ITEM 1 PUBLIC EXHIBITION - ETHICAL CONDUCT INVESTIGATIONS POLICY

A review of the existing Professional Conduct Investigation Policy has been undertaken to ensure that the policy reflects best practice in contemporary ethical conduct investigations and to account for recent changes to how Council manages this important function. A draft Ethical Conduct Investigations Policy is provided to Council for consideration to replace the existing Professional Conduct Investigation Policy.

RECOMMENDATION

1 That the draft Ethical Conduct Investigations Policy be placed on public exhibition for a period of 28 days.

2 Following the public exhibition period the results of the public exhibition and the draft policy are to be returned to Council for consideration.

REPORT AUTHORISATIONS

Report of: Todd Hopwood, Manager Customer + Business Integrity
Authorised by: Renee Whiteside, Director Corporate Services - Connected + Engaged City (Acting)

ATTACHMENTS

1 Draft Ethical Conduct Investigations Policy

ACRONYMS USED IN REPORT

Abbreviation	Meaning
ICAC	Independent Commission Against Corruption
PCC	Professional Conduct Coordinator

BACKGROUND

Council's Ethical Conduct Framework is currently comprised of the following Council policies that are supported by a range of internal policies and procedures:

- Code of Conduct
- Procedures for the Administration of the Codes of Conduct
- Code of Business Ethics
- Fraud and Corruption Prevention Policy
- Public Interest Disclosures Policy
- Professional Conduct Investigation Policy

The existing Professional Conduct Investigation Policy is mostly consistent with contemporary best practice for complex investigation frameworks, however, was drafted with a focus of all required investigations under the policy being undertaken by the Professional Conduct Coordinator (PCC). Following a review of integrity related roles the primary responsibility for undertaking serious ethical conduct investigations now lies with Council's Public Officer.

The following types of investigations are undertaken, or coordinated, by the Public Officer in accordance with the policies

- Public interest disclosures
- Serious maladministration and corruption
- Child protection matter
- Referrals from NSW Ombudsman, NSW ICAC or other oversight agencies
- Investigations, probity and ethics reviews authorised by the General Manager
- Complaints against Directors, Councillors and the General Manager

Almost all staff related matters are handled by the People and Culture Division and relevant management teams.

To support the above changes the existing Professional Conduct Investigation Policy has been reviewed to ensure that the policy reflects best practice in contemporary ethical conduct investigations and to incorporate the recent changes to how Council manages such investigations.

PROPOSAL

The draft Ethical Conduct Investigations Policy will replace the existing Professional Conduct Investigation Policy. The significant changes from the existing Policy are as follows:

- Changing primary responsibility for ethical conduct investigations to the Public Officer
- Adding a statement that the policy contributes to Council's implementation of the Child Safe Standards published by the Office of the Children's Guardian
- Adding privacy contraventions to the matters that would be jointly managed under this policy and the Public Interest Disclosures Policy
- Requiring all ethical conduct investigations to be authorised by the General Manager (or the Lord Mayor if the matter relates to the General Manager) prior to the commencement of the investigation
- Expanded information on the management of risks associated with investigations
- Introduction of a trauma informed approach to suit the individual needs of investigation participants
- Clearly articulated interview process
- Clearly articulated draft investigation report and final investigation report content and approval requirements

CONSULTATION AND COMMUNICATION

The draft policy has been consulted with the People and Culture Division to ensure appropriate alignment, where relevant, with internal workplace investigation procedures.

The draft policy will be placed on public exhibition for a period of 28 days to seek community input/feedback on the draft policy.

PLANNING AND POLICY IMPACT

This policy contributes towards goal 4.7 of the Wollongong 2035 Objectives

> *"Demonstrates responsible leadership that is customer focused, demonstrates respect and inclusion, and uses resources that are managed effectively to ensure long-term sustainability."*

RISK MANAGEMENT

There are significant reputational risks to Council and risks to staff culture that can arise from unethical conduct and the extent and impact of these risks can be greatly magnified if the investigation and response to ethical concerns are not managed in a transparent and appropriate manner that is focussed on investigating in a fair, objective and impartial manner, with due regard for confidentiality, procedural fairness, natural justice and the interests of the employee, persons involved, Council and the community.

