

CP104 INTERNAL REPORTING POLICY

Maintained by:	EA	Approved by:	GM	Effective Date:	14/12/2011
File Number:	C9/7	Council Policy No:	CP104	Version No.:	2
Review Date:	2011	Other Reference:	Nil		
Application:	All Staff and Councillors				
Attachments:	Nil				

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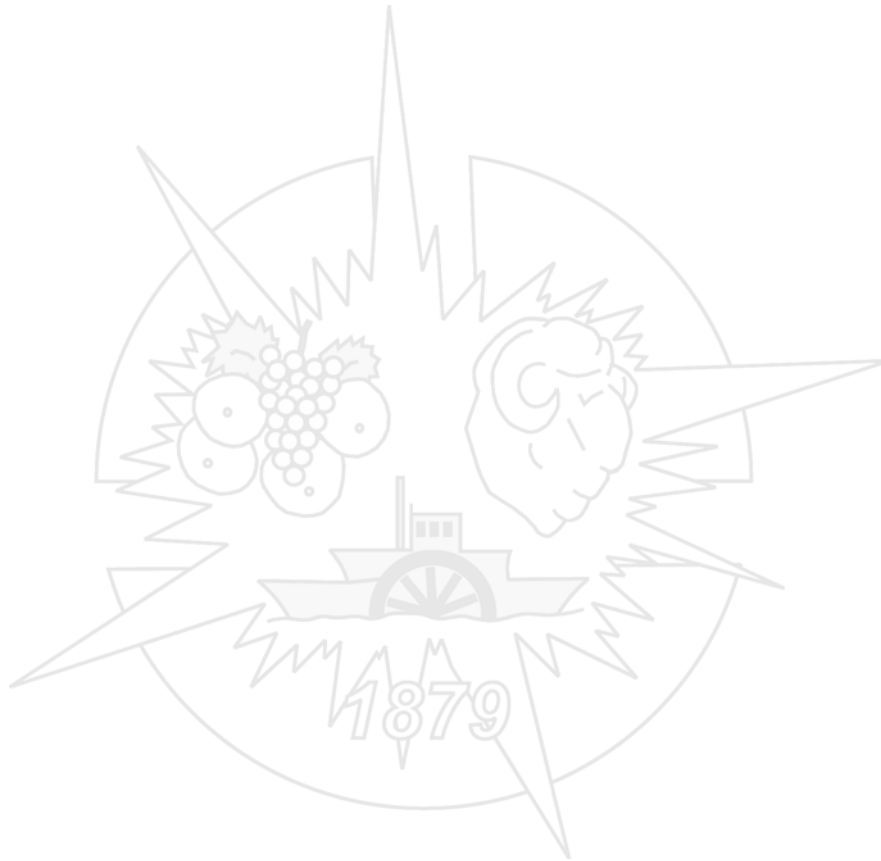
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1. INTRODUCTION

The Wentworth Shire Council is firmly committed to upholding high standards of ethical and accountable conduct and it will not tolerate any form of wrongdoing, which includes corrupt conduct, maladministration or serious and substantial waste of public money.

Under section 6D of the *Public Interest Disclosures Act 1994* (the PID Act), public authorities are required to have a policy and procedures for receiving, assessing and dealing with public interest disclosures. The definition of public authorities includes councils.

This policy is internally focussed as it deals with the protection of staff who report any wrongdoing. This policy:-

- Confirms Councils commitment to upholding high standards of ethical and accountable conduct
- Defines the types of wrongdoings that should be reported
- Defines the roles and responsibilities of staff
- Defines what should be reported
- Provides information about when a report will be protected by the PID Act
- Explains how to make a report
- Explains who can receive a report
- Explains how feedback will be given on a reported wrong doing
- Explains about protection against reprisals, and support for those reporting a wrongdoing
- Establishes a process for policy review

POLICY

2. ORGANISATIONAL COMMITMENT

The Wentworth Shire Council and the General Manager are committed to the aims and objectives of the *Public Interest Disclosures Act 1994* (the PID Act). It recognises the value and importance of contributions of staff to enhance administrative and management practices and strongly support disclosures being made by staff, which disclose corrupt conduct, maladministration, or serious and substantial waste of public money.

