

## Internal Reporting (Public Interest Disclosures) Policy

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### Purpose

The purpose of this policy is to state Council's commitment to the aims and objectives of the Public Interest Disclosures Act 1994 (PID Act), formerly the Protected Disclosures Act 1994.

Council recognises the value and importance of individual staff contributions to administrative and management practices and high standards of ethical and accountable conduct. Council will not tolerate any form of wrongdoing and strongly supports reporting of serious wrongdoing – corrupt conduct, maladministration, serious and substantial waste of public money, and government information contravention.

Council will take all reasonable steps to provide support and protection to staff from any detrimental action in reprisal for making a disclosure. Council acknowledges that Council Officers who come forward and report wrongdoing are helping promote integrity, accountability and good management within the organisation.

### Scope

This policy and the associated procedure are based on the NSW Ombudsman's Guidelines June 2011.

This policy applies to:

- Councillors and Council staff (including permanent employees whether full-time or part-time, temporary or casual employees); and
- Other persons engaged by Council (including consultants, individual contractors working for Council and volunteers).

This policy is designed to complement normal communication channels between managers/supervisors and staff/councillors/contractors/consultants and volunteers.

Staff are encouraged to continue to raise appropriate matters at any time with their supervisors but as an alternative have the option of making a protected disclosure in accordance with this Policy.

### Definitions

#### 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 to others
- Acting dishonestly or un fairly, or breaching public trust
- A member of the public influencing or trying to influence a public official to use their position in a way that is dishonest, biased or breaches public trust.

For more information about corrupt conduct, see the NSW Ombudsman's guideline on what can be reported.

### **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.

For more information about maladministration, see the NSW Ombudsman's guideline on what can be reported.

### **Serious and substantial waste in local government**

Serious and substantial waste in local government 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.

For more information about serious and substantial waste, see the NSW Ombudsman's guideline on what can be reported.

### **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.

For more information about government information contravention, see the NSW Ombudsman's guideline on what can be reported.

### **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 interest's 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.

For more information about local government pecuniary interest contravention, see the NSW Ombudsman's guideline on what can be reported.

### Other Wrongdoing

Although reports about the previous five categories of conduct attract the specific protections of the PID Act, you should report all activities or incidents that you believe are wrong.

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
- These types of issues should be reported to a supervisor, in accordance with Council's Code of Conduct and Equal Employment Opportunity Policy and Management Plan Policies.

Even if these reports are not dealt with as protected disclosures, Council will consider each matter and make every attempt to protect the staff member making the report from any form of reprisal.

### Policy Content

Greater Hume Shire Council is committed to acting in accordance with the spirit and letter of the PID Act by:

- Creating a climate of trust, where Council staff are comfortable and confident about reporting wrongdoing.
- Encouraging staff to come forward if they have witnessed what they consider to be wrongdoing within the council.
- Keeping the identity of the staff member disclosing wrongdoing confidential, wherever possible and appropriate.
- Protecting staff who make disclosures from any adverse action motivated by their report.
- Dealing with reports thoroughly and impartially and if some form of wrongdoing has been found, taking appropriate action to rectify it.
- Keeping staff who make reports informed of their progress and the outcome.
- Encourage staff to report wrongdoing within Council, but respecting any decision to disclose wrongdoing outside Council, provided that disclosure outside Council is made in accordance with the PD Act.
- Ensuring managers and supervisors at all levels in Council understand the benefits of reporting wrongdoing, are familiar with this policy, and aware of the needs of those who report wrongdoing.
- Providing adequate resources, both financial and human, to:
  - Encourage reports of wrongdoing
  - Protect and support those who make them
  - Provide training for key personnel
  - Investigate allegations
  - Properly manage any workplace issues that the allegations identify or create
  - Reassess or review the policy each year to ensure it is still relevant and effective.

### WHEN WILL A REPORT BE PROTECTED?

Council will support any member of Council staff who reports 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 has to be made to one or more of the following:
  - A person of position nominated in this policy
  - the General Manager
  - One of the investigating authorities nominated on the PID Act as listed.

Reports by members of Council staff and Councillors will not be considered to be public interest disclosures if they:

- Mostly question the merits of government policy, including any formal policy adopted by resolution of Council, or
- Are, made with the sole or substantial motive of avoiding dismissal or other disciplinary action.

### **HOW TO MAKE A REPORT**

You can report wrongdoing in writing or verbally. You are encouraged to make a report in writing 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 you are concerned about being seen making a report, ask to meet in a discreet location away from the workplace.

### **CAN A REPORT BE ANONYMOUS?**

There will be some situations where a member of Council staff may not want to be identified when making a report. Although these reports will still be dealt with by Council it is best if the particular member of Council staff identifies themselves. This allows Council to provide the member of staff 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 a person from being identified. If Council's Disclosure Officers do not know who made the report, it is very difficult for them to prevent any reprisal action.