The Ethical Conduct Investigation Policy helps Council appropriately respond to ethical concerns by providing a clear, consistent framework for identifying, investigating and responding to alleged misconduct, reducing the likelihood of unlawful, unfair or inconsistent decisions. It also strengthens governance and public trust by demonstrating transparency, accountability and compliance with legislative and ethical obligations, while minimising legal, financial and reputational risks to Council.

FINANCIAL IMPLICATIONS

There are no direct financial implications from the review and adoption of this policy.

CONCLUSION

The Ethical Conduct Investigations Policy helps Council appropriately respond to ethical concerns by providing a clear, consistent framework for identifying, investigating and responding to alleged misconduct. It also strengthens public trust by demonstrating transparency, accountability and compliance with legislative and ethical obligations.

ETHICAL CONDUCT INVESTIGATIONS COUNCIL POLICY

Adopted by COUNCIL: : [TO BE COMPLETED BY GOVERNANCE]

PURPOSE

Wollongong City Council from time to time receives complaints from members of the public or members of staff about events or matters which occur in Council's workplace. Depending on the nature and seriousness of those complaints, Council management may determine that formal investigative action is required. This policy provides the framework for the handling and investigation of serious complaints received by Council, that are coordinated by Council's Public Officer under the direction of the General Manager.

SCOPE

This policy relates to and governs all investigations of serious matters undertaken by the Public Officer as directed by the General Manager, subject to the following:

1. For complaints raised by staff, unless the matter is serious and of a nature defined in this policy, all matters should be raised with the staff member's Manager or the People and Culture Division in the first instance. This will allow matters to be dealt with at the lowest appropriate level and ensuring quick resolution of matters wherever possible.
2. All matters raised with the People and Culture Division are subject to an initial triaging process and if appropriate any matters of a serious nature will be immediately referred to the Public Officer to be dealt with in accordance with this policy.
3. For complaints raised by members of the public, unless the matter is serious and relates to fraud and/or corrupt conduct, all matters should be raised via Council's normal complaints management process that will allow management of the relevant operational area to review the matter in accordance with the Customer Feedback Handling Policy. If a member of the public remains dissatisfied after management review, a complaint to the General Manager can be lodged.

The Ethical Conduct Investigations Policy works in conjunction with other investigation related policies and procedures such as Public Interest Disclosures Policy, Procedures for the Administration of the Code of Conduct and internal workplace investigation procedures. The level of reliance and applicability of each policy to any individual matter will be determined by the individual circumstances of those matters.

POLICY INTENT

The main objectives of this policy are to:

1. Ensure that all investigations are carried out in a fair, objective and impartial manner, with due regard for confidentiality, procedural fairness, natural justice and the interests of the employee, persons involved and Council.
2. Promote good investigative practice by defining standards on the manner in which Council will receive, assess and investigate reports of alleged serious maladministration, corrupt conduct, serious and substantial waste of public money, pecuniary interest contraventions, privacy contraventions, and serious breaches of Wollongong City Council's Code of Conduct.
3. Wherever possible, Council will ensure that a trauma-informed approach to investigations is adopted. By understanding trauma and the effects it can have on a person, investigators will be better able to obtain essential information without causing unnecessary stress or re-traumatising participants in investigations.

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ETHICAL CONDUCT INVESTIGATIONS | COUNCIL POLICY

WOLLONGONG 2035 OBJECTIVES

Wollongong City Council receives considerable public funds in rates and charges, which they have a duty to spend wisely, effectively and to the benefit of the community. Council is committed to ensuring that those funds are properly expended, and that complaints and alleged breaches are properly investigated in adherence with the principles of independence, transparency, objectivity, and with regard to the rules of evidence, natural justice and the rights of all concerned.

This policy delivers on the Our Wollongong 2035 objective "*Council demonstrates responsible leadership that is customer focused, demonstrates respect and inclusion, and uses resources that are managed effectively to ensure long-term sustainability*."