In the interests of creating a climate of trust, where staff are comfortable and confident about reporting a wrongdoing, the Wentworth Shire Council and the General Manager will take all reasonable steps to provide protection and support to staff who make such disclosures from any detrimental action in reprisal for the making of the disclosure.

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3. ROLES AND RESPONSIBILITIES OF STAFF

This policy applies to both council staff and councillors. Council staff are further defined as being:-

- Permanent employees, whether full-time or part-time
- Temporary or casual employees
- Consultants
- Individual contractors working for the Council

This policy may also apply to other people who perform public official functions and their conduct and activities could be investigated by an investigating authority. This can include volunteers and those contracted to work for the council.

All staff are encouraged to report known and suspected wrongdoing within council. Staff members are also encouraged to support those who have made disclosures, as well as protect and maintain their confidentiality.

Staff are reminded that they must not victimise or harass anyone who has made a disclosure.

This policy is designed to complement normal communication channels between supervisors and staff. In the first instance, staff are encouraged to raise matters of concern at any time with their supervisor, however, this policy outlines alternative procedures if for any reason, a staff member does not wish to raise the matter with their supervisor.

4. WHAT SHOULD BE REPORTED?

Any wrongdoing that is seen within the Wentworth Shire Council should be reported.

There are five categories that are considered to be serious wrongdoings, which are dealt with under the PID Act (and this policy), as a public interest disclosure. These are:

- a) Corrupt conduct
- b) Maladministration
- c) Serious and substantial waste in local government
- d) Government information contravention and
- e) Local government pecuniary interest contravention

Other wrongdoings that do not fall within one of the categories above are dealt with in section (f) of this section

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a) Corrupt conduct

Corrupt conduct is the dishonest or partial exercise of official functions by a public official. For example, this could include:

- the improper use of knowledge, power or position for personal gain or the advantage of others
- acting dishonestly or unfairly, or breaching public trust
- a member of the public influencing a public official to use their position in a way that is dishonest, biased or breaches public trust.

More information about what constitutes corrupt conduct can be obtained from the NSW Ombudsman's website, details of which can be found in appendix A of this document.

b) Maladministration

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

For example, this could include:

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

More information about what constitutes maladministration can be obtained from the NSW Ombudsman's website, details of which can be found in appendix A of this document.

c) Serious and substantial waste in local government

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

For example, this could include:

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

More information about what constitutes serious and substantial waste in local government can be obtained from the NSW Ombudsman's website, details of which can be found in appendix A of this document.

d) Government information contravention

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

For example, this could include:

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

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More information about what constitutes Government information contravention can be obtained from the NSW Ombudsman's website, details of which can be found in appendix A of this document.

e) Local government pecuniary interest contravention

A local government pecuniary interest contravention is a failure to fulfil certain functions under the *Local Government Act 1993* relating to the management of pecuniary interests. These include obligations to lodge disclosure of interests returns, lodge written declarations and disclose pecuniary interests at council and council committee meetings. A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person.

For example, this could include:

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

More information about what constitutes Local government pecuniary interest contravention can be obtained from the NSW Ombudsman's website, details of which can be found in appendix A of this document.

f) Other wrongdoings

Although reports about the previous five categories of conduct can attract the specific protections of the PID Act, all activities or incidents that are believed to be wrong should also be reported.

For example, these could include:

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

Reports on these types of issues should be reported by staff to their supervisor, in line with Council's Grievance Policy (CP149). Even if these reports are not dealt with as public interest disclosures, Wentworth Council will consider each matter and make every attempt to protect the staff member making the report from any form of reprisal.

