are resources on offer to house the additional miners in The MAC development. There is no evidence that resources are available to house them in a full blown housing development. Therefore, without The MAC existing housing will be stretched even further. There is also the benefit of legacy infrastructure after The MAC has moved on. This may help attract resources for a full blown housing development in the future.

Mudgee is more economically and culturally diverse than some of the mining towns in the west of Queensland that are the subject of much of the literature. As such it is likely to be more appealing as a residential base. Therefore, it is possible that The MAC development could prove to be a stepping stone for labour that is initially "drive-in drive-out" but subsequently moves into the Mid-Western Regional LGA more permanently. The conversion rate from resident of The MAC facility to permanent resident could be monitored.

4.2.6 Facilitating a Drive-in Drive-out Approach Rather than Relocation of Families.

Interviews

It was suggested by one group of interviewees that The MAC village would make it easier for drive-in, drive-out resulting in fewer mining workers settling in homes in the Mid-Western Regional LGA with their families.

Literature Review

The literature suggests that whilst the majority of mine workers living in temporary accommodation would prefer to maintain their permanent residence elsewhere, approximately 10% were interested in relocating permanently to the town. This in turn could have a significant impact on population growth.

Assessment

Drive-in, drive-out and moving with a family into a home in the region may be seen as substitutes to a small extent. However, the literature suggests that drive-in, drive-out can secure the services of labour that would not be prepared to move permanently to a regional centre. This means that the two options are more likely to be complementary rather than substitutes. Specifically, much of the incoming labour is likely to initially be prepared only to come in as drive-in, drive out but may subsequently move permanently.

4.2.7 The impact on immediate neighbours

Assessment

The immediate neighbours of the proposed MAC development were not interviewed. However, the development, if it proceeded, would change the character and value of at least one of the neighbours' properties. The MAC has indicated that the facility will have bunds and landscaped gardens to minimise noise which may mitigate, to some extent, the impact on the neighbours.

5. CONCLUSION



There appears to be some negative community perception about the proposed MAC facility in Gulgong. However, much of this negativity revolves around the influx of a large number of mine workers and especially drive-in, drive-out, fly-in, fly-out workers, rather than being specifically related to The MAC facility. Thus The MAC development has attracted negative perceptions largely by association.

The industry profile shows that, while Mid-Western Regional LGA has considerable diversity, mining is a key part of the economy and underpins its relatively high average taxable income.

The competitor/associated industry analysis shows that The MAC facility is likely to have minimal if any negative competitive effects on existing businesses. It also suggests that many existing businesses could potentially benefit from The MAC development.

The economic impact analysis estimates the impact on the Mid-Western Regional LGA of both the construction phase and ongoing operational phase to be modest but significant in terms of gross regional product, household income and full-time equivalent employment.

The analysis of social issues suggests that most of the anticipated negative impacts of The MAC development may be perception rather than reality or are specific to a large influx of mine workers rather than The MAC development itself. Indeed in some instances The MAC development may help mitigate some of the negative social impacts of the arrival of significant numbers of mine workers.

APPENDIX 1: LITERATURE REVIEW

INTRODUCTION

This review provides an overview of recent studies into the social impacts of a non-resident workforce on rural and regional communities. It also discusses some of the general impacts associated with a rapid increase in population. Caution should be taken in the interpretation of these findings as most studies are based on "community perception" rather than "statistical evidence" and therefore impacts tend to be overstated.

THE NON-RESIDENT WORKFORCE

The significant mining boom occurring in Australia has generated problems in attracting sufficient workers to the rural and remote regions where mines are being developed (Storey, 2001). "Finding sufficient skilled and experienced local labour, or finding labour which is willing to relocate on a permanent basis to the regions, has proved extremely difficult" (Storey, 2001). Fly-in-fly-out and drive-in-drive-out operations allow mining companies to attract employees who do not want to live in the region due to better employment, educational and recreational opportunities for their families elsewhere (Lockie et al, 2009).

In a survey of workers in temporary accommodation in 2007, 58% indicated that they would prefer to live outside the area (Lockie, 2009). An earlier study by Rolfe et al (2007a) found that substantial wage premiums would be required to persuade non-resident workers to relocate to a mining town. Their study of non-resident workers found that 89% are not interested in relocating to a community closer to the mine site (Rolfe et al, 2007a). Of those who were interested in moving to the town, lack of available housing for rent was the most significant factor impeding them (69.2%) (Rolfe et al, 2007a). Petkova et al (2009) reported that "work camp surveys indicated that 11% of Moranbah and 12% of Nebo work camp residents were interested in moving permanently to these towns. While that leaves a much larger group who would prefer to maintain their permanent residence elsewhere, it remained the case that accommodating these workers and their families would lead to significant population growth, particularly in Nebo."

To address the pressing need for large increases in the mining workforce, there has been a significant shift towards long-distance commuting across Australia and internationally. The industry has become "increasingly reliant on non-resident workers

accommodated in work camps positioned in close proximity to existing rural towns and regional centres" (Carrington and Pereira, 2011). A study of Australia's publicly listed mining companies in 1999 revealed that 37% were utilising long-distance commuting (Hogan & Berry, 2000). Furthermore, it is estimated that 15 – 20% of the direct mining workforce in Western Australia are fly-in, fly-out (Storey, 2001) with many more supplying services to the mines through contracting companies.

Despite the significant benefits of this system at a regional and national level, the resulting decrease in the resident workforce is undermining the sustainable development of rural towns (Carrington and Pereira, 2011) (Ivanova and Rolfe, 2011). These towns are seen to bear a disproportionate level of the social costs of mining development (Carrington and Hogg, 2011) and are generally more susceptible to the negative impacts of development (Ruddell, 2011). It is this inequality in the distribution of benefits and costs (RSDC, 2011) that has led to tensions between non-resident workers and the community.

IMPACTS ON RURAL AND REGIONAL COMMUNITIES

While the economic impacts of mining are significant and far reaching, the social impacts are most strongly experienced at the local level (Carrington and Pereira, 2011). Factors which indicate the relative impact a community can expect include (Lockie et al, 2009):

- Economic diversity
- Rates of unemployment
- Rate of employment in mining
- Level of education and qualifications
- Income
- Housing ownership, purchasing and rental
- Age

Research into the impacts of non-resident workers on rural and regional communities has highlighted both positive and negative effects. In a survey of those who live or work in Queensland's mining regions, Carrington and Pereira (2011) found:

- An overwhelmingly negative perception of the impact on the local economy, services and infrastructure
- A negative perception of the impact on housing and rental

availability (75%) and affordability (79%)

- An adverse impact on overall community wellbeing (75%)
- 61% support new mining developments with a non-resident workforce less than 25%

However, not all community members were negative. Carrington and Pereira (2011) also noted:

- Enormous opportunities for regional Australia
- A boost to local business and contracting companies

The following provides a review of recent findings.

POPULATION

A number of impacts on population size and composition have been noted. These include positive impacts such as population growth and increased diversity (Petkova et al, 2009) and negative impacts such as population turnover (RSDC, 2011) (Petkova et al, 2009) and decline (Lockie et al, 2009) (Storey, 2001) (Rolfe et al, 2007a) and a shift from families to young, single men (RSDC, 2011). For example, in the Bowen Basin of Queensland "it is projected that the region will experience a substantial decline in families with children, and an increase in lone person households over the next 20 years, due to the mining industry's increasing reliance on a non resident workforce" (Carrington and Pereira, 2011).

The establishment of temporary work camps is seen to impact on the liveability and lifestyle factors of a region (Rolfe et al, 2007). Mining communities typically have difficulty attracting new residents, while existing residents are more likely to leave (Lockie et al, 2009) (Storey, 2001). A study by Ivanova and Rolfe (2011) found the number of people housed in work camps to have a significant impact on the length of time people would choose to live in a mining community.

ECONOMY

Fly-in-fly-out workers have also been associated with the "fly-over" phenomenon. This describes the lack of economic stimulus generated by non-resident workers who live elsewhere and do not spend money in the town (Rolfe et al, 2007). The fly-in-fly-out system generally results in mining communities losing the benefits of the activity in their region (Storey, 2001) which threatens the economic stability of these towns and creates tension between residents and non-residents (Carrington and Hogg, 2011) (Lozeva and Marinova, 2010). The limited ability of rural and regional towns to capture the benefits of mining activity has been attributed to a lack of secondary industry, with any business expansion concentrated in the mining services sector (Lockie et al, 2009).

While non-resident workers time spent in regional communities is small, it can have a positive impact. A study of non-residents

in Moranbah, found that only 16% spent any of their free time in the community, at an average of 12% of their time off shift (Carrington and Pereira, 2011). However, non-residents do spend money in the community, an average of \$161.49 per week. Their main expenditures were alcohol (33%), fuel (21%), food (16%) and entertainment (10%) (Rolfe et al, 2007a). As a result, businesses in Moranbah reported increased profitability (68%) and increased staff numbers (Rolfe et al, 2007a).

INCOME, EDUCATION AND EMPLOYMENT

Lockie et al (2009) found a range of impacts on income, education and employment in mining regions, including low education levels, highly polarised income levels, dependence on mining for employment, dominance of unskilled and semi-skilled positions and difficulty recruiting in non-mining businesses. These findings have been supported by Rolfe et al (2007), Carrington and Pereira (2011) and Petkova et al (2009). Rolfe et al (2007) also identified skills shortages as a problem in mining towns.

ACCOMMODATION COSTS

Studies on the impact of the mining boom in Australia generally agree that a shortage in permanent housing leads to significant inflation in purchase and rental costs (RSDC, 2011) (Carrington and Pereira, 2011) (Lockie et al, 2009) (Rolfe et al, 2007) (Rolfe et al, 2007a). These impacts have led to hardship for low income earners, difficulties in attracting and retaining employees and existing residents being forced to relocate elsewhere (RSDC, 2011) (Lockie et al, 2009) (Carrington and Pereira, 2011) (Rolfe et al, 2007) (Rolfe et al, 2007a) (Petkova et al, 2009).

IMPACTS ON LOCAL SERVICES

Rural and regional communities do not typically have the hard or soft infrastructure to cope with a rapid increase in population. This places considerable burden on local services (Carrington and Hogg, 2011) (Carrington and Pereira, 2011) including:

- counselling services – to manage the emotional impact on workers of being away from family and friends (Rolfe et al, 2007a)
- emergency services – to respond to increased traffic accidents (Lockie et al, 2009) (Rolfe et al, 2007a), and
- physical infrastructure such as water, sewerage, waste, housing, roads and transportation (Ruddell, 2011).

Further complicating this problem in these communities is a difficulty in attracting and retaining qualified professionals in health, education and community services (Rolfe et al, 2007).

IMPACTS ON SOCIAL CAPITAL

A number of themes emerge in impacts on social capital. Generally, a high level of new residents and population turnover can undermine community stability (Ruddell, 2011). In addition, an increased proportion of employees who work but do not live in the community make it difficult to build and maintain social fabric (Ivanova and Rolfe, 2011).

At the centre of most arguments, is non-residents' limited community participation and lack of community pride and ownership (RSDC, 2011). Research indicates mine workers have little time for anything other than work-eat-sleep, their rosters do not correspond with weekly or monthly schedules and when their shift is over, they return home (RSDC, 2011) (Lockie et al, 2009) (Lozeva and Marinova, 2010) (Storey, 2001) (Carrington and Pereira, 2011). The very nature of their employment makes it difficult for them to participate in any community, sport or leisure activities.

Studies have also indicated that mine workers are blamed for a disproportionate share of crime and anti-social behaviour as a result of an "us versus them" mentality (RSDC, 2011). Police report any increase is proportional to population growth and is not linked to mining employees who are typically subject to surveillance and sanctions against anti-social behaviour (Lockie et al, 2009). Carrington and Pereira (2011) supported this finding and noted low-level intra-male violence is managed informally by private security at the accommodation complex. Nonetheless, there remains a prevailing community perception that a non-resident workforce brings with it a higher level of physical and social disorder - increased accidents, traffic density and enforcement and crime (RSDC, 2011) (Petkova et al, 2009) (Ruddell, 2011) as well as increased alcohol and substance abuse (Rolfe et al, 2007a) (Storey, 2001).

FATIGUE AND MOTOR VEHICLE ACCIDENTS

A number of studies have highlighted problems with shiftwork associated with fly-in-fly-out or drive-in-drive-out operations including sleep disorders, fatigue and irritability (Lockie et al, 2009). In research conducted by Di Milia and Bowden, 13% of mine workers reported falling asleep on their way to their shift and 23% when driving home (Petkova et al, 2009). Fly-in-fly-out operations have been related to injuries, accidents and OH&S implications (Carrington and Pereira, 2011).

GENDER IMBALANCE

Mining boom towns have an increasingly atypical demographic structure (Petkova et al, 2009) characterised by a net loss of women, children and low-income workers as families move out of the region (Lockie et al, 2009) and are replaced by single men (Carrington and Pereira, 2011). Hogan and Berry (2000) report

gender bias in new mining towns to have created social problems. Further, Carrington and Pereira (2011) reported increased fears about community safety due to the existence of large number of young males away from home and family commitments, with no ties to the community (RSDC, 2011).

HOW TO MODERATE NEGATIVE IMPACTS

In a study of residents and non-residents in Moranbah, 81% of respondents indicated that building more work camps made the community less attractive (Rolfe et al, 2007a). However, results also indicated that residents would be more likely to stay longer in the community and non-residents would be more likely to relocate if there were (Rolfe et al, 2007a):

- More and cheaper housing
- Better shopping and other services
- Better employment opportunities for women and children
- More activities for women and children
- Better entertainment
- Better medical and educational facilities

Ruddell (2011) has also suggested some actions community leaders can take to counter the negative impacts of population change:

- Increase community engagement through groups membership/ involvement
- Host community workshops to provide residents with more information
- Involve the mining company in community activities
- Mining companies partnering with the community to improve infrastructure and services

Mining developments represent a significant opportunity for local businesses, therefore communities should evaluate and promote themselves in order to capture a greater proportion of the benefits of mining developments (Storey, 2001). For example, the Goldfields Esperance Development Commission developed an Industry Capability Directory (a register of all companies in the region) to promote and maximise the use of local suppliers in mining developments (Storey, 2001). However, these businesses will have to be capable and cost-effective to capture additional business (Storey, 2001).

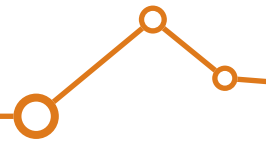
CONCLUSION

Despite a general negative community perception, the high incomes of mine employees and contractors servicing mines has had a universally positive impact on mining communities (Petkova et al, 2009). Lockie et al (2009) conclude that traditional social impact assessments can easily overstate the impacts of rapid growth on small communities and that many of the impacts recorded were as a result of the communities failing to capture the positive benefits brought about by mining expansion.

REFERENCES

- Petkova, V; Lockie, S; Rolfe, J and Ivanova, G (2009). Mining Developments and Social Impacts on Communities: Bowen Basin Case Studies. *Rural Society*, Vol 19 (3) Pp. 211 – 228.
- Carrington, K and Pereira, M (2011). *Social Impact of Mining Survey: Aggregate Results Queensland Communities*. Queensland University of Technology.
- RSDC (2011). *Social Issues Relating to Permanent and Non-Permanent Residents in the Moranbah Mining Community*.
- Storey, K (2010). Fly-in/Fly-out and Fly-over: Mining and Regional Development in Western Australia. *Australian Geographer*, Vol 32 (2) Pp. 133 – 148.
- Ruddell, R (2011). *Boomtown Policing: Responding to the Dark Side of Resource Development*. Policing. Oxford University Press.
- Carrington, K and Hogg, R (forthcoming 2011). Benefits and Burdens of the Mining Boom for Rural Communities. *Human Rights Defender*, Australian Human Rights Centre, Faculty of Law, UNSW.
- Ivanova, G and Rolfe, J (2011). Assessing development options in mining communities using stated preference techniques. *Resources Policy*, Vol 36 Pp. 255 – 264.
- Rolfe, J; Petkova, V; Lockie, S and Ivanova, G (2007a). *Mining Impacts and the Development of the Moranbah Township*. Research Report No. 7. Impacts of the Coal Mining Expansion on Moranbah and Associated Community. Centre for Environmental Management, Central Queensland University, Rockhampton.
- Rolfe, J; Miles, B; Lockie, S and Ivanova, G (2007). Lessons from the Social and Economic Impacts of the Mining Boom in the Bowen Basin 2004 – 2006. *Australasian Journal of Regional Studies*, Vol 13 (2) Pp. 134 – 153.
- Lozeva, S and Marinova, D (2010). Negotiating Gender: Experience from Western Australian Mining Industry. *Journal of Economic and Social Policy*, Vol 13 (2), Article 7.
- Hogan, L and Berry, P (2000). Mining and regional Australia: Some implications of long distance commuting. *Australian commodities*, Vol 7 (4) Pp. 648 – 659.
- Lockie, S; Franettovich, M; Petkova, V; Rolfe, J and Ivanova, G (2009). Coal mining and the resource community cycle: A longitudinal assessment of the social impacts of the Coppabella coal mine. *Environmental Impact Assessment Review*, Vol 29 Pp. 330 – 339.

APPENDIX 2: MODELLING METHODOLOGY



In this project the Western Research Institute (WRI) has used SIRE analysis to estimate the economic impact of The MAC facility on the economy of Mid-Western Regional Local Government Area (LGA).

The impacts are measured in terms of Gross Regional Product, household income and full-time equivalent jobs. All impacts are measured in either dollar terms or full-time equivalent employment terms and as a percentage of the regional economy.

Inter-industry models can be used for economic impact analysis, to estimate the benefits or costs generated by new initiatives on each and every sector of an economy. For example, if there is a change in the purchasing or sales pattern of any industry, the flow-on or multiplier effects on upstream industries can be calculated. Further details about SIRE analysis are provided at the conclusion of this Appendix.

Constructing the Tables

The table for this for this project has been constructed using the GRIT technique developed by Professor Guy West and Professor Rod Jensen of the University of Queensland. The GRIT technique, which uses both national Australian Bureau of Statistics data and local superior data concerning the industry in question, is the most reputable method of input-output table construction in the Australia and indeed elsewhere in the world.

GRIT uses a series of non-survey steps to produce a prototype regional table from the national table, but provides the opportunity at various stages for the insertion of superior data. The system is "variable interference" in that the analyst is able to determine the extent to which they interfere with the mechanical processes by introducing primary or other superior data.

The GRIT system is designed to produce regional tables that are:

- Consistent in accounting terms with each other and with the national table;
- Capable of calculations to a reasonable degree of holistic accuracy; and
- Capable of being updated with minimum effort as new data becomes available.

The GRIT technique is basically a hybrid method of deriving state and regional input-output tables from the national input-output table while at the same time allowing for the insertion of superior data at various stages in the construction of the tables.

The use of SIRE analysis in the tables will result in a more accurate estimate of the significance of The MAC facility value chain than would be possible with traditional input-output analysis.