### **MAINTAINING CONFIDENTIALITY**

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

Council is committed to keeping the identity of the member of Council staff and the fact that they have reported wrongdoing, confidential. However there may be situations where this may not be possible or appropriate. Council's Disclosure Officer will discuss with the staff member whether it is possible to keep their report confidential.

If confidentiality cannot be maintained, Council will develop a plan to support and protect any member of Council staff from risks of reprisal. The staff member will be involved in developing this plan and will also be told if their report will be dealt with under Council's Code of Conduct, as this may mean certain information will have to be tabled at a Council meeting.

If members of Council staff report wrongdoing, they should only discuss their report with those dealing with it. This will include the Disclosures Coordinator and the General Manager. If a report is discussed more broadly, this may affect the outcome of any investigation.

### **WHO CAN RECEIVE A REPORT WITHIN COUNCIL?**

Council 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 Council's disclosure procedures. For Council, this means this policy and any supporting procedures.

Any Council 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 procedure and guidance material supporting this policy.

If a report by a member of Council staff involves a Councillor, the member of Council staff should make it to the General Manager or the Mayor.

If a report by a Councillor is about another Councillor, the Councillor should make it to the General Manager or the Mayor.

The following positions are the only staff within Council who can receive a public interest disclosure:

#### General Manager

A report of wrongdoing can be made directly to the General Manager who 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 any problem that has been identified.

The General Manager must make sure there are systems in place in Council to support and protect staff who report wrongdoing. They are also responsible for referring actual or suspected corrupt conduct to the Independent Commission Against Corruption.

The General Manager may be contacted on (02) 6036 0100.

#### Mayor

If a Councillor or a member of Council staff is making a report about the General Manager, the report should be made to the 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
- Ensuring that there are systems in place in Council to support and protect staff who report wrongdoing
- If the report is about the General Manager, referring actual or suspected corrupt conduct to the Independent Commission Against Corruption.

The Mayor may be contacted on (02) 6036 0100.

### Disclosures Coordinator

The Disclosures Coordinator has a central role in dealing with reports made by Council staff. The Disclosures Coordinator receives, assesses and refers them to the staff within Council who can deal with them appropriately.

The Disclosure Coordinator (Director Corporate and Community Services) may be contacted on (02) 6036 0100.

### Disclosures Officers

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 Disclosures Officer (Manager Corporate Services) may be contacted on (02) 6036 0100.

### **WHO CAN RECEIVE A REPORT OUTSIDE OF COUNCIL?**

Staff are encouraged to report wrongdoing within Council, but internal reporting is not their only option. The guidance below provides details as to how a report can still be a public interest disclosure:

Council staff can choose to make their report to an investigating authority either initially, or at any stage after an initial report to Council. If the report is about the General Manager or the Mayor, the staff member should consider making it to an investigating authority.

Council staff can also choose to make a report to a Member of Parliament or a journalist, but only in limited circumstances which are outlined below.

### Investigating Authorities

The PID Act lists a number of investigating authorities in NSW that Council 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 NSW 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.

You 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.

You should be aware that it is very likely the investigating authority will discuss the case with Council. Council will make every effort to assist and cooperate with the investigating authority to ensure the matter is dealt with appropriately and there is a satisfactory outcome. Council will also provide appropriate support and assistance to staff who report wrongdoing to an investigating authority.

### Members of Parliament or Journalists

To have the protections under the PID Act, Council 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, Council or the 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 informed 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 Council staff report wrongdoing to an MP or a journalist, they will need to be able to prove that they have reasonable grounds for believing that the disclosure is substantially true.

If Council staff reports wrongdoing to a person or an organisation that is not listed above, they will not be protected under the PID Act. This may mean Council staff will be in breach of legal obligations of Councils Code of Conduct by, for example disclosing confidential information.

For more information about reporting wrongdoing to any of the agencies listed above contact the Disclosures Coordinator of the NSW Ombudsman's Public Interest Disclosures Unit. Their contact details are provided at the end of this policy.

### **FEEDBACK TO COUNCIL STAFF WHO REPORT WRONGDOING**

Council staff who report wrongdoing will be told what is happening in response to their report. When they make a report, they will be given:

- An acknowledgement that their disclosure has been received
- The timeframe for when they will receive further updates
- The name and contact details of the people who can tell them what is happening.

The PID Act requires that a member of Council staff making a public interest disclosure is provided with an acknowledgement letter and a copy of this policy within 45 days after the person has made their report. Every attempt will be made to provide this information within five working days from the date the report is received.

After a decision is made about how a report will be dealt with, Council staff will be given:

- Information about the action that will be taken in response to their report
- Likely timeframes for any investigation
- Information about the resources available within Council to handle any concerns Council staff may have
- Information about external agencies and services Council staff can access for support.