5. WHEN WILL A REPORT BE PROTECTED?

Wentworth Shire Council will support any staff who report wrongdoing. For a report to be considered a public interest disclosure, it has to meet all of the requirements under the PID Act. These requirements are:

- The person making the disclosure must honestly believe on reasonable grounds that the information shows or tends to show wrongdoing.
- The report is made to one or more of the following persons:
 - a position nominated under section 9 of this policy, which includes:-
 - the general manager

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- the Mayor
- the Disclosures Co-ordinator
- Disclosure Officers
- one of the investigating authorities nominated in the PID Act (see section 10 of this policy)

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

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

Some examples of what should be reported are:

- misappropriation or misuse of public property
- the purchase of unnecessary or inadequate goods and services
- overstaffing in particular areas
- staff being remunerated for skills that they do not have, but are required to have under the terms or conditions of their employment
- programs not achieving their objectives and therefore the program's costs being clearly ineffective and inefficient.
- Waste, which can result from such things as:
 - insufficient safeguards to prevent the theft or misuse of public property
 - purchasing practices that do not ensure goods and services are necessary and adequate for their intended purpose
 - poor recruiting practices.

6. HOW TO MAKE A REPORT

Staff can report wrongdoing in writing or verbally, but written reports are encouraged as this can help to avoid any confusion or misinterpretation.

If a report is made verbally, the person receiving the report must make a comprehensive record of the disclosure and ask the person making the disclosure to sign this record. The staff member should keep a copy of this record.

If staff are concerned about being seen making a report, they can request to meet in a discreet location away from the workplace, with one of the people nominated in section 9.

7. CAN A REPORT BE ANONYMOUS?

There will be some situations where a staff member may not want to identify themselves when making a report. Although these reports will still be dealt with by the Wentworth Shire Council, it is best if the person making the report identifies themselves.

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This allows Council to provide the informant with any necessary protection and support, as well as feedback about the outcome of any investigation into the allegations.

It is important to realise that an anonymous disclosure may not prevent the informant from being identified. If the identity of the informant is not known, it is very difficult to prevent any reprisal action.

8. MAINTAINING CONFIDENTIALITY

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

Council are committed to keeping informant's identity, and the fact there has been a reported wrongdoing, confidential. However there may be situations where this may not be possible or appropriate.

Whether it is possible to keep a report confidential will be discussed with the informant. If confidentiality cannot be maintained, a plan will be developed to support and protect the informant from risks of reprisal. The informant will be involved in developing this plan, and will also be told if the report will be dealt with under the council's code of conduct, as this may mean certain information will have to be tabled at a council meeting.

Informants should only discuss their report with those dealing with it, which will include the disclosures coordinator and the general manager. If the informant discusses the report more broadly, the outcome of any investigation may be effected.

9. WHO CAN RECEIVE A REPORT WITHIN THE WENTWORTH SHIRE COUNCIL

All staff are encouraged to report general wrongdoing to their supervisor. However the PID Act requires that – for a report to be a public interest disclosure – it must be made to a public official in accordance with the council's disclosure procedures. For the Wentworth Shire Council this means this policy and any supporting procedures.

Any supervisor who receives a report that they believe may be a public interest disclosure must refer the staff member making the report to one of the positions listed below. The broader responsibilities of these positions will be outlined in the guidance material supporting this policy.

If a report from a staff member involves a councillor, the report should be made to the general manager or the Mayor. Where a councillor is making a report about another councillor, the report should be made to the general manager or the Mayor.

The following positions are the only staff within the Wentworth Shire Council who can receive a public interest disclosure. In the interests of maintaining confidentiality, with the exception of the Mayor, each of the nominated staff members sits within the General Managers Department.

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a) The General Manager

Reports of wrongdoing can be made directly to the general manager. The general manager is responsible for:

- deciding if a report is a public interest disclosure
- determining what needs to be done next, including referring it to other authorities
- deciding what needs to be done to correct the problem that has been identified.

The general manager must make sure there are systems in place in the *Wentworth Shire Council* to support and protect staff who report wrongdoing. The general manager is also responsible for referring actual or suspected corrupt conduct to the Independent Commission Against Corruption.

b) The Mayor

If the report is about the general manager, the report should be made directly to the current Mayor. The Mayor is responsible for:

- deciding if a report is a public interest disclosure
- determining what needs to be done next, including referring it to other authorities
- deciding what needs to be done to correct the problem that has been identified.