Simulating Impacts on Regional Economies: The SIRE Model

Economic modelling at the regional and small area level is restricted by model and data availability. Often, resource and time limitations preclude the construction of complex models such as computable general equilibrium (CGE) models, and in fact there are arguments to suggest that building a CGE model for a small region, while not invalid, may not be a very efficient use of resources in the context of the tradeoff between increased complexity and increased data 'fuzziness'.

Input output modelling is usually used in such cases since it really provides the only practical option to planners. The assumptions of the input output model are concerned almost entirely with the nature of production. Inter-industry models are based on the premise that it is possible to divide all productive activities in an economy into sectors or industries whose inter-relations can be meaningfully expressed as a set of equations. The crucial assumption in the input output model is that the money value of goods and services delivered by an industry to other producing sectors is a linear and homogeneous function of the output level of the purchasing industry with supply being infinitely elastic.

This linearity assumption clearly lays simple IO models open to valid criticism. It implies a strict proportional relationship between input coefficients and output; for example, income coefficients are average propensities and employment coefficients reflect average labour productivity rates. In impact studies, this property can lead to an overestimation of the flow-on (multiplier) effects, particularly if the initial impacts are relatively modest. For example, many industries can increase output in the short term without corresponding proportional increases in wage costs and employment, particularly if there is slack capacity.

In the following section, a more general structural form of a model for simulating impacts on regional economies (SIRE) is suggested which provides for non-linearities in production in both primary and intermediate inputs.

The SIRE model shares much of the structure of the conventional input output model. Total inputs are equal to intermediate inputs plus primary inputs (labour and capital). In the conventional input-output model, the inputs purchased by each sector are a function only of the level of output of that sector. The input function is assumed linear and homogeneous of degree one, which implies constant returns to scale and no substitution between inputs.

The SIRE model departs here from the conventional input-output model by a number of steps that a) replace sets of average propensities with corresponding marginal propensities (elasticities) within the model's major linkages, and b) provide for changes in intermediate input coefficients as a function of relative price changes. There is room for variation between models and applications in the implementation and specifications of these linkages.

Primary Inputs

The first step is to allow for non-constant returns to scale and substitution between primary input factors. Value added at factor cost is calculated based on marginal changes in output by industry. The value added elasticities are estimated econometrically for industry using time-series data assuming a long-run equilibrium relationship between real value added at factor cost and total production.

The shares of wage (compensation of employees) and non-wage (gross operating surplus and mixed income) contributions to factor costs are assumed to be based on the same long-run relationship as that for total value added. The change in wage cost is then calculated from the marginal change in the share of wage costs in total factor costs. Gross operating surplus plus mixed income is calculated as the residual. The change in employment is calculated based on the average wage rate in each industry times the change in wages.

Household Consumption Expenditure

In a similar manner to primary inputs, total household consumption expenditure is assumed to follow long-run equilibrium relationship between real consumption and income. Ideally, consumption expenditure should be a function of disposable income and the function should also include variables such as wealth, etc. In this simplified version of the model, income is taken as wage income.

To ensure consistency between the long-run and short-run relationships, the constraint should be satisfied which gives a long-run elasticity equal to unity. The estimated short-run elasticity of consumption with respect to wage income is 0.926. Individual commodity expenditures are expressed in terms of total expenditure and are assumed to be based on the same long-run relationship as that for total expenditure. The budget shares for each commodity should remain constant in the long-run but that the short-term fluctuations are possible as income changes. Industry sourced non-wage household income is included in the other value added component of primary inputs.

Intermediate Inputs

Intermediate input coefficients can vary because of substitution effects caused by relative price changes, or through changes in technology. Technology change is generally regarded as a long run phenomenon. Hence, in short run impact situations, price effects will be the major source of change.

The regional technology coefficient is the sum of the regional purchase coefficient and the regional import coefficient and industry output prices are a weighted average of industry local and import prices. Note that the regional direct requirements coefficients can change, even when industry technology is fixed, as a result of relative price changes.

Import Substitution

The price model can also be used to adjust the regional purchase coefficients by calculating the substitution effect between locally produced and imported purchases. In most impact situations at the regional level, it can be assumed that changes in local production will have no or negligible effect on import prices. The Trade Weighted Index provides the base level differential between the local and import price levels. In addition, when adjusting the regional purchase coefficients, a penalty function is applied as a surrogate for capacity limitations in the case where the local price decreases relative to the import price thus resulting in increased demand for the local product.

Model Solution

The structural equations in this type of model cannot be solved analytically, because the input coefficients vary with the endogenous variables and thus also become endogenous. Hence, the solution procedure requires the use of an iterative recursive algorithm, such as the Gauss-Seidel method.

The operational performance of the model, compared to the conventional input-output model, is determined in part by the productivity gains, both labour and capital, experienced by industries as they expand. This results in reduced unit factor

costs and local product prices. If import prices are assumed to be unaffected by local production, then the reduction in local prices relative to import prices will see a shift towards locally produced inputs, thus further stimulating local production. The extent of these additional flow-on effects will not only depend on the relative shifts in local and import prices, but also the elasticity of substitution between local and imported inputs.

This has implications for the results of this type of model, particularly if compared with those from the conventional input-output model. If price effects are ignored, then we would expect that, while the output multipliers and impacts may not be significantly different, income and employment impacts should be smaller because of the marginal coefficients associated with labour productivity. This is because many industries, especially those that are more capital intensive and can implement further productivity gains, can increase output, particularly in the short run, without corresponding proportional increases in employment and hence income payments. However, when price effects are incorporated into the model, the direction of change becomes less clear, since these potentially can generate compounding or offsetting changes. If the import substitution elasticities are inelastic, then this will reinforce the downward effects on multipliers, but if the elasticities are large (elastic) then the price effects offset the productivity gains and the multipliers and impacts could exceed those from the conventional input-output model.

THE WESTERN RESEARCH INSTITUTE

WRI is a regional development research organisation located on the Bathurst campus of Charles Sturt University. WRI holds a wealth of knowledge on employment, business development and investment issues affecting regional Australia. It has worked with Commonwealth, State and Local Governments and industry groups on numerous investment and development programmes in regional areas. WRI has strong credentials in business and commercial market consulting and applied economic modelling including input-output analysis, shift-share, agribusiness and regional socio-economic surveys and analysis.

Mr Tom Murphy – Chief Executive Officer **B.Ec. (Hons I) MSc. (Econ) Lancaster**

Tom is currently Chief Executive Officer of WRI and has held this position since its inception in February 1999. Under Tom's leadership WRI has completed over 300 projects for all levels of government and government departments, industry groups, businesses, financial institutions, regional development boards and community groups, and educational institutions including universities, TAFE and schools in NSW, Victoria and Queensland.

Tom has previously held academic positions as senior lecturer in Economics and Director of the Regional Economics Research Unit in the Faculty of Commerce, Charles Sturt University, Bathurst and positions at the University of New England and Macquarie University. He has also held the positions of Economic Analyst with the Office of National Assessments in Canberra, with responsibility for the ASEAN economies and Senior Consultant with KPMG Peat Marwick Management Consultants.

Tom's particular expertise is in regional economics and labour markets, and he has published in a wide range of economic subject areas in refereed and non-refereed articles, books and textbooks. Tom has a high local media profile in Western NSW for economic and social commentary and also features regularly on national radio particularly in connection to the quarterly agribusiness survey conducted for Westpac Australia wide.

Ms Kathy Sloan – Research Manager **BAppSc (Geography) UC, GDip InfoSys CSU**

Kathy is responsible for the overall management of projects for WRI, which includes allocating resources, ensuring timeframes and budgets are met and monitoring compliance with the quality assurance system. Kathy has extensive experience in designing and conducting surveys developing the national Westpac / CSU Agribusiness Index and the Regional Skills and Labour Force Needs Study for the Victorian Government. She has a background in data analysis and research working with the ACT Government and Charles Sturt University and has developed and delivered a wide range of training for TAFE Western and the local community college.

Ms Lesley Arthur – Senior Research Officer **BSc. Bio Sc (Hons), MSc Tech Ec.**

Lesley is an experienced researcher with particular expertise in the areas of inter-industry modelling, including input-output analysis, statistical analysis, market analysis and forecasting. Since joining WRI Lesley has been involved in a diverse range of projects encompassing a variety of industry sectors. Her strengths are in strong analytical skills and in the preparation of concise reports. Prior to joining WRI, Lesley was a Director with KPMG Peat Marwick Management Consultants in Australia and Malaysia.

Ms Danielle Ranshaw – Senior Research Officer **BEC&Fin NSW**

Danielle's experience in project management in the information technology sector combined with qualifications in economics and finance provides a solid background for WRI projects. With skills in systems design and development, Danielle has been able to extend WRI's capability in developing robust and increasingly complex systems to support research fieldwork. Additionally, Danielle has extensive experience in business process analysis, performance planning and review, report writing and project planning.

Ms Dale Curran – Executive Officer **BA ANU**

Dale is responsible for all administrative processes at WRI including executive support, finance, management of the Board of Directors and maintenance of policies. She has worked in a variety of roles at WRI, including Fieldwork Supervisor and Research Assistant, and has worked on several community and business surveys. Dale brings a high level of organisational skill to her role as Executive Officer.



Western Research Institute

c/- Charles Sturt University

Research Station Drive

Bathurst NSW 2795

Phone: 02 6338 4435

Email: wri@csu.edu.au

Web: www.wri.org.au

20 December 2011

Geoff Campbell
Development Manager
The MAC Services Group Pty Ltd
Level 6, 10 Bond Street
SYDNEY NSW 2000

Dear Geoff,

Peer review of the Socio-Economic Report for the mining accommodation facility at 2 Black Lead Lane, Gulgong.

1 Introduction

Urbis has been engaged by The MAC Services Group Pty Ltd (the MAC) to peer review the Socio-Economic Report prepared by the Western Research Institute (WRI) in relation to the proposed mining accommodation facility at 2 Black Lead Lane, Gulgong.

This letter details the findings of our peer review, presenting a discussion about the potential positive benefits and negative impacts of the proposal as determined by the WRI. We have also made a number of recommendations relating to the scope of the Socio-Economic Report, additional impacts / benefits not identified that may assist in ongoing discussions with Council, and recommendations for further areas of investigation.

2 Background

2.1 THE SITE AND SURROUNDS

The 60.54 hectare subject site is located at 2 Black Lead Lane, 1.5 km north of Gulgong in the Mid-Western Region Local Government Area. The site is currently vacant and is used for cattle grazing. Surrounding uses are primarily pastoral and agricultural.

2.2 THE PROPOSED WORKS

It is understood that the MAC will shortly lodge a development application with the Mid Western Regional Council for the following works:

- the construction of 400, 16m² accommodation rooms, including eight 24 m² rooms equipped for disabled access
- the provision of associated facilities including a central facilities building (housing a kitchen area, indoor dining, outdoor seating and amenities), a conference centre, an administration building, a shed, a gymnasium and multi-purpose court, gazebos and laundry facilities
- the construction of an internal road network including the primary access point of Cope Road and lower order roadways
- 400 car parking spaces

- landscaping and open space
- earthworks
- utility installation
- signage.¹

It is understood that the accommodation facility has the capacity to support up to 1,500 bedrooms. Expansion to this scale will be determined based on market demand and would be subject to further development approvals.

3 Methodology

Urbis has reviewed the Socio-Economic Report prepared by the WRI. While the primary purpose was to review the WRI report, in order to fully understand the context of the proposed development, consideration has also been given to:

- documentation accompanying the development application, including the Statement of Environmental Effects and the Decommissioning Plan
- the requirements of the draft Development Control Plan for Temporary Workers Accommodation
- relevant media coverage, in particular from the Mudgee Guardian
- communications documented on the 'Proposed MAC Group Mining Village' website, established by the Gulgong Chamber of Commerce
- material in relation to MAC facilities at Narrabri, including a statement provided by the Mayor of Narrabri, Robyn Faber, and media coverage.

It should be noted that this review is necessarily brief and has been limited to the above available documentation.

4 Discussion

The WRI's Socio-Economic Report provides a broad overview of the local social and economic context, identifying many of the potential benefits and impacts likely to arise as a result of the proposed accommodation facility. It is noted however that WRI's assessment of potential benefits and impacts is high level. It would be beneficial to undertake further assessment in relation to each area of impact to further understand the detail. It will then be possible to more explicitly outline the potential benefits and mitigation measures to minimise negative impacts. This would also provide a more detailed evidence base to inform future discussions and negotiation with Council regarding the VPA and consent requirements.

¹ Whelans InSites Pty Ltd, *Statement of Environmental Effects: Proposed Temporary Workers Accommodation Village*, December 2011

4.1 POTENTIAL BENEFITS

The Western Research Institute identifies a number of social and economic benefits associated with the proposed accommodation facility. An overview is contained at Table 1 below. It may be argued that many of the potential economic and social benefits listed below are closely related.

TABLE 1 – POTENTIAL POSITIVE SOCIAL AND ECONOMIC BENEFITS IDENTIFIED BY WRI

SOCIAL	ECONOMIC
<ul style="list-style-type: none"> ▪ There is potential for legacy infrastructure to remain once the MAC facility has moved on, perhaps facilitating a new housing estate for the benefit of residents and the community. ▪ The MAC facility has the potential to ease pressure on the rental housing market by reducing demand generated by miners. 	<ul style="list-style-type: none"> ▪ The construction and operation of the facility may result in increased employment opportunities for local residents. ▪ By providing miners designated accommodation, other general accommodation providers (motels, hotels etc.) will become available to tourists, leading to increases in tourism and related economic gains. ▪ There will likely be increases in gross regional product, household income and full-time equivalent jobs in sectors such as agriculture, retail trade, and forestry and fishing. ▪ Local business operators are likely to experience improved business and trading, particularly licensed premises, cafes and restaurants.

4.2 POTENTIAL NEGATIVE IMPACTS

Table 2 summarises the potential negative social and economic impacts associated with the proposed mining accommodation facility. Mitigation measures to address these impacts are discussed overleaf.

TABLE 2 – POTENTIAL NEGATIVE SOCIAL AND ECONOMIC IMPACTS IDENTIFIED BY WRI

SOCIAL	ECONOMIC
<ul style="list-style-type: none"> ▪ There are concerns that a large facility at the Hunter Valley gateway to Gulgong could affect the heritage image of Gulgong, thereby reducing tourism. ▪ There are concerns that Gulgong and Mudgee do not have the capacity or capability to supply goods and services to the MAC facility. <p>There are concerns that an influx of young men in the area will lead to anti-social behaviour. Whether or not this concern is justified, it is possible some residents may feel uncomfortable or concerned due to negative perceptions of non-resident workers.</p> <ul style="list-style-type: none"> ▪ There is the possibility of increases in traffic volumes, potentially resulting in increased road accidents. ▪ The proposal will affect the character and value of one immediate neighbour's property. 	<ul style="list-style-type: none"> ▪ Businesses are facing difficulties in attracting employees because local workers are taking up opportunities at the mines. ▪ There are concerns regarding negative effects on supply, demand and rising prices in the housing market. ▪ Minimal concern from operators of accommodation venues that they will lose business from miners staying with them due to the presence of the facility.

4.3 MEASURES TO ENHANCE POTENTIAL BENEFITS AND MINIMISE POTENTIAL IMPACTS

There is comparatively little discussion in the WRI report about what mitigation measures may be employed to address the negative impacts listed above. The WRI suggest the following mitigation measures may be considered:

- the completed facility could run open days where the community can inspect the premises
- a facility liaison officer be established
- encouraging temporary workers to be involved in local events (e.g. sporting events) to encourage connection to the local community
- monitoring the conversion rate from temporary resident to permanent resident of Gulgong
- the incorporation of bunds and landscaping to minimise noise and visual impacts to adjoining neighbours.

Based on a review of the WRI report and a preliminary consideration of associated documentation, we suggest the following could also be considered:

- the MAC conduct drug and alcohol tests at the facility on behalf of the mines, as is understood to take place at Narrabri
- that the MAC, under its community sponsorship program, support the folk festival conducted in the main street of Gulgong, to demonstrate commitment to the local culture
- encourage use of designated buses to mines by providing financial incentives
- establishing a car-pool on-site to minimise individual car use at peak times
- negotiating deals (e.g. 'meal deals') with local businesses to encourage patronage by residents of the facility
- conducting a detailed social infrastructure audit to confirm the capacity in social services and infrastructure to accommodate the incoming population and consider contributions to those most at-risk of extending beyond capacity.

5 Comments and recommendations

5.1 FURTHER ASSESSMENT

As acknowledged by the WRI, the Socio-Economic Report 'does not constitute either a detailed economic or social impact assessment'. The draft Development Control Plan for Temporary Workers Accommodation requires a detailed Social Impact Assessment to be undertaken in relation to works such as that proposed. A more detailed Social Impact Assessment would include further analysis and evidence of community benefits the proposal may deliver. This would demonstrate more broadly (to the community and stakeholders – particularly to economic stakeholders) the MACs commitment to enhancing the local community. Most significantly, this could form the basis for discussions with the Mid-Western Regional Council about Voluntary Planning Agreements and development contributions.

Future Assessment is recommended to include:

- A comprehensive social infrastructure audit to further investigate the impact of the facility on local social services and infrastructure, and identify opportunities to provide community benefit through sponsorships or other similar activities. Particular consideration may be given to the capacity of medical facilities, recreation and road infrastructure to support additional patronage. The capacity of existing infrastructure to accommodate a population increase was a concern raised at the community meeting on 27 October 2011.
- Discussions with local businesses and education providers (such as high schools, TAFE and others) to identify potential opportunities for education, skills development and employment benefits through the construction, operation and management of the MAC on an ongoing basis.
- An assessment of the proposal's consistency with local social planning strategies such as the Mid-Western Regional Council Social Plan 2006, the Mid-Western Regional Council Cultural Plan and strategies relating to youth and ageing. A preliminary assessment of the Social Plan in particular suggests that housing affordability and management of crime and violence are some of the challenges experienced in the LGA. Demonstrating how the proposed accommodation facility will alleviate some pressure on existing housing is one example of how assessing these policy documents can support the proposal.

- A more detailed review of mitigation measures. In accordance with the draft Development Control Plan for Temporary Workers Accommodation, mitigation measures should be documented in a stand-alone Mitigation Strategy and may include a monitoring program. Suggested mitigation measures are discussed at Section 4 of this letter.
- Consideration of the impacts associated with the potential future expansion to 1500 beds. While the current Socio-Economic Report considers the economic impacts of a 1500-bed facility, little consideration is given to the social impacts of the significant population increase this would generate.
- Analysis of the likely characteristics of the incoming population, including their demographic profile (e.g. gender, age) and their tenancy patterns (e.g. how long temporary workers are expected to stay in the facility. We understand that temporary workers are likely to stay at the facility for the duration of shifts (e.g. 7 days on, 7 days off), for a period of 1 – 2 years and it would be important to consider the impact of this transient population within the existing community.
- An assessment of the impact of the accommodation facility on temporary workers. Concerns were raised in the media² about the desire of temporary workers to live in accommodation facilities such as that proposed. MAC facilities are understood to be well designed, managed and maintained and anecdotal evidence suggests that there is high demand for MAC facilities. It would be beneficial to document this.