This information will be given to Council staff within 10 working days from the date they make their report.

During any investigation, Council staff making a disclosure 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 any member of Council staff needs to be disclosed for the purposes of investigating the matter, and an
- Opportunity to talk about this.

At the end of any investigation, Council staff will be given:

- Enough information to show that adequate and appropriate action was taken and/or is proposed to be taken in response to their disclosure and any problem that was identified
- Advice about whether the staff member of Council will be involved as a witness in any further matters, such as disciplinary or criminal proceedings.

### **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 protected disclosure.

Council will not tolerate any reprisal action against Council staff who report wrongdoing. The criminal penalties that can be imposed include imprisonment or fines. Detrimental action is also misconduct that justifies disciplinary action. Council staff 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.

Responding to reprisals

Council will act to protect those who report wrongdoing from reprisals.

When a report is received, Council will ensure that a thorough risk assessment is conducted. This will identify any risks to the member of Council staff who reported the wrongdoing, as well as strategies to deal with those risks.

If a member of Council staff believes that detrimental action has been or is being taken against them or 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 Council 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
- 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 members of Council staff report reprisal action, they 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. If the allegation of reprisal action is about the General Manager, the Mayor may issue similar directions. These may include:

- Issuing warnings to those alleged to have taken reprisal action against the member of Council staff who made the disclosure
- Relocating the member of Council staff who made the disclosure or the subject officer within the current workplace
- Transferring the member of Council 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 Council 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 Council staff who made the disclosure agrees to it. The Disclosures Coordinator will make it clear to other Council staff that this action was taken in consultation with the staff member and with management support, and it is not a punishment.

If a member of Council staff has reported wrongdoing and feels that any reprisal action is not being dealt with effectively, the staff member should contact the Ombudsman or the ICAC, depending on the type of wrongdoing the staff member reported. Contact details for all these investigating authorities are included at the end of this policy.

### Protection against Legal Action

If a member of Council staff makes a disclosure in accordance with the PID Act, they will not be subject to any liability and no action, claim or demand can be taken against them for making the disclosure. They will not have breached any confidentiality or secrecy obligations and they will have the defence of absolute privilege in defamation.

### **SUPPORT FOR THOSE REPORTING WRONGDOING**

Council will make sure that members of Council 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.

Council has staff who will support those who report wrongdoing. They are responsible for initiating and coordinating support, particularly those who are suffering any form of reprisal. Contact details for support officers can be obtained from the Disclosures Coordinator.

All supervisors must notify the Disclosures Coordinator if they believe a Council Officer is suffering any detrimental action as a result of disclosing wrongdoing.

### **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.

### **SUPPORT FOR THE SUBJECT OF A REPORT**

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

- Treated fairly and impartially
- Told their rights and obligations under Council 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.

### **REVIEW**

This policy will be reviewed by Council every twelve/eighteen months. For any advice or guidance about this review, contact the NSW Ombudsman's Public Interest Disclosures Unit.

### **RESOURCES**

The contact details for external investigating authorities that members of Council staff can make a public interest disclosure to or seek advice from are listed below.

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](mailto:icac@icac.nsw.gov.au)  
Web: [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)  
Address: Level 21, 133 Castlereagh Street, Sydney NSW 2000

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](mailto:nswombo@ombo.nsw.gov.au)  
Web: [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)  
Address: Level 24, 580 George Street, Sydney NSW 2000

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](mailto:mail@audit.nsw.gov.au)

Web: [www.audit.nsw.gov.au](http://www.audit.nsw.gov.au)

Address: Level 15, 1 Margaret Street,  
Sydney NSW 2000

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](mailto:dlg@dlg.nsw.gov.au)

Web: [www.dlg.nsw.gov.au](http://www.dlg.nsw.gov.au)

Address: 5 O'Keefe Avenue, Nowra,  
NSW 2541

For disclosures about breaches of the GIPA Act:

Information Commissioner

Toll free: 1800 463 626

Facsimile: 02 8114 3756

Email: [oicinfo@oic.nsw.gov.au](mailto:oicinfo@oic.nsw.gov.au)

Web: [www.oic.nsw.gov.au](http://www.oic.nsw.gov.au)

Address: Level 11, 1 Castlereagh  
Street, Sydney NSW 2000

### Links to Policy

- Council's Code of Conduct
- Bribes, Gifts and Benefits
- Complaints against Staff
- Fraud Control Policy

### Links to Procedure

Nil

### Links to Forms

Nil

### References

Nil

## **Responsibility**

Director Corporate & Community Services

## **Document Author**

Director Corporate & Community Services

## **Relevant Legislation**

- Public Interest Disclosures Act 1994
- Government Information (Public Access) Act 2009
- Local Government Act 1993
- Work Health and Safety Act 2011

## **Associated Records**

Nil