The Mayor must make sure there are systems in place in the Wentworth Shire Council to support and protect staff who report wrongdoing. If the report is about the general manager, the Mayor is also responsible for referring actual or suspected corrupt conduct to the Independent Commission Against Corruption.

c) Disclosures coordinator

The disclosures coordinator has a central role in dealing with reports made by staff. They receive them, assess them, and refer them to the people within the Wentworth Shire Council who can deal with them appropriately. The Manager, Governance and Corporate Planning (MGCP) is the nominated Disclosures Coordinator of the Wentworth Shire Council.

d) Disclosures officer

Disclosures officers work with the disclosures coordinator, and are responsible for receiving, forwarding and/or dealing with reports made in accordance with this policy. The General Manager's Executive Assistant (GMEA) is the nominated Disclosure Officer of the Wentworth Shire Council.

10. WHO CAN RECEIVE A REPORT OUTSIDE OF THE ORGANISATION

Staff are strongly encouraged to report wrongdoing to one of the officers nominated in (9) above, however internal reporting is not the only option. If informants follow the guidance below, the report can still be a public interest disclosure.

Informant can choose to make a report to an investigating authority. You can do this first, or at any stage after your initial report to the Wentworth Shire Council. If the report is about the general manager or the Mayor, informants may consider making the report to an

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investigating authority listed below. Informants can also choose to make a report to a Member of Parliament or a journalist, but only in limited circumstances.

a) Investigating authorities

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

In relation to council, these authorities are:

- the Independent Commission Against Corruption (ICAC) — for corrupt conduct
- the Ombudsman — for maladministration
- the Police Integrity Commission (PIC) — for police misconduct
- the PIC Inspector — for disclosures about the PIC or its staff
- the Division of Local Government, Department of Premier and Cabinet — for disclosures about local government agencies
- the ICAC Inspector — for disclosures about the ICAC or its staff
- the Information Commissioner — for disclosures about a government information contravention.

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

Informants should be aware that it is very likely the investigating authority will discuss the case with the Wentworth Shire Council. Every effort will be made to assist and cooperate with the investigating authority to ensure the matter is dealt with appropriately and there is a satisfactory outcome.

Appropriate support and assistance will be made available to staff who report wrongdoing to an investigating authority.

b) Members of Parliament or journalists

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

- the general manager
- a person nominated in this policy
- an investigating authority in accordance with the PID Act.

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

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

Most importantly – to be protected under the PID Act – if an informant reports a wrongdoing to an MP or a journalist they will need to be able to prove that they have

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reasonable grounds for believing that the disclosure is substantially true and that it is in fact substantially true.

If an informant reports a wrongdoing to a person or an organisation that is not listed above, they will not be protected under the PID Act. This may mean the informant will be in breach of legal obligations or Wentworth Shire Councils code of conduct – by, for example, disclosing confidential information.

For more information about reporting wrongdoing outside the Wentworth Shire Council contact the disclosures coordinator or the NSW Ombudsman's Public Interest Disclosures Unit. Their contact details are provided at the end of this policy.

11. FEEDBACK TO STAFF WHO REPORT WRONGDOING

Staff who report wrongdoing will be told what is happening in response to their report. When a report is made, the informant will be given:

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

The PID Act requires that informants are provided with an acknowledgement letter and a copy of this policy within 45 days after you have made your report. Where the report is made to an officer outlined in section (9), we will attempt to get this information to the informant within two working days from the date the report is made.

After a decision is made about how the report will be dealt with, and within 10 working days from the date the report has been made, informants will be given:

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

During any investigation, informants will be given:

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

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

- enough information to show that adequate and appropriate action was taken and/or is proposed to be taken in response to your disclosure and any problem that was identified

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- advice about whether the informant will be involved as a witness in any further matters, such as disciplinary or criminal proceedings.