5.2 FUTURE PLANNING FOR THE SITE

During meetings³, Council expressed openness 'to assisting and encouraging development to promote permanent housing'. Moreover, the draft Development Control Plan for Temporary Workers Accommodation specifies that legacy infrastructure should be transferred to public ownership.

The WRI report states that legacy infrastructure 'could be used for future housing development on the 2 Black Lead Lane site'. The Decommissioning Plan prepared in relation to the proposed facility positively demonstrates the MACs commitment to achieving this benefit and this is likely to be viewed favourably during assessment.

5.3 INTEGRATION WITH THE COMMUNITY

Some media coverage⁴ has cited negative impacts associated with 'self-contained' facilities, primarily preventing temporary workers from accessing local services and benefiting the local economy.

It is understood that the model adopted by the MAC strives to integrate with the local community by providing services that are complementary to those existing and encouraging temporary workers to access local businesses. It would be valuable to emphasise this philosophy within development application documentation.

5.4 CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

It is understood that the MAC have undertaken some analysis of crime and safety within the accommodation facility, including applying the principles of Crime Prevention Through Environmental

² Mudgee Guardian, 07 November 2011, *The double-edged sword of housing miners*.

³ Gulgong Chamber of Commerce, 2011, Proposed MAC Group Mining Village, at <http://gulgong.net/miningvillage/>

⁴ Mudgee Guardian, 07 November 2011, *The double-edged sword of housing miners*.

Design (CPTED). This is valuable and should be clearly communicated in development application documentation.

5.5 CONSULTATION ACTIVITIES

It is understood that a flyer outlining the proposed accommodation facility is to be distributed to local residences shortly. Based on a review of documentation on the Gulgong Chamber of Commerce's 'Proposed Mining Village' website⁵, it also appears that some other consultation activities have been undertaken. For example a meeting was held with the Chamber on 13 October 2011 and the MAC attended a town meeting regarding the draft Development Control Plan on 27 October 2011.

It would be valuable to provide an overview of these activities, any communication or meetings held with Council and the consultation undertaken by the WRI, in development application documentation.

Specific consultation with adjoining neighbours is important to identify potential concerns, respond as required, and assist in managing specific negative impacts on adjoining properties (such as buffering and screening landscaping).

Further community consultation would be beneficial to build local relationships and educate the community regarding the facts of what is and what is not proposed. Broader consultation strategies to educate and inform the community may include:

- Establishing a link on the MAC website specifically outlining the proposal
- Development of a Factsheet clarifying the facts of the proposal
- Community newsletters similar to the flyer
- The establishment of a 1800 number or dedicated email address
- A Community 'Open House', where interested community members can speak with the project team on a one to one interactive basis, and find out more about what is proposed. (This is not a formal, structured, public meeting – in our experience, public meetings do not encourage positive and meaningful discussion).

5.6 COMMUNITY SPONSORSHIP

The Community Sponsorship initiative of the MAC is positive and should be further emphasised in development application documentation. There are a number of actions within Council's social planning documents that the MAC could offer to support including funding to support the establishment of a family outreach service or the establishment of a Youth Council in conjunction with the Youth Network and Cudgegong Learning Community⁶.

It is recommended that the MAC explore potential opportunities with the local TAFE and education providers regarding skills development, apprenticeships, and training and employment partnerships. This may consider opportunities in relation to construction, hospitality and other skills. This would have the potential benefit of offering new opportunities for young people and enhance local retention.

⁵ Gulgong Chamber of Commerce, 2011, Proposed MAC Group Mining Village, at <http://gulgong.net/miningvillage/>


⁶ Mid-Western Regional Council, 2006, *Social Plan 2006*
Mid-Western Regional Council, *Cultural Plan*

6 Conclusion

Urbis has reviewed the Socio-Economic Report prepared by WRI in relation to the proposed accommodation facility at 2 Black Lead Lane, Gulgong. Consideration has also been given to relevant development application documentation, media coverage and online material and recommendations have been made for inclusion in the development application anticipated to be submitted to the Mid-Western Regional Council imminently.

In all, the Socio-Economic Report provides a good overview of the local context and potential benefits/impacts of the proposal, however the discussion of areas of impact lacks the detail necessary to make practical recommendations around mitigating negative impacts. In order to overcome this, it is recommended that a more detailed Assessment be conducted and that this include a social infrastructure audit, policy review and further consultation. This would assist to substantiate a case for the MAC facility as a positive addition to the community and inform the basis for VPA discussions.

Yours sincerely,



Susan Rudland

Director

Appendix D

Submission by The MAC Services Group to the House of Representatives Standing Committee on Regional Australia



Standing Committee on Regional Australia
House of Representatives
Mr Tony Windsor, MP
PO BOX 6021
Parliament House
CANBERRA ACT 2600

26/10/2011

INQUIRY INTO THE USE OF FLY-IN FLY-OUT WORKFORCE PRACTICES IN REGIONAL AUSTRALIA

The MAC Services Group Pty Ltd (The MAC) would like to make a submission to the above noted inquiry generally in support of the current workforce practices and to bring further understanding to many of the common issues that often misrepresent the workforce accommodation industry.

BACKGROUND

The MAC is a leading integrated accommodation provider specialising in quality accommodation for people in key resource regions. The MAC develops, owns and operates high quality villages for people that work in regional areas of economic significance.

The MAC currently employs over 500 staff nationally and has more than 6000 permanent rooms under management in the Bowen and Surat Basins (Queensland), Regional NSW and WA.

The MAC strives to be the leading provider to the resource industry through high quality, innovative and flexible service offerings and best value-for-money solutions.

Its unique 'Develop-Own-Operate' (DOO) 360° business model incorporates land acquisition, village design, regulatory approvals, manufacturing, construction and ongoing management. By resolving the challenges of workforce accommodation, The MAC frees clients to focus on their core business.



SUBMISSION

Address of Terms of Reference relevant to our business.

1. The effect of non-resident FIFO/DIDO workforce on established communities, including community wellbeing, services and infrastructure

The MAC currently owns and operates eight workforce villages within regional areas of Queensland, NSW and WA. It is a key part of The MAC's community strategy to work in partnership with the local communities in which we operate, to build a shared vision for long term sustainability.

Some of the ways we are positively contributing and integrating with our local communities include:

- *Upgrades to public infrastructure*

The MAC has recently upgraded the town of Narrabri's sewer main to help adequately service the village. The upgrade will also accommodate for the future development of any adjoining third party residential development.

In response to a proposed workforce accommodation village in the nearby town of Boggabri, The MAC has proposed to upgrade the town's water supply with additional high level water storage which will be handed back to Council to manage. While servicing our own development, this will also provide for any further third party rural or residential development of an adjoining 25 hectare lot. The MAC has also proposed to construct a 400m lit public pedestrian and cycleway at the town of Muswellbrook that will extend the existing local cycle network improving the cycleway connection back to town.

- *Tailored service provision within The MAC villages to complement the existing services in the adjoining towns*

Following community consultation and gaining an understanding of the towns' business dynamics, The MAC has refrained from building residential bars and gymnasiums within our accommodation facilities where existing businesses within the town are able to provide similar services and benefit from the additional patronage from FIFO workers. Alternatively, where we may have facilities that include a gymnasium or conference facilities within the village, full public access will be granted where there is a potential benefit for the local community. The MAC also operates restaurant facilities that are also open to the public.

- *Support local communities and contributing to the region's economic health*

Engaging in community activities and providing sustainable support and contribution in the communities in which The MAC operates has had a positive impact within these local towns. Below is an example of some of the more recent activities and support The MAC has given over the past 2 years.

Upper Hunter NSW	
Location/Town	Supporting Event/Organisation
Muswellbrook	Major sponsor of Muswellbrook Rugby Club
Narrabri	Major sponsor of Narrabri Rugby Club
Narrabri	Sponsorship of the Narrabri annual Business Awards
Narrabri	Sponsored the annual 'Nosh on the Namoi' food and wine festival
Bowen Basin QLD	
Coppabella	Supported the Coppabella annual Australia Day Awards
Coppabella	Sponsor of the Coppabella Community family weekend
Coppabella	2009 & 2010 Brigalow regional athletics carnival
Coppabella	Provide food and services in kind for the Coppabella State School
Coppabella	Provided labour, construction and materials for the Coppabella Cubs playground renovation
Dysart	Major Sponsor Dysart Bulls Rugby League team
Dysart	Sponsor of the 2010 Dysart Triathlon
Dysart	Catered for the Dysart Disability Services Christmas party
Middlemount	Silver Sponsors of the annual Middlemount Race Day for the past three years
Middlemount	Sponsors of the Highlands Indigenous Women's Rugby League Team
Middlemount	Sponsor of Middlemount Junior Motocross
Middlemount	Catered for providing food and services for the Middlemount Breast and Prostate cancer fund raising dinner
Middlemount	Sponsored the Middlemount 30 year celebrations event
Moranbah	Major sponsor of Moranbah BMA Race Day for 3 years
Moranbah	Provided a meals and service for the Moranbah Traders association Gala awards presentation night.
Moranbah	Major sponsor of the Moranbah Miners Rugby League team for 3 years
Moranbah	Sponsored and participated in the Cancer Council's Moranbah relay for life for 3 years
Moranbah	Moranbah Rodeo – ran a food stall donating the proceeds back to the community
Nebo	Major sponsor Nebo Rodeo and camp draft
Nebo	Major sponsor of the Isolated children's Parents Association
Nebo	Provide food and services in kind to the Nebo State School



Western Australia	
Kambalda	Annual sponsor of the Kambalda (WA) Senior citizens Christmas Luncheon
Kambalda	Donation of a computer to the local Kambalda school for year 3 & 4 special needs students.
Kambalda	Annual sponsor of the Kambalda Australia day Breakfast

Example of The MAC's community contribution

The MAC, where possible, uses local subcontractors, employs local operational staff and purchases local supply items. This capital investment brings significant funds into local economies. The figures below illustrate this and relate to our recent Narrabri development.

Narrabri Village Local Spending through to September 2011	
Village Construction - subcontractors and suppliers (electricians, plumbers, etc.)	\$4,039,000
Operational Wages - staff of The MAC who live locally	250,000
Operational Supply - goods & services including food, linen services etc.	428,450
TOTAL LOCAL SPEND TO DATE	\$4,717,450

2. Long term strategies for economic diversification in towns with large FIFO/DIDO workforces

- The MAC provides opportunities for local businesses to supply services to FIFO workers staying The MAC village (eg. food, personal laundry, pharmaceuticals, medical, coffee etc.).
- The MAC works in partnership with local communities consulting with Councils on the provision of services such as gymnasiums and bars with our villages. If there is services available within the town that Council believes the local businesses will benefit from the increased patronage from FIFO workers The MAC will not incorporate these added facilities within the village, encouraging the workers to integrate with the local town.
- The MAC sources food, cleaning and other services locally (such as linen services) where possible.
- The MAC also provides opportunities for hospitality industry employment within the village and seek to employ local people over FIFO. The MAC is a major employer of hospitality personnel within the industry.



3. Provision of services, infrastructure and housing availability for FIFO/DIDO workforce employees

High demand for accommodation in resource growth areas can drive up housing prices and rentals which can make it very difficult for low income earners to stay in the market, or for first home buyers to enter. Workforce villages take the pressure off local housing and rental prices allowing much greater accessibility and sustainable growth of the community.

There is some concern in communities in which we operate, relating to empty housing estates should a downturn occur. This has historically resulted in a reduction in housing demand which leads to reduced property values. This concern leads to support the need for quality accommodation villages, as it addresses the rapid expansion phase of mining development and allows workers to establish themselves in their jobs within a local region.

The MAC's experience has been that once workers feel that their jobs are of a permanent and secure nature and have had the opportunity to evaluate the local community and town, they may choose to move locally depending on the available real estate opportunities. Workforce accommodation villages can absorb the increased population demand when workers move into a mining area which can allow for sustainable and manageable residential growth within the region over time.

Our anecdotal evidence is supported by a study carried out in 2009 by researchers from the Queensland University and the ANU (*"Mining developments and social impacts on communities: Bowen Basin case studies"*, Vanessa Petkova, Stewart Lockie, John Rolfe and Galina Ivanova) and published in Rural Society (Vol. 19, Number 3 Oct 2009 p211) several relevant points were made including the following:

- *"High building costs and the reluctance of banks" to finance developers and individuals in remote areas that were mining dependent "promoted inflation in the value of existing housing stock"*
- The following argument of one worker is quoted in the report *"Mining has encouraged people to buy \$300,000-\$400,000 homes in a town where maybe in five years' time [those houses will] not be worth anything"*
- It was seen by local government that *"Work camps were generally seen as a practical way to deal with the short term need for accommodation, and with fluctuations in employment levels, but less desirable in the long-term than permanent housing"*

The report then goes on to say that *"Paradoxically though, the majority of the non-resident workforce who were interviewed or surveyed preferred to commute to the area, and would not move to the mining towns, even if more housing became available"*.



4. Strategies to optimise FIFO/DIDO experience for employees and their families, communities and industry

The experience of workers who choose to accept a job which involves living away from home is greatly enhanced by staying in a high quality, landscaped serviced environment.

The food and service quality is noted as critical to the wellbeing of the FIFO/DIDO worker. All of The MAC village kitchens are ISO 22000 certified and enjoy a reputation of consistently serving a high quality, varied menu with a range of healthy options. Nutritional information on menu items is readily available in our eateries. A yearly competition called “The MAC Dare” is run throughout the organisation to promote living a healthy lifestyle. Again, all our eateries are open to the public.

The MAC’s operations are internationally certified in relation to Quality and Safety requiring regular audits to be carried out to maintain our high quality service provision. The MAC also offers extensive training programs to all hospitality staff including offering traineeships in Hospitality or Frontline Management. The MAC believes the primary source of our achievements is our team. Professional, service-orientated employees who are engaged in their roles with a good understanding of our client’s needs are integral to our success and provide a consistent and high standard at our villages.

The MAC provides lifestyle facilities such as in-house gymnasiums and fitness facilities including multi-purpose courts (basketball, volleyball and tennis) and recreational swimming pools. The MAC also employs Lifestyle Co-ordinators, certified personal trainers who are available to guests for fitness and health advice, personal training and run group fitness classes within the village. All of these services are complimentary to guests and are provided as part of their accommodation.

The MAC provides guests with superior en-suited private rooms. The MAC standard room includes an en-suited 16m² room with air-conditioning, a flat screen TV with Foxtel channels, a desk, wireless internet and a king single bed. Additionally The MAC also provides some 19m² or 24m² rooms with added cabin furniture and queen sized bed.

Providing a quality landscaped and relaxed environment within the villages is also critical to the experience of workers when living away from home. Provision of BBQ areas, lawns and gazebos within the village surroundings provides casual recreational areas which promote social interaction. In our experience, it has proven that when the environment provided is attractive and well maintained then it is respected by those using it.

Other village services such as gymnasiums, restaurants, licenced facilities and conference facilities are open to the public and the local community.



5. Any other related matter

It is widely supported that the growth of the resources sector needs to be facilitated in Australia as it underwrites many of our future wealth aspirations. This growth cannot occur without a large construction and long term operational labour force living and working physically in the resource rich areas.

Accommodation in resource rich areas is essential for the projected growth to transpire. Without adequate accommodation provision to meet the mining companies' ever increasing rate of production and output time frames, the projects cannot go ahead.

The FIFO/DIDO practices exist to support the labour requirements in remote areas and in more populated areas where there is an inadequate labour market from which to draw upon.

Workforce accommodation villages are the only form of accommodation that can respond to this labour force requirement in remote and developing regions of the mining industry in the short and medium term. This is not a new concept and has been the foundation of many Australian towns and cities since settlement where new industries have been developed.

Quality of life and potential social issues are mitigated by providing high quality, well managed and landscaped living environments for people. The MAC provides this type of accommodation and while we would never claim to be the whole solution to the workforce accommodation issue, our villages are certainly an essential part of the solution, in many areas now and into the future.

More traditional forms of residential development require established water sewer and power infrastructure to exist prior to development. The timeframe around the provision of this infrastructure generally prohibits these potential developers from responding in a timeframe suitable to the mining industry labour requirements. Infrastructure investment will occur over time as mining activities become established and a long term view is taken.

The MAC would be happy to provide any further detail required by the inquiry and to participate in any further dialogue with the committee as you progress the study.

Thank you for the opportunity to participate in this timely and important inquiry.

Kind Regards

Peter McCann
Executive General Manager, Finance and Business Development
The MAC Services Group Pty Ltd

Sydney

Level 21, 321 Kent Street
Sydney, NSW 2000
t +02 8233 9900
f +02 8233 9966

Brisbane

Level 7, 123 Albert Street
Brisbane, QLD 4000
t +07 3007 3800
f +07 3007 3811

Melbourne

Level 12, 120 Collins Street
Melbourne, VIC 3000
t +03 8663 4888
f +03 8663 4999

Perth

Level 1, 55 St Georges Terrace
Perth, WA 6000
t +08 9346 0500
f +08 9221 1779

Australia • Asia • Middle East
w urbis.com.au e info@urbis.com.au



ATTACHMENT 6.2.7



Code of Conduct for Local Councils



Circular No. 12-10
Date 1 May 2012
Doc ID. A275754

Contact John Davies
02 4428 4139
john.davies@dlg.nsw.gov.au

REVIEW OF THE MODEL CODE OF CONDUCT FOR LOCAL COUNCILS – REQUEST FOR SUBMISSIONS ON CONSULTATION DRAFT

The purpose of this circular is to:

1. advise councils of the progress of the review of the *Model Code of Conduct for Local Councils in NSW* (the Model Code),
2. invite submissions on consultation drafts of the new Model Code, Model Code procedures and proposed amendments to the *Local Government Act 1993*.

Progress of the review

Last year, at the request of the Minister for Local Government, the Division of Local Government commenced a review of the Model Code of Conduct for Local Councils in NSW. The review process has included extensive consultation with councils and other stakeholders, to design a system that supports the highest standards of behaviour in local government, in a simple, clear and cost-effective way. This included:

- 1) A discussion paper to seek the views of stakeholders and any other interested persons on the operation of the current version of the Model Code and areas for improvement.

The Division received a total of 122 submissions in response to its discussion paper from a range of sources including councils, individual council officials, conduct reviewers, unions and industry bodies, Members of Parliament, NSW Government agencies such as the ICAC and the Ombudsman and members of the community.

- 2) A position paper on a draft reform proposal for the Model Code and the misbehaviour provisions of the Act, reflecting feedback to date.

The Division received 93 submissions on the position paper from a similarly broad range of sources as those provided in response to the discussion paper. In addition the Division held a series of workshops around the State to discuss and refine the proposal. Workshops were held in Sydney (including at the LGMA Governance network meeting), Tamworth, Dubbo, Wagga Wagga and Ballina.

Based on the feedback the Division has received from submissions and the workshops a refined proposal has now been developed.

Draft proposals

Drafts of the following have now been issued for comment:

- Proposed amendments to the Model Code (the amendments are highlighted in bold)
- Proposed new procedures for the administration of the Model Code
- Proposed amendments to the *Local Government Act 1993* and Local Government (General) Regulation 2005 (the amendments are highlighted in bold)

The consultation drafts are available on the Division's website at www.dlg.nsw.gov.au.

As foreshadowed in the position paper, the Division now seeks comment on the technical detail of the proposed changes.

The Division requests that submissions be made by email to dlg@dlg.nsw.gov.au.

Alternatively, submissions may be made in writing to the following postal address:

Division of Local Government
Department of Premier and Cabinet
Locked Bag 3015
NOWRA NSW 2541

The Division asks that submissions be received by **Tuesday, 26 June 2012**.

Should anyone wish to contact the Division to discuss the consultation drafts or the Model Code of Conduct Review, they may contact Mr John Davies, the Leader of the Division's Council Governance Team, on telephone 02 4428 4139.



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



Division of Local Government
Department of Premier and Cabinet

Review of the Model Code of Conduct for Local Councils in NSW

A large, light blue abstract graphic consisting of several overlapping, irregular shapes that resemble a stylized map or a network of lines, positioned in the lower half of the page.

May 2012

Consultation Drafts

1. BACKGROUND

The original version of the Model Code of Conduct for Local Councils in NSW (the Model Code) commenced operation on 1 January 2005. A revised version of the Model Code subsequently came into force on 27 June 2008 and operates to this day.

The Model Code is an evolving document. While the framework for managing complaints about council officials has vastly improved over the 6 years the Model Code has been in operation, we agree that there remains scope for further refinement and improvement.

Over the three years in which the revised Model Code has been in operation, we have identified or have had brought to our attention a number of areas where the Model Code has not operated in the manner in which it was intended or where its operation could be improved.

We commenced a comprehensive review last year at the request of the Minister for Local Government, the Hon. Don Page MP. We issued a discussion paper in which we outlined the issues that had been raised with us about the operation of the current version of the Model Code. We asked you about any other areas where you considered the Model Code required improvement and asked for your suggestions on how best to make those improvements. We also asked for your views on possible options for improving the Model Code to address the issues that have been raised with us.

We received a total of 122 submissions in response to our discussion paper from a diverse range of sources. Based on our consideration of your submissions we prepared a reform proposal with respect to the Model Code and the misbehaviour provisions of the *Local Government Act 1993* (the Act).

We issued a position paper in which we outlined our proposal and asked you for your comments. We also held workshops around the State to discuss the proposal and to identify possible improvements to it.

We received close to 100 submissions in response to our position paper from a diverse range of sources. Our workshops were also well attended. Based on the

feedback we received from submissions and the workshops we have refined our proposal. The changes to our proposal are outlined below.

2. WHAT IS THE PURPOSE OF THIS PAPER?

Based on our consideration of the feedback we received on our position paper, we have now finalised our reform proposal. We have drafted the following for the purposes of implementing our final proposal:

- Proposed amendments to the Model Code (the amendments are highlighted in bold)
- Proposed new procedures for the administration of the Model Code
- Proposed amendments to the Local Government Act 1993 and Local Government (General) Regulation 2005 (the amendments are highlighted in bold)

As foreshadowed in the position paper, we now seek your comment on the technical detail of the proposed changes.

We request that submissions be made in writing and sent to the following postal address:

Division of Local Government
Department of Premier and Cabinet
Locked Bag 3015
NOWRA NSW 2541

Alternatively, submissions may be emailed to dlg@dlg.nsw.gov.au.

We ask that submissions be received by **Tuesday, 26 June 2012**.

Should you wish to contact us to discuss the consultation drafts or the Model Code of Conduct Review, you may contact Mr John Davies, the Leader of the Division's Council Governance Team, on telephone 02 4428 4139.

3. WHAT ARE OUR REFORM OBJECTIVES?

In preparing a reform proposal, we have had regard to the following needs identified in the submissions we received in relation to the discussion paper:

- For councils to be ultimately responsible for the management of complaints about the conduct of their officials.
- To put in place a framework for managing such complaints that is rigorous, cost-effective and promotes public confidence.
- To ensure that only those matters that warrant investigation are investigated and that alternative resolution strategies are available for those matters that do not warrant investigation.
- For all councils, regardless of their size and location to be able to access a pool of independent and suitably qualified persons to undertake investigations where they are warranted.
- To provide greater clarity and certainty in relation to the procedural requirements of the code at the same time as allowing flexibility.
- To ensure the code has more “teeth”.
- To ensure that rights are adequately protected and that appropriate checks and balances are in place.
- To put in place adequate protections and disincentives to prevent the misuse of the code.
- To minimise the exposure of councils to costly appeal processes in the Courts.
- To remove the current obstacles to the more effective exercise of the Division’s powers under the misbehaviour provisions of the Act and to provide it with more options for managing misbehaviour.

- To make the penalties that may be applied by the Chief Executive and the Pecuniary Interest and Disciplinary Tribunal in relation to misbehaviour more effective in deterring and managing such conduct.

What we intend to do to deliver on these reform objectives is described below.

4. WHAT IS BEING PROPOSED?

As foreshadowed in the Position Paper, in the interests of simplicity, we intend to split the Model Code into two instruments:

- A Model Code of Conduct for Local Councils in NSW (comprising solely of the prescribed standards of conduct), and
- Procedures for the Administration of the Model Code (comprising of the procedural requirements of the Code) (referred to below as the “Model Code procedures”)

In relation to the standards of conduct prescribed under the Model Code, we are proposing to make the following changes:

- In the interests of simplicity and clarity, to remove the “context” section of the Model Code. This is largely educational material and does not constitute enforceable standards of conduct. This will now be incorporated into the better practice Guidelines to the Model Code that will be developed separately.
- Prohibit binding caucus votes that prevent councillors from exercising their discretion. However councillors will still be permitted to meet to discuss council business ahead of meetings;
- Refine the provisions relating to the disclosure of reportable political donations to align them with subsequent amendments to the relevant legislation and to eliminate loopholes;

- Include provisions to address the loss of quorum arising from compliance with requirements under the code;
- Expand the prohibition on the acceptance of cash to include cash-like gifts;
- Amend the provisions relating to relationships between council officials to allow councillors to provide information to the Chair of the audit committee, to prohibit staff from participating in political activities that interfere with their duty to serve a council in a politically neutral manner and to allow councillors to discuss the general manager's performance with him or her;
- Remove loopholes in the provisions that relate to the use of council resources for election purposes; and
- Create a new class of standards relating to the maintenance of the integrity of the code of conduct. Breaches of these standards will be dealt with by the Division under the misbehaviour provisions.

Proposals made in the Position Paper about the disclosure of gifts and benefits of nominal value, councillors meeting with developers or objectors, councillors and staff discussing industrial policy matters and guidance on the application of the code to contractors and volunteers will **not** be included in the revised Model Code. They may, however, be made as better practice suggestions in the Guidelines to the Model Code.

In relation to the Model Code procedures, we are proposing to make the following changes:

- Councils will be able to establish their own panels of conduct reviewers or to establish regional panels
- An option will be created to allow councils to use conduct reviewers from a panel established by a prescribed organisation
- The selection process and criteria for conduct reviewers will be prescribed

- To limit the misuse of the procedures to deal with non code of conduct matters “Code of conduct complaint” will be a defined term
- Complaints must be made within 3 months
- General Managers and Mayors will no longer have any role in the management of complaints about councillors or the General Manager beyond the initial receipt of complaints. General Managers and Mayors will however retain the option to resolve complaints informally at the outset should they choose to do so, but this will be at their discretion.
- Councils will be required to nominate a member of staff other than the General Manager to be a complaints coordinator for the purposes of providing administrative support for the code. This will ensure complaints are dealt with at arms length from the General Manager and Mayor.
- The process for dealing with complaints about councillors and General Managers will be simplified. Where the current code prescribes a 3-tier process, (ie preliminary assessment by the General Manager or Mayor, investigation by a conduct reviewer and determination by the council), under our proposed changes, complaints will be dealt with from start to finish by a conduct reviewer at arms length from the council.
- Preliminary assessment of complaints will be undertaken by independent conduct reviewers
- Limited provision will be made for the Division of Local Government to undertake a preliminary assessment role for a council in relation to complaints made by or about a person where the number or nature of complaints made by or about the person imposes an undue cost burden on the council or impedes the effective administration of the council’s code
- A time limit will be imposed on the preliminary assessment of complaints
- Conduct reviewers will only be permitted to investigate a matter where they are satisfied the alleged conduct is sufficiently serious to warrant investigation and cannot be resolved by alternate means

- Provision will be made for the use of conduct review committees of three persons to investigate matters in limited circumstances
- The investigation process including procedural fairness requirements will be more clearly prescribed
- Councils will no longer make a determination that there has been a breach of the code. Determinations will now be made by the investigator
- Investigation reports will no longer be dealt with in the public domain. The only investigation reports that will be reported to council will be those recommending the imposition of a more severe sanction (eg censure)
- An amendment to section 10A of the Act will be sought to permit councils to consider investigation reports in closed meetings
- Councils' role in relation to code of conduct matters will be limited to imposing more severe sanctions (eg censure) where such sanctions have been recommended by the investigator. Councils will have limited discretion in the imposition of a sanction
- Lesser sanctions (eg training or counselling) will be implemented by the general manager or, in the case of a complaint about the General Manager, by the Mayor
- Where a person has a sanction imposed on them, they will have a limited right to request a review of the determination by the Division

We do **not** propose to proceed with the proposal made in the position paper to prescribed regional groups of councils. As stated above, it will be left to individual councils to determine how to configure their local arrangements for the administration of the code in a way that best suits their needs.

We also do **not** propose to proceed with the proposal made in the position paper for councils to nominate a neighbouring General Manager to undertake the preliminary assessment of complaints. As stated above, this role will now be undertaken by independent contracted conduct reviewers.

As foreshadowed in the position paper, we propose to seek amendments to the Act to simplify and streamline the process for taking action under the misbehaviour provisions.

We propose to seek amendments to the Act to change the term “misbehaviour” to “misconduct”. We believe this will more accurately reflect the nature of the conduct dealt with under those provisions.

We also propose to seek amendments to give the Division more options for managing misbehaviour under the Act. Accordingly the misbehaviour provisions will no longer focus simply on “suspension” as the sole form of action available for misbehaviour but will also refer to a broader range of options known collectively as “disciplinary action”.

Our proposed amendments will also confer on the Division the option of “calling in” code of conduct matters so that they may be dealt with under the misbehaviour provisions instead of a council’s code of conduct.

The amendments will maintain the existing two avenues for seeking disciplinary action to be taken against councillors under the misbehaviour provisions. These are:

- Action by the Chief Executive, Local Government as delegate of the Director General, Department of Premier and Cabinet
- Action by the Local Government Pecuniary Interest and Disciplinary Tribunal

Under our proposed amendments, the sanctions available to the Chief Executive will be strengthened to include suspension for up to three months.

The sanctions available to the Tribunal will be strengthened to align with those available for breaches of the pecuniary interest provisions of the Act. Under our proposed amendments, the Tribunal will be able to disqualify a councillor from holding civic office for up to 5 years for misbehaviour.

Under our proposed amendments, the Chief Executive and the Tribunal may take into consideration previous incidents of misbehaviour in imposing these sanctions.

5. WHAT DO WE WANT FROM YOU?

Attached to this paper are the following:

- Proposed amendments to the Model Code of Conduct (the amendments are highlighted in bold)
- Proposed new procedures for the administration of the Model Code
- Proposed amendments to the Local Government Act 1993 and Local Government (General) Regulation 2005 (the amendments are highlighted in bold).

We want to ensure that our proposed changes are workable and will provide for the more effective and efficient administration of the code of conduct.

To this end, we would like to hear your views on our proposed changes. In particular, we would like to hear your views on the following:

- Do you agree with the proposals? If not why not?
- Is there anything unclear about our proposed drafting?
- If so, how could it be said more clearly?
- Is there anything we have missed?
- Are there any loopholes?
- Does any of our proposed drafting carry potential unforeseen consequences?

We request that you make your submissions in writing to the following postal address:

Model Code of Conduct Review
Division of Local Government
Locked Bag 3015
NOWRA NSW 2541

Alternatively your submission may be lodged electronically via email to: dlg@dlg.nsw.gov.au .

We ask that submissions be received by **Tuesday, 26 June 2012**.

Should you wish to discuss the consultation drafts or the Model Code of Conduct Review, please contact Mr John Davies, the Leader of the Division's Council Governance Team, on telephone 02 4428 4139.

6. WHERE TO FROM HERE?

We will consider your comments prior to recommending the final Model Code and Model Code procedures to the Minister for consideration.

As with previous versions of the Model Code we intend to supplement the new Model Code and procedures with amended Guidelines to assist in their interpretation. We also intend to reissue an updated education package to assist councils to raise awareness among councillors, staff, delegates and committee members of any new requirements under the new Model Code and procedures.

7. LIST OF ATTACHMENTS

1. Summary version of the proposed new Model Code
2. Draft revised Model Code
3. Proposed procedures for the administration of the Model Code
4. Proposed amendments to the *Local Government Act 1993*

SUMMARY

PROPOSED NEW MODEL CODE OF CONDUCT

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
- avoid or appropriately manage any conflict of interests
- take all reasonable steps to ascertain the source of and report any 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
- examine and make available information in accordance with Government Information (Public Access) Act 2009 and the council's charter.
- use and secure information appropriately
- use council resources ethically, effectively, efficiently and carefully in the course of official duties
- not make complaints improperly or take detrimental action in response to complaints about standards of behaviour.

Council officials include councillors, members of staff of council, administrators appointed under section 256 of the Act, 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. In most cases where the complaint cannot be resolved informally, the process involves investigation by an independent conduct reviewer. The process for dealing with complaints is summarised in the flowchart below.

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.

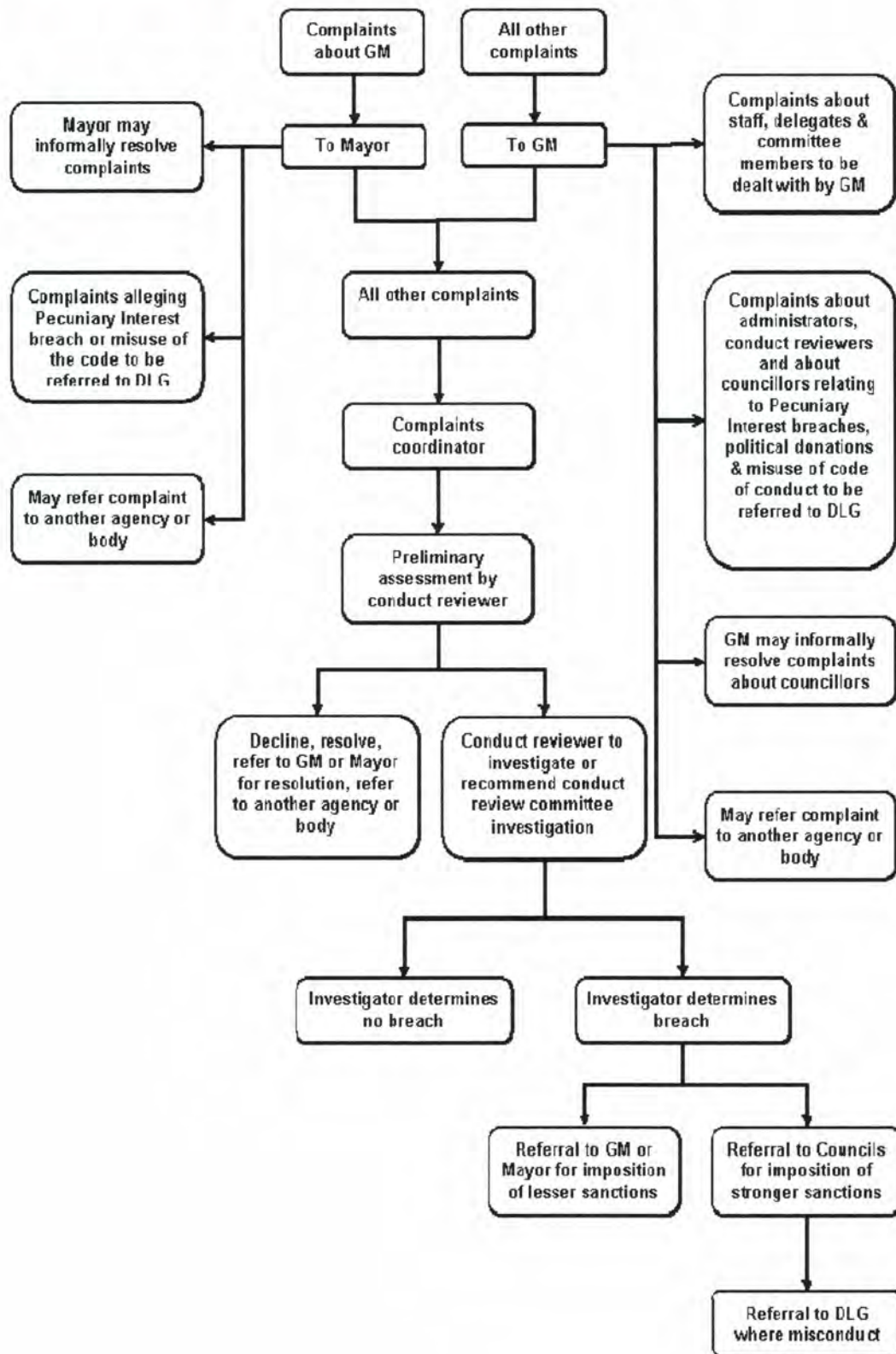
Breaches by the general manager may result in the following action

- 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 Division of Local Government for disciplinary action including but not limited to suspension for up to 3 months
- referral by the Division to the Pecuniary Interest and Disciplinary Tribunal for suspension of up to 6 months or disqualification from holding civic office.

Understanding the process for code of conduct breaches





Premier & Cabinet
Division of Local Government

The Model Code of Conduct for Local Councils in NSW

May 2012

TABLE OF CONTENTS

PART 1	INTRODUCTION.....	17
PART 2	PURPOSE OF THE CODE OF CONDUCT.....	17
PART 3	GENERAL CONDUCT OBLIGATIONS	18
PART 4	CONFLICT OF INTERESTS	20
PART 5	PERSONAL BENEFIT.....	25
PART 6	RELATIONSHIP BETWEEN COUNCIL OFFICIALS.....	27
PART 7	ACCESS TO INFORMATION AND COUNCIL RESOURCES	29
PART 8	MAINTAINING THE INTEGRITY OF THIS CODE	32
PART 9	DEFINITIONS.....	34

PART 1 INTRODUCTION

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

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

Failure by a councillor to comply with the standards of conduct prescribed under section 2, of this code constitutes misconduct for the purposes of the *Local Government Act 1993* (the Act). The Act provides for a range of penalties that may be imposed on councillors for misconduct, including suspension or disqualification from civic office.

Failure by a member of staff to comply with council's code of conduct may give rise to disciplinary action.