12. PROTECTION AGAINST REPRISALS

The PID Act provides protection for people reporting wrongdoing by imposing penalties on anyone who takes detrimental action substantially in reprisal for them making the public interest disclosure.

The Wentworth Shire Council will not tolerate any reprisal action against staff who report wrongdoing. The criminal penalties that can be imposed include imprisonment or fines.

Detrimental action is also misconduct that justifies disciplinary action. People who take detrimental action against someone who has made a disclosure, can also be required to pay damages for any loss suffered by that person.

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

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

a. Responding to reprisals

The Wentworth Shire Council will act to protect staff who report wrongdoing from reprisals. When a report is received, the receiving officer will ensure that a thorough risk assessment is conducted. This will identify any risks to the member of staff who reported the wrongdoing, as well as strategies to deal with those risks.

If the informant believes that detrimental action has been or is being taken against them, or if any staff member feels that detrimental action has been or is being taken against someone else who has reported wrongdoing in reprisal for making a report, they should tell their supervisor, the disclosures coordinator or the general manager immediately.

All supervisors must report any suspicions they have that reprisal action against a staff member is occurring, or any reports that are made to them, to the disclosures coordinator or the general manager.

If the disclosures coordinator becomes aware of reprisal action against a person who has made a disclosure, they will:

- ensure a senior and experienced member of staff, who has not been involved in dealing with the initial disclosure, will investigate the suspected reprisal
- give the results of that investigation to the general manager for a decision
- give the results of that investigation to the Mayor for a decision if the allegation of reprisal action is about the general manager

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- if it has been established that reprisal action is occurring against someone who has made a disclosure, take all steps possible to stop that activity and protect the member of staff who made the disclosure
- take appropriate disciplinary or criminal action against anyone proven to have taken or threatened any action in reprisal for making a disclosure.

If reprisal action is reported, the informant will be kept informed of the progress of any investigation and the outcome.

The general manager may issue specific directions to help protect against reprisals. These may include:

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

These directions will only be taken if the member of staff who made the disclosure agrees to it. The disclosures coordinator will make it clear to other staff that this action was taken in consultation with the staff member and with management support – and it is not a punishment.

If the informant of reprisal action feels that the reprisal action is not being dealt with effectively, they should contact the Ombudsman or the ICAC – depending on the type of wrongdoing that is being reported. Contact details for all these investigating authorities are included at the end of this policy.

b. Protection against legal action

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

13. SUPPORT FOR THOSE REPORTING WRONGDOING

The Wentworth Shire Council will make sure that staff who have reported wrongdoing, regardless of whether they have made a public interest disclosure, are provided with access to any professional support they may need as a result of the reporting process – such as stress management, counselling services, legal or career advice. Access to such services is available under the Employee Assistance Program, details of which can be found in Council Policy CP166.

All supervisors must notify the disclosures coordinator if they believe a staff member is suffering any detrimental action as a result of disclosing wrongdoing.

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14. SANCTIONS FOR MAKING FALSE OR MISLEADING DISCLOSURES

It is important that all staff are aware that it is a criminal offence under the PID Act to wilfully make a false or misleading statement when reporting wrongdoing.

15. SUPPORT FOR THE SUBJECT OF A REPORT

The Wentworth Shire Council is committed to ensuring staff who are the subject of a report of wrongdoing are treated fairly and reasonably. If a staff member is the subject of a report, that staff member will be:

- treated fairly and impartially
- told of their rights and obligations under our policies and procedures
- kept informed during any investigation
- given the opportunity to respond to any allegation made against them
- told the result of any investigation.

16. REVIEW

This policy is a legislative requirement arising from the *Public Interest Disclosures Act 1994* (the PID Act).

This policy has been substantially revised from the previous version, and is in line with the Model Internal Report Policy Information released by the NSW Ombudsman in September, 2011.

The policy may be amended or revoked at any time, and will be reviewed by council every twelve (12) months.

17. MORE INFORMATION

Appendix A contains details of investigating authorities through which staff can make a public interest disclosure to, or from whom advice about making such a disclosure can be sought.

More information around public interest disclosures is available on our intranet. Staff can also access advice and guidance from the Wentworth Shire Council's Disclosures Coordinator or the NSW Ombudsman's website at www.ombo.nsw.gov.au.

18. RESPONSIBILITY/ACCOUNTABILITY

This policy and subsequent variations to the Policy will be implemented and managed by the Wentworth Shire Council General Manager.

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19. RELATED DOCUMENTS

19.1 ASSOCIATED LEGISLATION

- Public Interest Disclosures Act 1994 (the PID Act)

19.2 ASSOCIATED GOVERNMENT POLICY PROVISIONS

Nil

19.3 ASSOCIATED COUNCIL DOCUMENTS

Nil

19.4 ASSOCIATED OTHER DOCUMENTS

- Model Internal Report Policy Information – NSW Ombudsman September 2011

20. POLICY STATUS

This policy was formally adopted by Council on 14 December 2011 and commenced operation on 14 December 2011. This policy replaces the previous version adopted on 19 December 2007 and has been substantially revised.

21. POLICY REVIEW

This policy may be amended or revoked at any time and must be reviewed at least twelve months since its adoption (or latest amendment).

22. AUTHORISATION

.....
Position: General Manager

Date:/...../.....

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Application:	All Staff and Councillors				
Attachments:	Nil				

23. APPENDIX A

The contact details for external investigating authorities through which staff can make a public interest disclosure to, or from whom advice about making such a disclosure can be sought.

<p>For disclosures about corrupt conduct: Independent Commission Against Corruption (ICAC) Phone: 02 8281 5999 Toll free: 1800 463 909 Tel. typewriter (TTY): 02 8281 5773 Facsimile: 02 9264 5364 Email: icac@icac.nsw.gov.au Web: www.icac.nsw.gov.au Address: Level 21, 133 Castlereagh Street, Sydney NSW 2000</p>	<p>For disclosures about maladministration: NSW Ombudsman Phone: 02 9286 1000 Toll free (outside Sydney metro): 1800 451 524 Tel. typewriter (TTY): 02 9264 8050 Facsimile: 02 9283 2911 Email: nswombo@ombo.nsw.gov.au Web: www.ombo.nsw.gov.au Address: Level 24, 580 George Street, Sydney NSW 2000</p>
<p>For disclosures about serious and substantial waste: Auditor-General of the NSW Audit Office Phone: 02 9275 7100 Facsimile: 02 9275 7200 Email: mail@audit.nsw.gov.au Web: www.audit.nsw.gov.au Address: Level 15, 1 Margaret Street, Sydney NSW 2000</p>	<p>For disclosures about local government agencies: Division of Local Government in the Department of Premier and Cabinet Phone: 02 4428 4100 Tel. typewriter (TTY): 02 4428 4209 Facsimile: 02 4428 4199 Email: dlg@dlg.nsw.gov.au Web: www.dlg.nsw.gov.au Address: 5 O'Keefe Avenue, Nowra, NSW 2541</p>
<p>For disclosures about police misconduct: Police Integrity Commission (PIC) Phone: 02 9321 6700 Toll free: 1800 657 079 Facsimile: 02 9321 6799 Email: contactus@pic.nsw.gov.au Web: www.pic.nsw.gov.au Address: Level 3, 111 Elizabeth Street, Sydney NSW 2000</p>	<p>For disclosures about breaches of the GIPA Act: Information Commissioner Toll free: 1800 463 626 Facsimile: 02 8114 3756 Email: oiinfo@oic.nsw.gov.au Web: www.oic.nsw.gov.au Address: Level 11, 1 Castlereagh Street, Sydney NSW 2000</p>

Maintained by:	EA	Approved by:	GM	Effective Date:	
File Number:	C9/7	Council Policy No:	CP104	Version No.:	2
Review Date:	2011	Other Reference:	Nil		
Application:	All Staff and Councillors				
Attachments:	Nil				