A set of guidelines has also been developed to assist councils to review and enhance their codes of conduct. The guidelines support this code and provide further information and examples on the provisions in this code.

PART 2 PURPOSE OF THE CODE OF CONDUCT

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

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

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

PART 3 GENERAL CONDUCT OBLIGATIONS

General conduct

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

Fairness and equity

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

Harassment and discrimination

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

Development decisions

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

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

Binding caucus votes

- 3.9 You must not participate in binding caucus votes.

3.10 For the purposes of clause 6.9, a binding caucus vote is a process whereby a group of councillors establish a predetermined position on a matter before the council by way of a vote or other means that has the effect of compelling members of the group to vote on that matter in accordance with that position regardless of the merits of the matter or any personal views members of the group may have on the matter.

3.11 Clause 6.9 does not prohibit councillors from discussing a matter before the council prior to considering the matter in question at a council meeting.

PART 4 CONFLICT OF INTERESTS

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

What is a pecuniary interest?

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

What is a non-pecuniary conflict of interests?

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

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

Managing non-pecuniary conflict of interests

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

4.13 If a disclosure is made at a council or committee meeting, both the disclosure and the nature of the interest must be recorded in the minutes. This disclosure constitutes disclosure in writing for the purposes of clause 7.12.

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

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

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

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

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

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

- 4.18 If you are a member of staff of council, the decision on which option should be taken to manage a non-pecuniary conflict of interests must be made in consultation with your manager.
- 4.19 Despite clause 7.16(b), a councillor who has disclosed that a significant non-pecuniary conflict of interests exists may participate in a decision to delegate council's decision-making role to council staff, or appoint another person or body to make the decision in accordance with the law. This applies whether or not council would be deprived of a quorum if one or more councillors were to manage their conflict of interests by not voting on a matter in accordance with clause 7.16(b) above.

Reportable political donations

- 4.20 Councillors should note that matters before council involving political or campaign donors may give rise to a non-pecuniary conflict of interests.
- 4.21 Councillors should take all reasonable steps to ascertain the source of any reportable political donations.**
- 4.22 Where a councillor has received a direct benefit to their election campaign from a reportable political donation:**
- a) made by a major political donor or a related entity in the previous four years; and
 - b) where the major political donor or related entity has a matter before council,
- then the councillor must declare a non-pecuniary conflict of interests, disclose the nature of the interest, and manage the conflict of interests in accordance with clause 7.16(b).
- 4.23 The obligation to disclose and manage a conflict of interests under clause 7.22 will only arise where there is a direct and demonstrable connection between the reportable political donation in question and any benefit to the election campaign of the councillor.
- 4.24 For the purposes of this Part (Part 7):
- a) a "reportable political donation" is a "reportable political donation" for the purposes of section 86 of the *Election Funding, Expenditure and Disclosures Act 1981*,
 - b) a "major political donor" is a "major political donor" for the purposes of section 84 of the *Election Funding, Expenditure and Disclosures Act 1981*, and
 - c) a "related entity", is a "related body corporate" for the purposes of section 50 of the *Commonwealth Corporations Act 2001*.

- 4.25 Councillors should note that political **donations** below \$1,000, or political donations to a registered political party or group by which a councillor is endorsed, may still give rise to a non-pecuniary conflict of interests. Councillors should determine whether or not such conflicts are significant and take the appropriate action to manage them.
- 4.26 If a councillor has received a **direct benefit to their election campaign from a reportable political donation** of the kind referred to in clause 7.22, that councillor is not prevented from participating in a decision to delegate council's decision-making role to council staff or appointing another person or body to make the decision in accordance with the law (see clause 7.19 above).

Loss of quorum as a result of compliance with this Part

- 4.27 Where a majority of councillors are precluded from consideration of a matter under this part (Part 7), the council must resolve to delegate consideration of the matter in question to another person.
- 4.28 **Where a majority of councillors are precluded from consideration of a matter under this part (Part 7), and the matter in question concerns the exercise of a function that may not be delegated under section 377 of the Act, the councillors may apply in writing to the Chief Executive to be exempted from complying with a requirement under this Part.**
- 4.29 **The Chief Executive will only exempt a councillor from complying with a requirement under this Part where**
- a) **compliance by councillors with a requirement under the Part in relation to a matter before the council will result in the loss of a quorum, and**
 - b) **the matter before the council relates to the exercise of a function of the council that may not be delegated under section 377 of the Act.**
- 4.30 **A councillor who would otherwise be precluded from participating in the consideration of a matter under this part (Part 7) is permitted to participate in consideration of the matter, if:**
- a) **the matter is a proposal relating to**
 - i) **the making of a principal environmental planning instrument applying to the whole or a significant part of the council's area, or**
 - ii) **the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant part of the council's area, and**
 - b) **the councillor declares any interest they have in the matter that would otherwise have precluded their participation in consideration of the matter under this part.**

Other business or employment

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

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

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

Personal dealings with council

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

PART 5 PERSONAL BENEFIT

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

Gifts and benefits

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

Token gifts and benefits

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

Gifts and benefits of value

- 5.4 Notwithstanding clause 8.3, gifts and benefits that have more than a token value include, but are not limited to, tickets to major sporting events (such as state or international cricket matches or matches in other national sporting codes (including the NRL, AFL, FFA, NBL)), corporate hospitality at a corporate facility at major sporting events, discounted products for personal use, the frequent use of facilities such as gyms, use of holiday homes, free or discounted travel.

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

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

e) accept an offer of cash or a **cash-like gift**, regardless of the amount.

- 5.6 For the purposes of clause 8.5(e), a “cash-like gift” includes but is not limited to gift vouchers, credit cards, debit cards with credit on them, prepayments such as phone or internal credit, memberships or entitlements to discounts.**
- 5.7 Where you receive a gift or benefit of more than token value that cannot reasonably be refused or returned, this must be disclosed promptly to your supervisor, the Mayor or the general manager. The recipient, supervisor, Mayor or general manager must ensure that any gifts or benefits of more than token value that are received are recorded in a Gifts Register. The gift or benefit must be surrendered to council, unless the nature of the gift or benefit makes this impractical.

Improper and undue influence

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

PART 6 RELATIONSHIP BETWEEN COUNCIL OFFICIALS

Obligations of councillors and administrators

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

Obligations of staff

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

Obligations during meetings

- 6.5 You must act in accordance with council's Code of Meeting Practice, if council has adopted one, and the *Local Government (General) Regulation 2005* during council and committee meetings.
- 6.6 You must show respect to the chair, other council officials and any members of the public present during council and committee meetings or other formal proceedings of the council.

Inappropriate interactions

- 6.7 You must not engage in any of the following inappropriate interactions:
- a) Councillors and administrators approaching staff and staff organisations to discuss individual staff matters and not broader industrial policy issues.
 - b) Council staff approaching councillors and administrators to discuss individual staff matters and not broader industrial policy issues.
 - c) Council staff refusing to give information that is available to other councillors to a particular councillor.
 - d) Councillors and administrators who have lodged a development application with council, discussing the matter with council staff in staff-only areas of the council.
 - e) Councillors and administrators being overbearing or threatening to council staff.
 - f) Councillors and administrators making personal attacks on council staff in a public forum.
 - g) Councillors and administrators directing or pressuring council staff in the performance of their work, or recommendations they should make.
 - h) Council staff providing ad hoc advice to councillors and administrators without recording or documenting the interaction as they would if the advice was provided to a member of the community.
 - i) Council staff meeting with **development applicants or objectors to development applications** alone AND outside office hours to discuss development applications or proposals.
 - j) Councillors attending on-site inspection meetings with lawyers and/or consultants engaged by council associated with current or proposed legal proceedings unless permitted to do so by council's general manager or, in the case of the Mayor or administrator, exercising their power under section 226 of the Act.
- 6.8 It is appropriate that staff and staff organisations have discussions with councillors in relation to matters of industrial policy.
- 6.9 **Notwithstanding clause 9.7, councillors and administrators may discuss issues with the general manager relating to the general manager's employment and performance provided they do so in a manner that is consistent with the requirements of the general manager's employment contract.**

PART 7 ACCESS TO INFORMATION AND COUNCIL RESOURCES

Councillor and administrator access to information

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

Councillors and administrators to properly examine and consider information

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

Refusal of access to documents

- 7.7 Where the general manager and public officer determine to refuse access to a document sought by a councillor or administrator they must act reasonably. In reaching this decision they must take into account whether or not the document sought is required for the councillor or administrator to perform their civic duty (see clause 10.2). The general manager or public officer must state the reasons for the decision if access is refused.

Use of certain council information

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

Use and security of confidential information

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

7.10 In addition to your general obligations relating to the use of council information, you must:

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

Personal information

7.11 When dealing with personal information you must comply with:

- a) *the Privacy and Personal Information Protection Act 1998,*
- b) *the Health Records and Information Privacy Act 2002,*
- c) the Information Protection Principles and Health Privacy Principles,
- d) council's privacy management plan,
- e) the Privacy Code of Practice for Local Government

Use of council resources

7.12 You must use council resources ethically, effectively, efficiently and carefully in the course of your official duties, and must not use them for private purposes (except when supplied as part of a contract of employment) unless this use is lawfully authorised and proper payment is made where appropriate.

7.13 Union delegates and consultative committee members may have reasonable access to council resources for the purposes of carrying out their industrial responsibilities, including but not limited to:

- a) the representation of members with respect to disciplinary matters
- b) the representation of employees with respect to grievances and disputes
- c) functions associated with the role of the local consultative committee.

7.14 You must be scrupulous in your use of council property, including intellectual property, official services and facilities, and must not permit their misuse by any other person or body.

7.15 You must avoid any action or situation that could create the appearance that council property, official services or public facilities are being improperly used for your benefit or the benefit of any other person or body.

- 7.16 You must not use council property or facilities for the purpose of assisting your election campaign or the election campaign of others unless the property or facilities are otherwise available for use or hire by the public and any publicly advertised fee is paid for use of the property or facility.**
- 7.17 You must not use council letterhead, council crests and other information that could give the appearance it is official council material for:**
- a) the purpose of assisting your election campaign or the election campaign of others, or**
 - b) for other non-official purposes.**
- 7.18 You must not convert any property of the council to your own use unless properly authorised.
- 7.19 You must not use council's computer resources to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature.

Councillor access to council buildings

- 7.20 Councillors and administrators are entitled to have access to the council chamber, committee room, mayor's office (subject to availability), councillors' rooms, and public areas of council's buildings during normal business hours and for meetings. Councillors and administrators needing access to these facilities at other times must obtain authority from the general manager.
- 7.21 Councillors and administrators must not enter staff-only areas of council buildings without the approval of the general manager (or delegate) or as provided in the procedures governing the interaction of councillors and council staff.
- 7.22 Councillors and administrators must ensure that when they are within a staff area they avoid giving rise to the appearance that they may improperly influence council staff decisions.

PART 8 MAINTAINING THE INTEGRITY OF THIS CODE

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

Complaints made for an improper purpose

8.2 You must not make a complaint or cause a complaint to be made for an improper purpose.

8.3 For the purposes of clause 11.2, a complaint is made for an improper purpose where it is trivial, frivolous, vexatious or not made in good faith, or where it otherwise lacks merit and has been made substantially for one or more of the following purposes:

- a) to intimidate or harass another council official,
- b) to damage another council official's reputation,
- c) to obtain a political advantage,
- d) to influence a council official in the exercise of their official functions or to prevent or disrupt the exercise of those functions,
- e) to influence the council in the exercise of its functions or to prevent or disrupt the exercise of those functions,
- f) to avoid disciplinary action under this code,
- g) to take reprisal action against a person for making a complaint under this code except as may be otherwise specifically permitted under this code,
- h) to take reprisal action against a person for exercising a function prescribed under the procedures for the administration of this code except as may be otherwise specifically permitted under this code,
- i) to prevent or disrupt the effective administration of this code.

Detrimental action

8.4 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for a complaint they have made under this code except as may be otherwise specifically permitted under this code.

8.5 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for any function they have exercised under this code except as may be otherwise specifically permitted under this code.

8.6 For the purposes of clauses 11.4 and 11.5 detrimental action is an action causing, comprising or involving any of the following:

- a) injury, damage or loss,
- b) intimidation or harassment,
- c) discrimination, disadvantage or adverse treatment in relation to employment,
- d) dismissal from, or prejudice in, employment,
- e) disciplinary proceedings.

Compliance with requirements under this code

- 8.7 You must not engage in conduct that is calculated to impede or disrupt the consideration of a matter under this code.
- 8.8 You must comply with a reasonable and lawful request made by a person exercising a function under this code.
- 8.9 You must comply with a practice ruling made by the Division of Local Government.
- 8.10 Where you are a councillor, you must comply with any council resolution requiring you to take action as a result of a breach.

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

- 8.11 You must report breaches of this code in accordance with the reporting requirements under this code.
- 8.12 You must not make allegations of suspected breaches of this code at council meetings or in other public forums.
- 8.13 You must not disclose information about the consideration of a matter under this code unless the disclosure is otherwise permitted under this code.

Complaints alleging a breach of this part

- 8.14 Complaints alleging a breach of this part (part 11) by a councillor, the general manager or an administrator are to be made to the Division of Local Government.
- 8.15 Complaints alleging a breach of this part (part 11) by other council officials are to be made to the general manager for consideration under the procedures prescribed under the Regulation for the administration of this code.

PART 9 DEFINITIONS

In the Model Code of Conduct the following definitions apply:

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

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

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



Premier & Cabinet
Division of Local Government

Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW

May 2012

TABLE OF CONTENTS

PART 1	INTRODUCTION	37
PART 2	DEFINITIONS	37
PART 3	ADMINISTRATIVE FRAMEWORK	38
PART 4	HOW MAY CODE OF CONDUCT COMPLAINTS BE MADE?	40
PART 5	HOW ARE CODE OF CONDUCT COMPLAINTS TO BE MANAGED?	41
PART 6	PRELIMINARY ASSESSMENT	47
PART 7	OPERATIONS OF CONDUCT REVIEW COMMITTEES	51
PART 8	INVESTIGATIONS	53
PART 9	RIGHTS OF REVIEW	61
PART 10	PROCEDURAL IRREGULARITIES	63
PART 11	PRACTICE DIRECTIONS	63
PART 12	REPORTING ON COMPLAINTS STATISTICS	64

PART 1 INTRODUCTION

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

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

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

A set of guidelines has also been developed to assist councils in the implementation of these procedures.

PART 2 DEFINITIONS

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

"the Act"	the Local Government Act 1993
"administrator"	a person appointed under section 256 of the Act.
"code of conduct"	a code of conduct adopted under section 440 of the Act
"code of conduct complaint"	a complaint that alleges conduct on the part of a council official acting in their official capacity that on its face, if proven, would constitute a breach of the standards of conduct prescribed under the council's code of conduct.
"complainant"	a person who makes a code of conduct complaint.
"complainant councillor"	a councillor who makes a code of conduct complaint.
"complaints coordinator"	a person appointed by the general manager under these procedures as a complaints coordinator.

“conduct reviewer”	a person appointed under these procedures to review allegations of breaches of the code of conduct by councillors or the general manager.
“council committee member”	a person other than a councillor or member of staff of a council who is a member of a committee of the council
“council official”	includes councillors, members of staff of council, administrators, council committee members, conduct reviewers and delegates of council.
“delegate of council”	a person (other than a councillor or member of staff of a council) or body and the individual members of that body to whom a function of the council is delegated.
“the Division”	the Division of Local Government, Department of Premier and Cabinet
“investigator”	a conduct reviewer or conduct review committee
“the Regulation”	the Local Government (General) Regulation 2005
“subject person”	a person whose conduct is the subject of investigation by a conduct reviewer or conduct review committee under these procedures

PART 3 ADMINISTRATIVE FRAMEWORK

The establishment of a panel of conduct reviewers

- 3.1 The council must by resolution establish a panel of conduct reviewers.
- 3.2 The council may by resolution enter into an arrangement with one or more other councils to share a panel of conduct reviewers.
- 3.3 The panel of conduct reviewers is to be established following a public expression of interest process.
- 3.4 An expression of interest for members of the council’s panel of conduct reviewers must, at a minimum, be advertised locally and in the Sydney metropolitan area.

- 3.5 To be eligible to be a member of a conduct review committee, a person must, at a minimum, meet the following requirements:
- a) knowledge of the local government context, and
 - b) knowledge of investigative processes including but not limited to procedural fairness requirements and the requirements of the Public Interest Disclosures Act 1994, and
 - c) knowledge and experience of one or more of the following:
 - i) investigations, or
 - ii) law, or
 - iii) public administration, or
 - iv) public sector ethics, or
 - v) alternative dispute resolution, and
 - d) meet the eligibility requirements for membership of a panel of conduct reviewers under clause 3.6.
- 3.6 A person will not be eligible to be a member of the panel of conduct reviewers if they are
- a) a councillor, or
 - b) a nominee for election as a councillor, or
 - c) an administrator, or
 - d) an employee of a council, or
 - e) a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or
 - f) a nominee for election as a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or
 - g) a person who has a conviction for an indictable offence that is not an expired conviction.
- 3.7 A person is not precluded from being a member of the council's panel of conduct reviewers if they are a member of another council's panel of conduct reviewers.
- 3.8 A panel of conduct reviewers established under this Part is to have a term of up to four years.
- 3.9 The council may terminate the panel of conduct reviewers at any time by resolution.
- 3.10 When the term of the conduct reviewers concludes or is terminated, the council must establish a new panel of conduct reviewers in accordance with the requirements of this Part.
- 3.11 A person who was a member of a previous panel of conduct reviewers established by the council may be a member of subsequent panels of conduct reviewers established by the council.

The appointment of complaints coordinators

- 3.12 The general manager must appoint a senior and suitably qualified member of staff of the council to act as a complaints coordinator.

- 3.13 The general manager may appoint other senior and suitably qualified members of staff to act as alternates to the complaints coordinator.
- 3.14 The general manager must not undertake the role of complaints coordinator.
- 3.15 The person appointed as complaints coordinator must also be a nominated disclosures officer appointed for the purpose of receiving and managing reports of wrongdoing under the *Public Interest Disclosures Act 1994*.
- 3.16 The role of the complaints coordinator is to:
- a) coordinate the management of complaints made under the council's code of conduct,
 - b) liaise with and provide administrative support to a conduct reviewer or conduct review committee,
 - c) liaise with the Division of Local Government, and
 - d) arrange the annual reporting of code of conduct complaints statistics.

PART 4 HOW MAY CODE OF CONDUCT COMPLAINTS BE MADE?

What is a "code of conduct complaint"?

- 4.1 For the purpose of these procedures, a code of conduct complaint is a complaint that alleges conduct on the part of a council official acting in their official capacity that on its face, if proven, would constitute a breach of the standards of conduct prescribed under the council's code of conduct.
- 4.2 Only code of conduct complaints are to be dealt with under these procedures.

When must a code of conduct complaint be made?

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

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

- 4.4 All code of conduct complaints other than those relating to the general manager are to be made to the general manager in writing.
- 4.5 Where a code of conduct complaint about a council official other than the general manager can not be made in writing, the complaint must be

- 4.6 In making a code of conduct complaint about a council official other than the general manager, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.
- 4.7 The general manager or, where the complaint is referred to a conduct reviewer, the conduct reviewer, will consider the complainant's preferences in deciding how to deal with the complaint.
- 4.8 Notwithstanding clauses 4.4 and 4.5, where the general manager becomes aware of a possible breach of the council's code of conduct, he or she may initiate the process for the consideration of the matter under these procedures without a written complaint.

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

- 4.9 Code of conduct complaints about the general manager are to be made to the Mayor in writing.
- 4.10 Where a code of conduct complaint about the general manager can not be made in writing, the complaint must be confirmed with the complainant in writing as soon as possible after the receipt of the complaint.
- 4.11 In making a code of conduct complaint about the general manager, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.
- 4.12 The Mayor or, where the complaint is referred to a conduct reviewer, the conduct reviewer, will consider the complainant's preferences in deciding how to deal with the complaint.
- 4.13 Notwithstanding clauses 4.9 and 4.10, where the Mayor becomes aware of a possible breach of the council's code of conduct by the general manager, he or she may initiate the process for the consideration of the matter under these procedures without a written complaint.

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

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

- 5.1 The general manager is responsible for making enquiries or causing enquiries to be made into code of conduct complaints about members of staff of council and for determining the outcome of such complaints.

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

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

- 5.6 The general manager is responsible for making enquiries or causing enquiries to be made into code of conduct complaints about delegates of council and council committee members and for determining the outcome of such complaints.
- 5.7 Where the general manager decides not to make enquiries into a code of conduct complaint about a delegate of council or a council committee member, the general manager will give the complainant reasons in writing for their decision.
- 5.8 Without limiting clause 5.7, the general manager may decide not to enquire into the matter on grounds that the complaint is trivial, frivolous, vexatious or not made in good faith.
- 5.9 Sanctions for delegates of council and/or members of council committees depend on the severity, scale and importance of the breach and may include one or more of the following:
 - a) censure,
 - b) requiring the person to apologise to any person adversely affected by the breach,
 - c) prosecution for any breach of the law,
 - d) removing or restricting the person's delegation,
 - e) removing the person from membership of the relevant council committee, or
 - f) revising any of council's policies or procedures
- 5.10 Prior to imposing a sanction against a delegate of council or a council committee member under clause 5.9, the general manager or any person making enquiries on behalf of the general manager must comply with the requirements of procedural fairness. In particular:

- a) the substance of the allegation (including the relevant provision/s of council's code of conduct that the alleged conduct is in breach of) must be put to the person the subject of the allegation, and
- b) the person must be given an opportunity to respond to the allegation, and
- c) the general manager must consider the person's response in deciding whether to impose a sanction under clause 5.9.

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

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

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

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

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

- 5.16 The general manager is to refer the following code of conduct complaints about councillors to the Division:
 - a) complaints alleging a breach of the pecuniary interest provisions of the Act,
 - b) complaints alleging a failure to comply with a requirement under the code of conduct to disclose and appropriately manage conflicts of interests arising from reportable political donations (see section 328B),
 - c) complaints alleging a breach of Part 11 of the code of conduct relating to the maintenance of the integrity of the code, and
 - d) complaints the subject of a special complaints management arrangement with the Division under clause 5.39.
- 5.17 Where the general manager refers a complaint to the Division under clause 5.16, the general manager must notify the complainant of the referral in writing.

- 5.18 Where the general manager considers it to be practicable and appropriate to do so, he or she may seek to resolve code of conduct complaints about councillors, other than those requiring referral to the Division under clause 5.16, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology.
- 5.19 Where the general manager resolves a code of conduct complaint under clause 5.18 to their satisfaction, the general manager must notify the complainant in writing of the steps taken to resolve the complaint and this will serve to finalise the consideration of the matter under these procedures.
- 5.20 The general manager must refer all code of conduct complaints about councillors other than those referred to the Division under clause 5.16 or resolved under clause 5.18 to the complaints coordinator.

How are code of conduct complaints about the general manager to be dealt with?

- 5.21 The Mayor is to refer the following code of conduct complaints about the general manager to the Division:
- a) complaints alleging a breach of the pecuniary interest provisions of the Act,
 - b) complaints alleging a breach of Part 11 of the code of conduct relating to the maintenance of the integrity of the code, and
 - c) complaints the subject of a special complaints management arrangement with the Division under clause 5.39.
- 5.22 Where the Mayor refers a complaint to the Division under clause 5.21, the Mayor must notify the complainant of the referral in writing.
- 5.23 Where the Mayor considers it to be practicable and appropriate to do so, he or she may seek to resolve code of conduct complaints about the general manager, other than those requiring referral to the Division under clause 5.16, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology.
- 5.24 Where the Mayor resolves a code of conduct complaint under clause 5.23 to their satisfaction, the Mayor must notify the complainant in writing of the steps taken to resolve the complaint and this will serve to finalise the consideration of the matter under these procedures.
- 5.25 The Mayor must refer all code of conduct complaints about the general manager other than those referred to the Division under clause 5.21 or resolved under clause 5.23 to the complaints coordinator.

Referral of code of conduct complaints to external agencies

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

Disclosure of the identity of complainants

- 5.29 In dealing with matters under these procedures, information that identifies or tends to identify complainants is not to be disclosed unless:
- a) the complainant consents in writing to the disclosure, or
 - b) it is generally known that the complainant has made the complaint as a result of the complainant having voluntarily identified themselves as the person who made the complaint, or
 - c) it is essential, having regard to procedural fairness requirements, that the identifying information be disclosed, or
 - d) a conduct reviewer or conduct review committee is of the opinion that disclosure of the information is necessary to investigate the matter effectively, or
 - e) it is otherwise in the public interest to do so.
- 5.30 Clause 5.29 does not apply to code of conduct complaints made by councillors about other councillors or the general manager.
- 5.31 Where a councillor makes a code of conduct complaint about another councillor or the general manager and the complainant councillor considers that compelling grounds exist that would warrant information that identifies or tends to identify them as the complainant not to be disclosed, they may request in writing that such information not be disclosed.
- 5.32 A request made by a complainant councillor under clause 5.31 must be made at the time they make a code of conduct complaint and must state the grounds upon which the request is made.
- 5.33 Conduct reviewers or conduct review committees must consider a request made under clause 5.31 before disclosing information that

- 5.34 Where a complainant councillor makes a request under clause 5.31, a conduct reviewer or conduct review committee will notify the councillor in writing of their intention to disclose information that identifies or tends to identify them prior to disclosing the information.

Code of conduct complaints made as Public Interest Disclosures

- 5.35 Code of conduct complaints that are made as public interest disclosures under the Public Interest Disclosures Act 1994 are to be managed in accordance with the requirements of that Act, the council's internal reporting policy and any guidelines issued by the NSW Ombudsman that relate to the management of Public Interest Disclosures.
- 5.36 Where a councillor makes a code of conduct complaint about another councillor or the general manager as a public interest disclosure, before the matter may be dealt with under these procedures, the complainant councillor must consent in writing to the disclosure of their identity as the complainant.
- 5.37 Where a complainant councillor declines to consent to the disclosure of their identity as the complainant under clause 5.36, the general manager or the Mayor must refer the complaint to the Division for consideration.

Special complaints management arrangements

- 5.38 The general manager may request in writing that the Division enter into a special complaints management arrangement with the council in relation to code of conduct complaints made by or about a person or persons.
- 5.39 Where the Division receives a request under clause 5.38, it may agree to enter into a special complaints management arrangement where it is satisfied that the number or nature of code of conduct complaints made by or about a person or persons has:
- a) imposed an undue and disproportionate cost burden on the council's administration of its code of conduct, or
 - b) impeded or disrupted the effective administration by the council of its code of conduct, or
 - c) impeded or disrupted the effective functioning of the council.
- 5.40 A special complaints management arrangement must be in writing and must specify the following:
- a) the code of conduct complaints the arrangement relates to, and
 - b) the period that the arrangement will be in force.
- 5.41 The Division may by notice in writing, amend or terminate a special complaints management arrangement at any time.

- 5.42 While a special complaints management arrangement is in force, an officer of the Division (the assessing Divisional officer) will undertake the preliminary assessment of the code of conduct complaints specified in the arrangement in accordance with the requirements of these procedures except as provided by clauses 5.43 below.
- 5.43 Where, following a preliminary assessment, the assessing Divisional officer determines that a code of conduct complaint warrants investigation by a conduct reviewer or a conduct review committee, the assessing Divisional officer will notify the complaints coordinator in writing of their determination and the reasons for their determination. The complaints coordinator must comply with the recommendation of the assessing Divisional officer.
- 5.44 Prior to the expiry of a special complaints management arrangement, the Division, will, in consultation with the general manager review the arrangement to determine whether it should be renewed or amended.
- 5.45 A special complaints management arrangement will expire on the date specified in the arrangement unless renewed under clause 5.44.

PART 6 PRELIMINARY ASSESSMENT

Referral of code of conduct complaints to conduct reviewers

- 6.1 The complaints coordinator will refer all code of conduct complaints about councillors or the general manager submitted to the complaints coordinator within 21 days of receipt of a complaint by the general manager or the Mayor.
- 6.2 For the purposes of clause 6.1, the complaints coordinator will refer a complaint to a conduct reviewer selected from:
- a) a panel of conduct reviewers established by the council, or
 - b) a panel of conduct reviewers established by an organisation prescribed under the Regulation.
- 6.3 In selecting a suitable conduct reviewer, the complaints coordinator may have regard to the qualifications and experience of members of the panel of conduct reviewers.
- 6.4 A conduct reviewer must not accept the referral of a code of conduct complaint where:
- a) they have a conflict of interests in relation to the matter referred to them, or
 - b) a reasonable apprehension of bias arises in relation to their consideration of the matter, or
 - c) they or their employer has entered into one or more contracts with the council in the 2 years preceding the referral and they or

- d) at the time of the referral, they or their employer are the council's legal service providers or are a member of a panel of legal service providers appointed by the council.
- 6.5 For the purposes of clause 6.4(a), a conduct reviewer will have a conflict of interests in a matter where a reasonable and informed person would perceive that they could be influenced by a private interest when carrying out their public duty (see clause 7.1 of the Model Code of Conduct)
- 6.6 For the purposes of clause 6.4(b), a reasonable apprehension of bias arises where a fair-minded observer might reasonably apprehend that the conduct reviewer might not bring an impartial and unprejudiced mind to the matter referred to the conduct reviewer.
- 6.7 Where the complaints coordinator refers a matter to a conduct reviewer, they will provide the conduct reviewer with a copy of the code of conduct complaint and any other information relevant to the matter held by the council.
- 6.8 The complaints coordinator will notify the complainant in writing that the matter has been referred to a conduct reviewer and advise which conduct reviewer the matter has been referred to.

Preliminary assessment by a conduct reviewer

- 6.9 The conduct reviewer is to undertake a preliminary assessment of a complaint referred to them by the complaints coordinator for the purposes of determining how the complaint is to be managed.
- 6.10 The conduct reviewer may determine to do one or more of the following in relation to a complaint referred to them by the complaints coordinator:
- a) to take no action, or
 - b) to resolve the complaint by alternative and appropriate strategies such as, but not limited to explanation, counselling, training, mediation, informal discussion, negotiation or apology, or
 - c) to refer the matter to the general manager or, in the case of a complaint about the general manager, the Mayor, for resolution by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, or apology, or
 - d) to refer the matter to another agency or body such as, but not limited to the ICAC, the NSW Ombudsman, the Division or the Police, or
 - e) to investigate the matter, or

- f) to recommend that a conduct review committee be convened to investigate the matter.
- 6.11 In determining how to deal with a matter under clause 6.10, the conduct reviewer is to have regard to the complaint assessment criteria prescribed under clause 6.27.
- 6.12 The conduct reviewer may make such enquiries the conduct reviewer considers to be reasonably necessary to determine what option to exercise under clause 6.10.
- 6.13 The conduct reviewer may request the complaints coordinator to provide such additional information the conduct reviewer considers to be reasonably necessary to determine what option to exercise in relation to the matter under clause 6.10. The complaints coordinator will, as far as is reasonably practicable, supply any information requested by the conduct reviewer.
- 6.14 The conduct reviewer must refer to the Division, any complaints referred to him or her that should have been referred to the Division under clauses 5.16 and 5.21.
- 6.15 The conduct reviewer must determine to take no action on a complaint that is not a code of conduct complaint for the purposes of these procedures.
- 6.16 Where the conduct reviewer completes their preliminary assessment of a complaint by determining to exercise an option under clause 6.10, paragraphs (a), (b) or (c), they will provide the complainant with written notice of their determination and provide reasons for it and this will finalise consideration of the matter under these procedures.
- 6.17 Where the conduct reviewer refers a complaint to another agency or body, they will notify the complainant of the referral in writing where it is appropriate for them to do so.
- 6.18 The conduct reviewer may only determine to investigate a matter or to recommend that a conduct review committee be convened to investigate a matter where they are satisfied as to the following:
 - a) that the complaint is a “code of conduct complaint” for the purposes of these procedures, and
 - b) that the alleged conduct, on its face, is sufficiently serious to warrant investigation, and
 - c) that the matter is one that could not or should not be resolved by alternative means.
- 6.19 The conduct reviewer may only determine to recommend that a conduct review committee be convened to investigate a matter where they are satisfied that it would not be practicable or appropriate for the matter to be investigated by a sole conduct reviewer.

- 6.20 The conduct reviewer must complete their preliminary assessment of the complaint within 28 days of referral of the matter to them by the complaints coordinator.
- 6.21 The conduct reviewer is not obliged to give prior notice to or to consult with any person before making a determination in relation to their preliminary assessment of a complaint except as may be specifically required under these procedures.

Referral back to the general manager or Mayor for resolution

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

Complaints assessment criteria

- 6.27 In undertaking the preliminary assessment of a complaint, the conduct reviewer may have regard to the following considerations:
- a) whether the complaint is a "code of conduct complaint",
 - b) whether the complaint is trivial, frivolous, vexatious or not made in good faith
 - c) whether the complaint discloses prima facie evidence of a breach of the code,
 - d) whether the complaint raises issues that would be more appropriately dealt with by another agency or body,

- e) whether there is or was an alternative and satisfactory means of redress available to the complainant in relation to the conduct complained of,
- f) whether the complaint is one that can be resolved by alternative and appropriate strategies such as, but not limited to explanation, counselling, training, informal discussion, negotiation or apology,
- g) whether the issue/s giving rise to the complaint have previously been addressed or resolved,
- h) whether the conduct complained of forms part of a pattern of conduct,
- i) whether there were mitigating circumstances giving rise to the conduct complained of,
- j) the seriousness of the alleged conduct,
- k) the significance of the conduct or the impact of the conduct for the council,
- l) how much time has passed since the alleged conduct occurred, or
- m) such other considerations that the conduct reviewer considers may be relevant to the assessment of the complaint.

PART 7 OPERATIONS OF CONDUCT REVIEW COMMITTEES

- 7.1 Where a conduct reviewer recommends that a conduct review committee be convened to investigate a matter, the conduct reviewer will notify the complaints coordinator of their recommendation and the reasons for their recommendation in writing.
- 7.2 The complaints coordinator will convene a conduct review committee comprising three conduct reviewers selected from:
- a) a panel of conduct reviewers established by the council, or
 - b) a panel of conduct reviewers established by an organisation prescribed under the Regulation.
- 7.3 In selecting suitable conduct reviewers for membership of a conduct review committee convened under clause 7.2, the complaints coordinator may have regard to the following:
- a) the qualifications and experience of members of the panel of conduct reviewers and
 - b) any recommendation made by the conduct reviewer about the membership of the committee.
- 7.4 The conduct reviewer who made the preliminary assessment of the complaint may be a member of a conduct review committee convened under clause 7.2.
- 7.5 A member of a panel of conduct reviewers may not be appointed to a conduct review committee where they would otherwise be precluded

- 7.6 Where the complaints coordinator convenes a conduct review committee, they will advise the complainant in writing that the committee has been convened and the membership of the committee.
- 7.7 Where, after a conduct review committee has been convened, a member the committee becomes unavailable to participate in further consideration of the matter, the complaints coordinator may appoint another person from a panel of conduct reviewers to replace them.
- 7.8 Meetings of a conduct review committee may be conducted in person or by teleconference.
- 7.9 The members of the conduct review committee are to elect a chairperson of the committee.
- 7.10 A quorum for a meeting of the conduct review committee is two members.
- 7.11 Business is not to be conducted at any meeting of the conduct review committee unless a quorum is present.
- 7.12 If a quorum is not present at a meeting of the conduct review committee, it must be adjourned to a time and date that is specified.
- 7.13 Each member of the conduct review committee is entitled to one vote in relation to a matter. In the event of an equality of votes being cast, the chairperson will have the casting vote.
- 7.14 If the vote on a matter is not unanimous, then this should be noted in the report of the conduct review committee in which it makes its determination in relation to the matter.
- 7.15 The chairperson may make a ruling on questions of procedure and the chairperson's ruling is to be final.
- 7.16 The conduct review committee will conduct business in the absence of the public.
- 7.17 The conduct review committee will maintain proper records of its proceedings.
- 7.18 The complaints coordinator will undertake the following functions in support of a conduct review committee:
 - a) provide procedural advice where required,
 - b) ensure adequate resources are provided including secretariat support

- c) attend meetings of the conduct review committee in an advisory capacity
 - d) provide advice about council's processes where requested
- 7.19 The complaints coordinator must not be present at, or in sight of a meeting of the conduct review committee where it makes its final determination in relation to the matter.
- 7.20 The conduct review committee may adopt procedures governing the conduct of its meeting that supplement these procedures. However any procedures adopted by the committee must not be inconsistent with these procedures.

PART 8 INVESTIGATIONS

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

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

How are investigations to be commenced?

- 8.4 The investigator must at the outset of their investigation provide a written notice of investigation to the subject person. The notice of investigation must:
- a) disclose the substance of the allegations against the subject person, and
 - b) advise of the relevant provisions of the code of conduct that apply to the alleged conduct, and
 - c) advise of the process to be followed in investigating the matter, and
 - d) invite the subject person to make a written submission in relation to the matter within 28 days or such other reasonable period specified by the investigator in the notice, and

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

Written and oral submissions

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

- 8.13 Where the subject person accepts the opportunity to address the investigator in person, they may have a support person or legal advisor in attendance. The support person or legal advisor will act in an advisory or support role to the subject person only. They must not speak on behalf of the subject person or otherwise interfere with or disrupt proceedings.
- 8.14 The investigator must consider all written and oral submissions made to them in relation to the matter.

How are investigations to be conducted?

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

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

- 8.20 At any time after an investigator has issued a notice of investigation and before they have issued a draft report, an investigator may determine to:
- a) resolve the matter by alternative and appropriate strategies such as, but not limited to explanation, counselling, training, mediation, informal discussion, negotiation or apology, or
 - b) refer the matter to the general manager, or, in the case of a complaint about the general manager, to the Mayor, for resolution by alternative and appropriate strategies such as, but not limited to explanation, counselling, training, mediation, informal discussion, negotiation or apology, or
 - c) refer the matter to another agency or body such as, but not limited to the ICAC, the NSW Ombudsman, the Division or the Police.
- 8.21 Where an investigator determines to exercise any of the options under clause 8.20 after the commencement of an investigation, they must do

- 8.22 Where an investigator determines to exercise any of the options under clause 8.20 after the commencement of an investigation, they may by written notice to the subject person, the complainant, the complaints coordinator and the general manager, or in the case of a complaint about the general manager the Mayor, discontinue their investigation of the matter.
- 8.23 Where the investigator discontinues their investigation of a matter under clause 8.22, this will serve to finalise the consideration of the matter under these procedures.
- 8.24 An investigator is not obliged to give prior notice to or to consult with any person before making a determination to exercise any of the options under clause 8.20 or to discontinue their investigation except as may be specifically required under these procedures.

Draft investigation reports

- 8.25 When an investigator has completed their enquiries and considered any written or oral submissions made to them in relation to a matter, they must prepare a draft of their proposed report.
- 8.26 The investigator must provide their draft report to the subject person and invite them to make a written submission in relation to it within 28 days or such other reasonable period specified by the investigator.
- 8.27 Where the investigator proposes to make adverse comment about any other person (an affected person) in their report, they must also provide that person with relevant extracts of their draft report containing such comment and invite the person to make a written submission in relation to it within 28 days or such other reasonable period specified by the investigator.
- 8.28 The investigator must consider written submissions received in relation to the draft report prior to finalising their report in relation to the matter.
- 8.29 The investigator may, after consideration of all written submission received in relation to their draft report make further enquiries into the matter. Where as a result of making further enquiries, the investigator makes any material change to their proposed report that makes new adverse comment about the subject person or any other person, they must provide the affected person with a further opportunity to make a written submission in relation to the new adverse comment.
- 8.30 Where the subject person or any other affected person fails to make a written submission in relation to the draft report within the period

8.31 The investigator may accept written submissions in relation to the draft report received outside the period specified by the investigator at any time prior to issuing their final report.

Final investigation reports

8.32 Where an investigator issues a notice of investigation they must prepare a final report in relation to the matter unless the investigation is discontinued under clause 8.22.

8.33 An investigator must not prepare a final report in relation to the matter at any time before they have finalised their consideration of the matter in accordance with the requirements of these procedures.

8.34 The investigator's final report must:

- a) make findings of fact in relation to the matter investigated, and,
- b) make a determination that the conduct investigated either,
 - i. constitutes a breach of the code of conduct, or
 - ii. does not constitute a breach of the code of conduct, and
- c) provide reasons for the determination.

8.35 Where the investigator determines that the conduct investigated constitutes a breach of the code of conduct, the investigator may make one or more of the following recommendations:

- a) that the council revise any of its policies or procedures,
- b) that the subject person undertake any training or other education relevant to the conduct giving rise to the breach
- c) in the case of a breach by a councillor, that the councillor be counselled by the general manager for their conduct,
- d) in the case of a breach by the general manager, that the general manager be counselled by the Mayor for their conduct,
- e) that the subject person apologise to any person affected by the breach in such a time and form specified by the recommendation,
- f) that findings of inappropriate conduct be made public,
- g) in the case of a breach by the general manager, that action be taken under the general manager's contract for the breach,
- h) in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the Act,
- i) in the case of a breach by a councillor, that the council resolves as follows:
 - i. that the councillor be formally censured for the breach under section 440G of the Act, and
 - ii. that the council states its belief that grounds may exist that warrant the councillor's suspension, and
 - iii. that the council request that the Director General suspend the councillor for the conduct.

- 8.36 Where the investigator determines that the conduct investigated does not constitute a breach of the code of conduct, the investigator may make one or more of the following recommendations:
- a) that the council revise any of its policies or procedures,
 - b) that a person or persons undertake any training or other education.
- 8.37 In making a recommendation under clause 8.35, the investigator may have regard to the following:
- a) the seriousness of the breach,
 - b) whether the breach can be easily remedied or rectified,
 - c) whether the subject person has remedied or rectified their conduct,
 - d) whether the subject person has expressed contrition,
 - e) whether there were any mitigating circumstances,
 - f) the age, physical or mental health or special infirmity of the subject person,
 - g) whether the breach is technical or trivial only,
 - h) any previous breaches,
 - i) whether the breach forms part of a pattern of conduct,
 - j) the degree of reckless intention or negligence of the subject person,
 - k) the extent to which the breach has affected other parties or the council as a whole,
 - l) the harm or potential harm to the reputation of the council or local government arising from the conduct,
 - m) whether the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny,
 - n) whether an educative approach would be more appropriate than a punitive one,
 - o) the relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action,
 - p) what action or remedy would be in the public interest.
- 8.38 At a minimum, the investigator's final report must contain the following information:
- a) a description of the allegations against the subject person,
 - b) the relevant provisions of the code of conduct that apply to the alleged conduct investigated,
 - c) a statement of reasons as to why the conduct reviewer considered that the matter warranted investigation,
 - d) a statement of reasons as to why the conduct reviewer considered that the matter was one that could not or should not be resolved by alternative means,
 - e) where the matter is investigated by a conduct review committee, a statement as to why the matter was one that warranted investigation by a conduct review committee instead of a sole conduct reviewer,

- f) a description of any attempts made to resolve the matter by use of alternative means,
- g) the steps taken to investigate the matter,
- h) the facts of the matter,
- i) the investigator's findings in relation to the facts of the matter and the reasons for those findings,
- j) the investigator's determination and the reasons for that determination,
- k) any recommendations.

8.39 The investigator must provide a copy of their report to the complaints coordinator, the subject person and the complainant,

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

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

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

8.43 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 8.35, paragraphs (e) to (i), the complaints coordinator will, where practicable, arrange for the investigator's report to be reported to the next ordinary council meeting for the council's consideration.

Consideration of the final investigation report by council

8.44 The role of the council in relation to a final investigation report is to impose a sanction where it is recommended by an investigator in their final report under clause 8.35, paragraphs (e) to (i).

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

- 8.46 Where the complainant is a councillor, they must absent themselves from the meeting and take no part in any discussion or voting on the matter. The complainant councillor may absent themselves without making any disclosure of interests in relation to the matter unless otherwise required to do so under the Act.
- 8.47 Prior to imposing a sanction, the council must provide the subject person with an opportunity to make an oral submission to the council. The subject person is to confine their submission to addressing the investigator's recommendation.
- 8.48 Once the subject person has completed their oral submission, they must absent themselves from the meeting and, where they are a councillor, take no part in any discussion or voting on the matter.
- 8.49 The council must not invite oral submissions from other persons for the purpose of seeking to rehear evidence previously considered by the investigator.
- 8.50 Prior to imposing a sanction, the council may by resolution:
- a) request that the investigator make additional enquiries and/or provide additional information to it in a supplementary report, or
 - b) seek an opinion by the Division in relation to the report.
- 8.51 The council may, by resolution defer further consideration of the matter pending the receipt of a supplementary report from the investigator or an opinion from the Division.
- 8.52 The investigator may make additional enquiries for the purpose of preparing a supplementary report.
- 8.53 Where the investigator prepares a supplementary report, they are to provide copies to the complaints coordinator for submission to the council and to the subject person and the complainant.
- 8.54 The investigator is not obliged to notify or consult with any person prior to submitting the supplementary report to the complaints coordinator.
- 8.55 The council will only be required to provide the subject person a further opportunity to address it on a supplementary report where the supplementary report contains new information that is adverse to them.
- 8.56 A council may by resolution impose the following sanctions on a subject person:
- a) that the subject person apologise to any person affected by the breach in such a time and form specified by the resolution,
 - b) that findings of inappropriate conduct be made public
 - c) in the case of a breach by the general manager, that action be taken under the general manager's contract for the breach,

- d) in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the Act
- e) in the case of a breach by a councillor:
 - i. that the councillor be formally censured for the breach under section 440G of the Act, and
 - ii. that the council states its belief that grounds may exist that warrant the councillor's suspension, and
 - iii. that the council request that the Director General suspend the councillor for the conduct.

8.57 The council may only impose a sanction on the subject person under clause 8.56 that is recommended by the investigator in their final report.

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

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

PART 9 RIGHTS OF REVIEW

Failure to comply with a requirement under these procedures

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

Practice rulings

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

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

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

9.5 The Division may decline to make a practice ruling. Where the Division declines to make a practice ruling, it will provide notice in writing of its

Requests for review

- 9.6 A person the subject of a sanction imposed under Part 8 of these procedures other than one imposed under clause 8.56, paragraph (e), may, within 28 days of the sanction being imposed, seek a review of the investigator's determination and recommendation.
- 9.7 A review under clause 9.6 may be sought on the following grounds:
- a) that the investigator has failed to comply with a requirement under these procedures, or
 - b) that the investigator has misinterpreted or misapplied the standards of conduct prescribed under the code of conduct, or
 - c) that the council has failed to comply with a requirement under these procedures in imposing a sanction.
- 9.8 A request for a review made under clause 9.6 must be made in writing and must specify the grounds upon which the person believes the investigator or the council has erred.
- 9.9 The Division may decline to conduct a review, where the grounds upon which the review is sought are not sufficiently specified.
- 9.10 The Division may undertake a review of a matter without receiving a request under clause 9.6.
- 9.11 The Division will undertake a review of the matter on the papers. However the Division may request that the complaints coordinator provide such further information that the Division considers reasonably necessary for them to review the matter. The complaints coordinator will, as far as is reasonably practicable, provide the information requested by the Division.
- 9.12 The Division will notify the person who requested the review and the complaints coordinator of the outcome of the Division's review in writing and the reasons for its decision. In doing so, the Division may comment on any other matters the Division considers to be relevant.
- 9.13 Where the Division considers that the investigator or the council has erred, the Division may recommend that a decision to impose a sanction under these procedures be reviewed.
- 9.14 In the case of a sanction implemented by the general manager or Mayor under clause 8.42, where the Division recommends that the decision to impose a sanction be reviewed:
- a) the complaints coordinator will provide a copy of the Division's determination in relation to the matter to the general manager or the Mayor, and

- b) the general manager or Mayor will review any action taken by them to implement the sanction, and
- c) the general manager or Mayor will consider the Division's recommendation in doing so.

9.15 In the case of a sanction imposed by the council by resolution under clause 8.55, where the Division recommends that the decision to impose a sanction be reviewed:

- a) the complaints coordinator will, where practicable, arrange for the Division's determination to be tabled at the next ordinary council meeting, and
- b) the council will:
 - i. review its decision to impose the sanction, and
 - ii. consider the Division's recommendation in doing so, and
 - iii. resolve to either rescind or reaffirm its previous resolution in relation to the matter.

9.16 Where having reviewed its previous decision in relation to a matter under clause 9.15, the council resolves to reaffirm its previous decision the council must state in its resolution its reasons for doing so.

PART 10 PROCEDURAL IRREGULARITIES

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

10.2 A failure to comply with these procedures will not render a decision made in relation to a matter invalid where:

- a) the non-compliance is isolated and/or minor in nature, or
- b) reasonable steps are taken to correct the non-compliance, or
- c) reasonable steps are taken to address the consequences of the non-compliance.

PART 11 PRACTICE DIRECTIONS

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

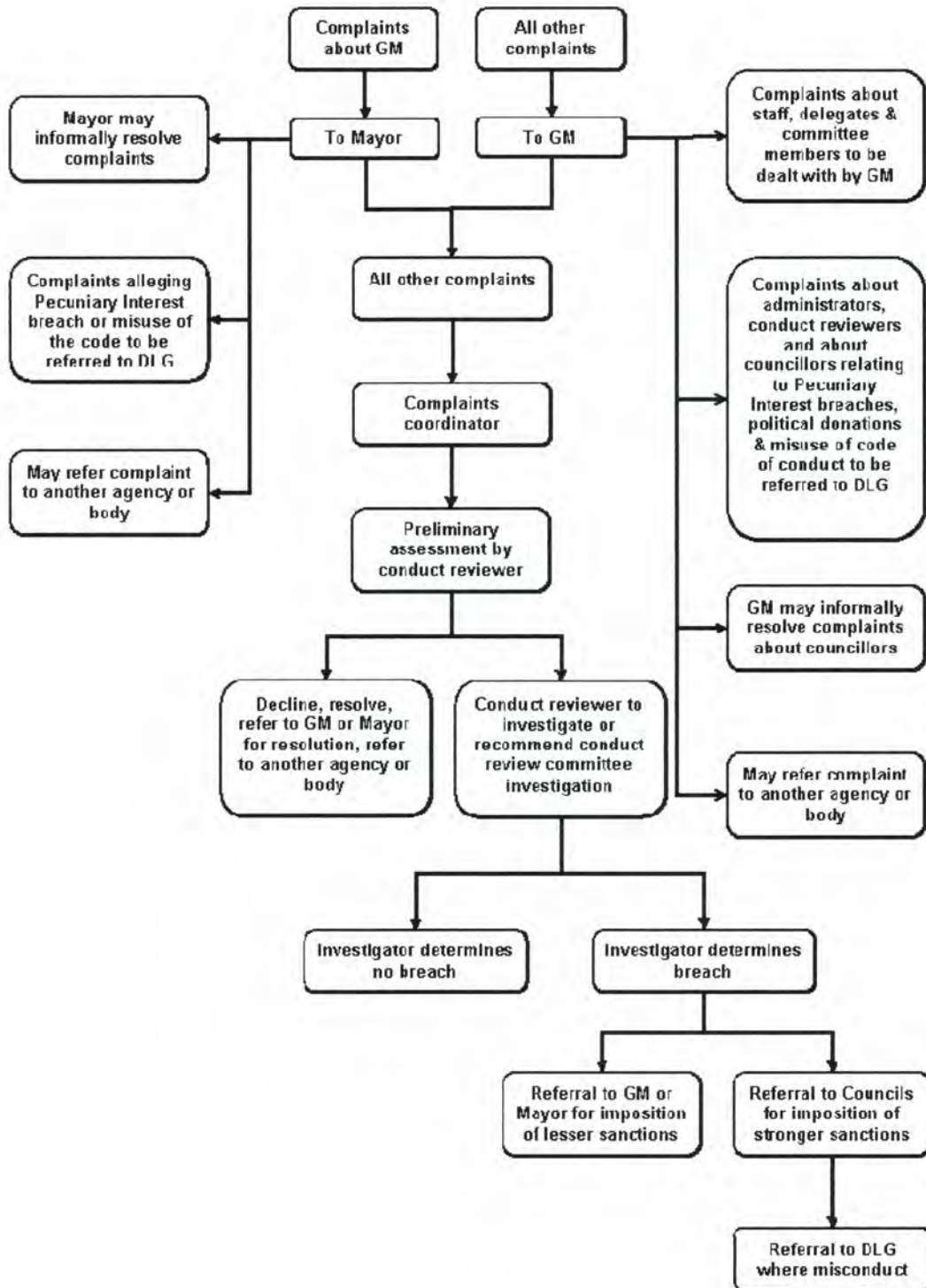
11.2 The Division will issue practice directions in writing, by circular to all councils.

11.3 All persons performing a function prescribed under these procedures must consider the Division's practice directions when performing the function.

PART 12 REPORTING ON COMPLAINTS STATISTICS

- 12.1 The complaints coordinator will arrange for the following statistics to be reported to the council within 3 months of the end of each financial year:
- a) the total number of code of conduct complaints made about councillors and the general manager under the code of conduct,
 - b) the number of code of conduct complaints referred to a conduct reviewer,
 - c) the number of code of conduct complaints finalised by a conduct reviewer at the preliminary assessment stage and the outcome of those complaints,
 - d) the number of code of conduct complaints investigated by a conduct reviewer,
 - e) the number of code of conduct complaints investigated by a conduct review committee,
 - f) without identifying particular matters, the outcome of code of conduct complaints investigated by a conduct reviewer or conduct review committee under these procedures,
 - g) the number of matter reviewed by the Division and, without identifying particular matters, the outcome of the reviews.
- 12.2 The council is to provide the Division with a report containing the statistics referred to in clause 12.1 within 3 months of the end of each financial year.

Model Code Procedure Flowchart





Premier & Cabinet
Division of Local Government

Proposed Amendments to the Local Government Act 1993 to Support the Revised Model Code of Conduct

May 2012

INTRODUCTION

The purpose of this document is to provide an indication of how proposed amendments to the Local Government Act 1993 to support the revised Model Code of Conduct for Local Councils in NSW may look. This document has been prepared by the Division of Local Government for consultation purposes only to assist you to provide feedback on the drafting of the proposed amendments.

The proposed amendments are highlighted in bold. Existing headings in the legislation are also in bold. Proposed amendments to headings in the legislation are underlined.

The proposed amendments outlined in this document are indicative only and may not reflect any final amendments that may be made to the Act. Your comments will assist us to provide drafting instructions to the Parliamentary Counsel's Office.

Ultimately any final proposed amendments will need to be approved by Cabinet, drafted by the Parliamentary Counsel's Office and passed by both Houses of Parliament.

Proposed amendment to section 10A

- (1) A council, or a committee of the council of which all the members are councillors, may close to the public so much of its meeting as comprises:
 - (a) the discussion of any of the matters listed in subclause (2), or
 - (b) the receipt or discussion of any of the information so listed.

- (2) The matters and information are the following:
 - (a) personnel matters concerning particular individuals (other than councillors),
 - (b) the personal hardship of any resident or ratepayer,
 - (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business,
 - (d) commercial information of a confidential nature that would, if disclosed:
 - (i) prejudice the commercial position of the person who supplied it, or
 - (ii) confer a commercial advantage on a competitor of the council, or
 - (iii) reveal a trade secret,
 - (e) information that would, if disclosed, prejudice the maintenance of law,
 - (f) matters affecting the security of the council, councillors, council staff or council property,

- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,
 - (h) information concerning the nature and location of a place or an item of Aboriginal significance on community land,
 - (i) **a matter dealt with under the council's code of conduct adopted under section 440(3).**
- (3) A council, or a committee of the council of which all the members are councillors, may also close to the public so much of its meeting as comprises a motion to close another part of the meeting to the public.
- (4) A council, or a committee of a council, may allow members of the public to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.

Proposed amendments to sections 439 and 440

439 Conduct of councillors, administrators, staff and delegates

- (1) Every councillor, **administrator**, member of staff of a council and delegate of a council must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions under this or any other Act.
- (2) Although this section places certain duties on councillors, **administrators**, members of staff of a council and delegates of a council, nothing in this section gives rise to, or can be taken into account in, any civil cause of action.

440 Codes of conduct

- (1) The regulations may prescribe the following:
- (a) a model code of conduct (the model code) applicable to councillors, **administrators**, members of staff of councils and delegates of councils,
 - (b) **procedures for the administration of the model code (model code procedures), and**
 - (c) **arrangements for the implementation of the model code and model code procedures.**
- (2) Without limiting what may be included in the model code, the model code may:
- (a) relate to any conduct (whether by way of act or omission) of a councillor, **administrator**, member of staff or delegate in carrying out his or her functions that is likely to bring the council or holders of civic office into disrepute, and

- (b) in particular, contain provisions for or with respect to conduct specified in Schedule 6A.
- (3) A council must adopt a code of conduct (the adopted code) **and procedures for the administration of the adopted code (the adopted code procedures)** that incorporate the provisions of the model code **and the model code procedures respectively**. The adopted code **and adopted code procedures** may include provisions that supplement the model code **and model code procedures**.
- (4) A council's adopted code **and adopted code procedures** have no effect to the extent that they are inconsistent with the model code and **the model code procedures** as in force for the time being.
- (5) Councillors, **administrators**, members of staff and delegates of a council must comply with the applicable provisions of:
 - (a) the council's adopted code, except to the extent of any inconsistency with the model code as in force for the time being, and
 - (b) the model code as in force for the time being, to the extent that:
 - (i) the council has not adopted a code of conduct, or
 - (ii) the adopted code is inconsistent with the model code, or
 - (iii) the model code contains provisions or requirements not included in the adopted code.
- (6) A provision of a council's adopted code is not inconsistent with the model code merely because the provision makes a requirement of the model code more onerous for persons required to observe the requirement.
- (7) A council must, within 12 months after each ordinary election, review its adopted code **and adopted code procedures** and make such adjustments as it considers appropriate and as are consistent with this section.
- (8) **The Director General may issue:**
 - (a) **practice directions to provide procedural guidance to councils on the administration of their adopted codes of conduct.**
 - (b) **practice rulings on questions of procedure in relation to particular matters being dealt with under a council's adopted code.**
- (9) **A council and any person exercising a function under a council's adopted code procedures must comply with a practice direction or practice ruling issued by the Director General.**
- (10) **The Director General may authorise a member of staff of the Department to exercise a function of the Department that is prescribed under the model code procedures.**

- (11) Nothing in this section or such a code gives rise to, or can be taken into account in, any civil cause of action, but nothing in this section affects rights or liabilities arising apart from this section.

Proposed amendments to the current misbehaviour provisions

Division 3 Misconduct

440F Definitions

- (1) In this **Chapter**:

administrator means a person appointed under section 256

Disciplinary action means any of the following:

- (a) disciplinary action by the Director General under section 440K
- (b) suspension of a councillor from civic office by the Director General under section 440L
- (c) a decision by the Pecuniary Interest and Disciplinary Tribunal under section 482A

Misconduct of a councillor means any of the following:

- (a) a contravention by the councillor of this Act or the regulations,
- (b) a failure by the councillor to comply with an applicable requirement of a code of conduct as required under section 440 (5),
- (c) an act of disorder committed by the councillor at a meeting of the council or a committee of the council,
- (d) **a failure to comply with an order made by the Director General under this Division.**

but does not include a contravention of the disclosure requirements of Part 2.

Pattern of misconduct means a pattern of conduct that comprises of more than one incident of misconduct.

Note. A contravention of the disclosure requirements of Part 2 is dealt with under other provisions of this Chapter.

- (2) A reference in this **Chapter** to **misconduct** or an incident of **misconduct** includes a reference to **misconduct** that consists of an omission or failure to do something.

440G Formal censure of councillor for misconduct

- (1) A council may by resolution at a meeting formally censure a councillor for **misconduct**.
- (2) A formal censure resolution may not be passed except by a motion to that effect of which notice has been duly given in accordance with regulations made under section 360 and, if applicable, the council's code of meeting practice.
- (3) A council may pass a formal censure resolution only if it is satisfied that the councillor has **engaged in misconduct** on one or more occasions.
- (4) The council must specify in the formal censure resolution the grounds on which it is satisfied that the councillor should be censured.
- (5) A motion for a formal censure resolution may, without limitation, be moved on the report of a committee of the council and any such report must be recorded in the minutes of the meeting of the council.

440H How may the process for disciplinary action under this Division be initiated?

- (1) The process for **disciplinary action under this Division** may be initiated by:
 - (a) a request made by the council by resolution communicated to the Director-General, in which the council states its belief that grounds may exist that warrant the councillor's suspension, or
 - (b) a referral by the general manager where such a referral is required under section 328B or the model code procedures, or**
 - (c) at the Director-General's own motion, or**
 - (d) a request made by the Director-General to the council for a report from the council in relation to the councillor's alleged **misconduct**, or
 - (e) a report made by the Ombudsman in which the Ombudsman states that the Ombudsman is satisfied that grounds exist that warrant **disciplinary action under this Division**, or
 - (f) a report made by the Independent Commission Against Corruption in which the Commission recommends that consideration be given to **disciplinary action** under this Division.
- (2) **The process for disciplinary action under this Division cannot be initiated by a request made by the council unless the councillor has:**
 - (a) been formally censured for the misconduct in question, or**
 - (b) been expelled from a meeting of the council or a committee of the council for the incident of misconduct in question.**

- (3) The council must make a report to the Director-General requested under subsection (1)(c) before the date specified in the Director-General's request or any later date allowed by the Director-General.
- (4) This section authorises such requests and reports to be made, and a reference in this section to a report made by the Independent Commission Against Corruption or the Ombudsman is a reference to a report made to the Director-General under the authority of this subsection or under any other provisions of this or any other Act.
- (5) Nothing in this section affects any function under any other provisions of this or any other Act that authorises the making of a report or recommendation concerning suspension of a councillor from civic office.

440I What are the grounds on which disciplinary action may be taken against a councillor?

The grounds on which disciplinary action may be taken against a councillor under this Division are that the councillor's conduct has involved one or more incidents of misconduct or a pattern of misconduct.

440J Preparation of a departmental report a prerequisite to disciplinary action

- (1) The Director-General may arrange for a departmental report to be prepared into the matters initiated under section 440H.
- (2) The Director-General may authorise a member of the staff of the Department to conduct an investigation into any or all of those matters to assist in the preparation of the departmental report.
- (3) A member of staff authorised to conduct an investigation under subsection (2) may require a councillor or member of staff of a council to:
 - (a) give a statement of information,
 - (b) produce any document or other thing, or
 - (c) give a copy of any document.
- (4) The preparation of a departmental report is a prerequisite to a decision by the Director-General to take disciplinary action against a councillor, but is not necessary if the Independent Commission Against Corruption or the Ombudsman states in a report that the Commission or Ombudsman is satisfied that grounds exist that warrant disciplinary action against the councillor

- (5) In this Division, departmental report means a report prepared by a person authorised by the Director-General to do so.

440K Disciplinary action by the Director General

- (1) The Director General may by order in writing take one or more of the disciplinary actions against a councillor referred to in subsection (2):
- (a) if the Director-General has considered a departmental report into the matters concerned and is satisfied that grounds exist that warrant disciplinary action against the councillor, or
 - (b) if the Independent Commission Against Corruption or the Ombudsman states in a report that the Commission or Ombudsman is satisfied that grounds exist that warrant disciplinary action against the councillor.
- (2) For the purposes of subsection (1), the Director-General may take one or more of the following disciplinary actions against the councillor:
- (a) counsel the councillor.
 - (b) reprimand the councillor
 - (c) make public findings of misconduct
 - (d) require the councillor to apologise to any person adversely affected by the conduct that constitutes an incident of misconduct
 - (e) require the councillor to take such action specified in the order
 - (f) suspend the councillor's right to be paid any fee or other remuneration to which the councillor would otherwise be entitled as the holder of the civic office in respect of a period not exceeding 3 months.
- (3) A copy of the order must be served on the councillor.
- (4) A failure by a councillor to comply with a requirement under an order issued by the Director General under this section will constitute grounds for suspension from civic office by the Director General or referral to the Pecuniary Interest and Disciplinary Tribunal.

440L Suspension by Director-General for misconduct

- (1) The Director-General may by order in writing suspend a councillor from civic office for a period not exceeding **three months**:
- (a) if the Director-General has considered a departmental report into the matters concerned and is satisfied that grounds exist that warrant the councillor's suspension, or
 - (b) if the Independent Commission Against Corruption or the Ombudsman states in a report that the Commission or

Ombudsman is satisfied that grounds exist that warrant the councillor's suspension.

- (2) A copy of the order must be served on the councillor.
- (3) A councillor, while suspended from civic office under this section:
 - (a) is not entitled to exercise any of the functions of the civic office, and
 - (b) is not entitled to any fee or other remuneration to which he or she would otherwise be entitled as the holder of the civic office.
- (4) **The Director General may take into consideration previous incidents of misconduct by the councillor when determining whether to suspend the councillor from civic office.**

440M When does an order of suspension take effect?

The period of suspension under an order made by the Director-General commences on the date 7 days after the service of the order on the councillor or the date specified in the order for the commencement of the period of suspension, whichever is the later.

440N Appeals against disciplinary action by the Director General

- (1) A councillor against whom an order of **disciplinary action** or suspension is made by the Director-General may appeal against the order to the Pecuniary Interest and Disciplinary Tribunal.
- (2) Such an appeal may not be made more than 28 days after the date the order was served on the councillor.
- (3) The Tribunal may stay the order of suspension until such time as the Tribunal determines the appeal.
- (4) The Tribunal may:
 - (a) confirm the order, or
 - (b) quash the order, or
 - (c) amend the order consistently with the powers of the Director-General.
- (5) If the order is quashed, any fee or other remuneration withheld is payable to the councillor.
- (6) If the order is amended, the order as amended has effect as if it had been made in that form by the Director-General.
- (7) The regulations may make provision for or with respect to the making, hearing and determination of appeals under this section.

440O Referral of matters to Pecuniary Interest and Disciplinary Tribunal

- (1) The Director-General may refer a matter **initiated** under section 440H for consideration by the Pecuniary Interest and Disciplinary Tribunal instead of **taking disciplinary action** against the councillor concerned under this Division.
- (2) The preparation and consideration of a departmental report is not a prerequisite to a decision by the Director-General to refer a matter to the Tribunal, but the Director-General may take into consideration a departmental report into the matter if one is prepared.
- (3) A matter is referred to the Tribunal under this section by means of a report presented to the Tribunal by the Director-General. A report may contain or be accompanied by such material and observations as the Director-General thinks fit.
- (4) The regulations may make provision for or with respect to the reference of matters to the Tribunal under this section.

440P Are there alternatives to disciplinary action under this Division or referral to Pecuniary Interest and Disciplinary Tribunal?

- (1) The Director-General may, after considering a matter **initiated** under section 440H and any relevant departmental report prepared under section 440J, decide to take no further action on the **matter**, whether or not a departmental investigation or departmental report has been authorised, started or completed, if satisfied that no further action is warranted.
- (2) The Director-General may, instead of **taking disciplinary action against a councillor** under this Division or referring the matter to the Pecuniary Interest and Disciplinary Tribunal, refer the matter to the council with recommendations as to how the council might resolve the matter, by alternative dispute resolution or otherwise.

440Q Expenses to be borne by council

- (1) The Director-General may recover the reasonable expenses incurred by or in respect of the Department in considering and dealing with a request made by a council under section 440H from the council, including the expenses of any departmental investigation and departmental report into the matters raised by or connected with the request.
- (2) The Director-General may make a determination of the amount of the expenses referred to in subsection (1) and serve a notice on the council requiring the amount so determined be paid in recovery of the Department's expenses.

- (3) An amount equal to the expenses as so determined is payable to the Department as a debt by the council concerned, except as determined by the Director-General.
- (4) The council may apply to the Administrative Decisions Tribunal for a review of whether any part of the expenses so determined are not reasonable expenses.
- (5) The Director-General must give effect to any decision of the Tribunal on a review of the determination of the amount of the expenses.
- (6) A reference in this section to expenses incurred includes a reference to remuneration paid to departmental staff.

440Q Reasons to be given

- (1) The Director-General is required to prepare a written statement of reasons for:
 - (a) **disciplinary action taken under section 440K,**
 - (b) **imposing a period of suspension,**
 - (c) **a decision to take no action**
 - (d) referring a matter to the Pecuniary Interest and Disciplinary Tribunal.
- (2) The statement of reasons is to be provided to the council and councillor concerned.
- (3) **The Director General may make the written statement of reasons public.**

Proposed amendments to section 482A

482A Decision of Pecuniary Interest and Disciplinary Tribunal—misconduct matters

- (1) This section applies where a matter has been referred to the Pecuniary Interest and Disciplinary Tribunal under section 440O.
- (2) The Tribunal may, if it finds that the **conduct** concerned warrants action under this section:
 - (a) counsel the councillor, or
 - (b) reprimand the councillor, or
 - (c) suspend the councillor from civic office for a period not exceeding 6 months, or
 - (d) **disqualify the councillor from holding civic office for a period not exceeding 5 years, or**
 - (e) suspend the councillor's right to be paid any fee or other remuneration, to which the councillor would otherwise be entitled as the holder of the civic office, in respect of a period not

exceeding 6 months (without suspending the councillor from civic office for that period).

- (3) **The Tribunal may take into consideration previous incidents of misconduct by the councillor when determining what action to take under this section.**

Proposed amendment to section 661

275 Who is disqualified from holding civic office?

- (1) A person is disqualified from holding civic office:
- (a) while disqualified from being an elector, or
 - (b) while a judge of any court of the State or the Commonwealth, or
 - (c) while serving a sentence (including a sentence the subject of an intensive correction order) for a serious indictable offence or any other offence, except a sentence imposed for a failure to pay a fine, or
 - (d) if he or she is while holding that office, or has been within 2 years before nomination for election, election or appointment to the office, convicted of an offence under the regulations made for the purposes of section 748 (3), or
 - (e) if he or she is while holding that office, or has been within 5 years before nomination for election, election or appointment to the office, convicted of an offence referred to in Part 4 of the Crimes Act 1900 (Offences relating to property), or
 - (f) while a surcharge, payable by the person under Part 5 of Chapter 13 and not paid within 6 months after it became payable, remains unpaid, or
 - (g) while disqualified from holding a civic office under a provision of this Act or Part 4A of the Crimes Act 1900 (Corruptly receiving commissions and other corrupt practices), or
 - (h) while disqualified from managing a corporation under Part 2D.6 of the Corporations Act 2001 of the Commonwealth, or
 - (i) **while disqualified from holding civic office by an order by the Pecuniary Interest and Disciplinary Tribunal made under section 482 or section 482A.**
- (2) A person is disqualified from holding civic office on a council if he or she is an employee of the council or holds an office or place of profit under the council.
- (3) A person is not disqualified from holding a civic office only because, while holding the civic office, the person ceases to be a resident in the area, to own property in the area or to be an occupier or ratepaying lessee of rateable land in the area.
- (4) A person is taken not to be disqualified from holding civic office if the Administrative Decisions Tribunal, in proceedings under section 329,

has refused to order the dismissal of the person in circumstances to which subsection (4) of that section applies.

Note. If a person while holding civic office becomes subject to disqualification under this section, the office becomes vacant under section 234.

Proposed amendment to section 329

329 Can the holder of a civic office be dismissed?

- (1) Any person may apply to the Administrative Decisions Tribunal for an order that a person be dismissed from civic office.
- (2) On any such application, the Tribunal may order the dismissal of a person from civic office:
 - (a) if there has been any irregularity in the manner in which the person has been elected or appointed to that office, or
 - (b) if the person is disqualified from holding civic office.
- (3) Proceedings based on the ground that there has been an irregularity in the manner in which a person has been elected or appointed to civic office may not be commenced more than 3 months after the date of the person's election or appointment to that office.
- (4) If the proceedings are based on the ground that a person is disqualified from holding civic office, the Tribunal may refuse to order the dismissal of the person from that office if it is satisfied:
 - (a) that the facts and circumstances giving rise to the disqualification are of a trifling character, and
 - (b) that the acts which gave rise to that disqualification were done in good faith and without knowledge that the person would incur disqualification by doing those acts.
- (5) Subsection (4) does not apply to a person who is disqualified from holding civic office by a decision of the Pecuniary Interest and Disciplinary Tribunal under section 482 or **section 482A** or by a decision of the Governor under section 440B.
- (6) The Tribunal may award costs under section 88 of the Administrative Decisions Tribunal Act 1997 in respect of proceedings commenced by an application made under this Part.

Proposed amendment to section 661

661 Failure to comply with certain directions

A person who fails, without lawful excuse, to comply with a direction given to the person under Part 3 or 5 of Chapter 13 or **Part 1 of Chapter 14** by a person authorised to give the direction is guilty of an offence.

Maximum penalty: 20 penalty units.

Proposed amendment to Part 8A of Chapter 10

Part 8A Political donations

328A General manager to keep register of political donation disclosures

- (1) The general manager is required to keep a register of copies of current declarations of disclosures of political donations lodged with the Election Funding Authority by or on behalf of councillors of the council concerned (including in their capacity as candidates for election as councillors).
- (2) For the purposes of this section, current declarations of disclosures of political donations are declarations lodged under Part 6 of the **Election Funding, Expenditure and Disclosures Act 1981** in respect of the relevant disclosure period that includes the date of the last election (other than a by-election) and all subsequent relevant disclosure periods.

Note. Part 6 of the **Election Funding, Expenditure and Disclosures Act 1981** makes provision for disclosure by councillors and candidates for civic office (and parties registered in connection with local government elections) of political donations and electoral expenditure.

328B Reference by general manager to Director-General of political donation matters

- (1) If the general manager reasonably suspects that a councillor has not complied with the provisions of the code of conduct under section 440 relating to the disclosure of political donations or the manner of dealing with any perceived conflict of interest in relation to political donations, the general manager is to refer the matter to the Director-General.
- (2) Any such matter may be referred by the Director-General to the Pecuniary Interest and Disciplinary Tribunal.
- (3) **Any such matter is taken (for the purposes of this Act) to be referred to the Tribunal under section 440O.**

Other consequential amendments

All other references in Chapter 14 to “misbehaviour” are to be amended to refer instead to “**misconduct**”.

All references in Chapter 14 to section “440N” in relation to the referral of matters to the Tribunal are to be amended to refer instead to “**section 440O**”

Consequential amendments to the Local Government (General) Regulation 2005

Division 4 Conduct generally

193 Code of conduct

- (1) For the purposes of section 440 (Codes of conduct) of the Act:
 - (a) the Code called The Model Code of Conduct for Local Councils in NSW, as published in the Gazette on [XX] 2012, is prescribed as the model code of conduct, and
 - (b) **the procedures called Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW, as published in the Gazette on [XX] 2012, is prescribed as the model code procedures.**
- (2) **Councils may use conduct reviewers appointed to a panel established by an organisation prescribed under this Regulation for the purposes of implementing the model code and model code procedures.**

Division 5 Appeals against suspension

195 Making of appeal

An appeal under section **440N** of the Act is to be made:

- (a) in accordance with any relevant procedures set out in the Pecuniary Interest and Disciplinary Tribunal Procedure Manual published by the Pecuniary Interest and Disciplinary Tribunal, as in force from time to time, or
- (b) if there are no such relevant procedures (or no such manual)—by giving written notice of the appeal to that Tribunal.