OFFICE OF THE CHILDRENS GUARDIAN CHILD SAFE STANDARDS

This policy assists Council in meeting its commitment to abide by and implement the Child Safe Standards published by the Office of the Children's Guardian. With particular reference to the following standards:

Standard 1 – Child safety is embedded in organisational leadership, governance and culture
Standard 3 – families and communities are informed and involved
Standard 6 – processes to respond to complaints of child abuse are child focused
Standard 10 – Policies and procedures document how the organisation is child safe

POLICY

1 Reporting

Staff are obliged to report all incidents of wrongdoing that they become aware of. Where safe and appropriate to do so, staff are encouraged to attempt to resolve a matter of concern with the individual(s) involved in the first instance prior to escalating to their supervisor. Despite this, staff should not attempt to resolve serious concerns of wrongdoing with the individual(s) and should report to their supervisor, People and Culture Division and/or the Public Officer in accordance with the following.

In the first instance, staff should make an assessment of their concern/complaint and determine whether or not it is a matter that should be reported to the Public Officer, such as a corruption matter or serious breach of the Code of Conduct. If so, staff are encouraged to report such a matter either directly to the Public Officer, to the General Manager, or to their Director. Any non-Ethical Conduct matters should be raised by staff with their Supervisor or Manager. If in doubt, staff are encouraged to discuss their concerns in the first instance with the People and Culture Division.

Any matter that relates to the following six categories of wrongdoing may constitute a Public Interest Disclosure (**PID**) and should be reported directly Public Officer or to one of Council's Public Interest Disclosure Officers, to be dealt with in accordance with Council's Public Interest Disclosures Policy:

a corrupt conduct;

b maladministration;

c serious and substantial waste of public money;

d government information contravention;

e local government pecuniary interest contravention; and

f privacy contravention

Council officers who cover up or fail to report or act upon information of actual or suspected wrongdoing or corrupt conduct without reasonable explanation may be subject to disciplinary action which may result in termination of employment.

Matters that involve child abuse or potential serious risks to the safety and welfare of a child must be reported to NSW Police and the Child Protection Helpline 132 111. Matters relating to child safety at

Council premises or involving Council staff, where there is not an immediate threat to child safety should be reported to Council's Child Protection Officer.

2 Triaging Complaints

Not every complaint requires investigation. The majority of concerns raised by complainants will be able to be resolved at an informal level or through other processes, such as mediation. In determining whether a complaint requires investigation it is necessary to consider a range of factors:

- Are the issues raised by the complaint serious?
- Is the complaint trivial or vexatious?
- Does the complaint involve an allegation of child abuse or risks to child safety and welfare?
- Is there a more appropriate mechanism for dealing with the complaint?
- What significance does the complaint have for Council?
- Does the complaint indicate the existence of a systemic problem or a serious abuse of power?
- What are the monetary amounts or other benefits involved?
- How many staff are alleged to be involved?

Wherever possible Council will endeavour to resolve a matter quickly and via the management team responsible for the service area relevant to the complaint. Matters will only be formally investigated under this policy if there are serious concerns of wrongdoing as outlined in this policy or the Public Interest Disclosures Policy.

Complaints should never be dismissed simply because they are made anonymously, or because the complainant later withdraws the complaint. Although in both these situations it may not be possible to continue to rely on the complainant for evidence, the allegations should still be tested by way of other avenues where it is reasonable and possible to do so.

A complainant should be provided with a written acknowledgement of their complaint, and details of the process for review and investigation of their concerns as well as anticipated timeframe for resolution of the matter. If the complaint is to be referred on or not investigated, this should be advised to the complainant in writing.

2.1 Ethical Conduct Matters

The following types of matters would generally be considered serious, and would be relevant for management and investigation under this policy:

- Public interest disclosures
- Serious maladministration and corruption
- Child protection matter
- Serious sexual harassment matters (managed in conjunction with People and Culture Division)
- Referrals from NSW Ombudsman, NSW ICAC or other oversight agencies
- Investigations, probity and ethics reviews authorised by the General Manager
- Complaints against Directors, Councillors and the General Manager

If any matter is likely to meet the above threshold of matters requiring an ethics investigation it should immediately be disclosed to the General Manager (or the Lord Mayor if about the GM). This responsibility applies the Public Officer, Directors, Senior Managers or any other officer officially receiving a complaint.

Disclosure should occur as soon as practicable and prior to any other steps in this policy.

2.2 Refusal to Investigate

Council may refuse to investigate, or may cease to investigate a matter where:

a a remedy or right of appeal, deemed adequate by Council, already exists, whether or not the complainant uses the remedy or right of appeal;

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b the complaint, is frivolous, vexatious or not made in good faith, or concerns a trivial matter;

c the complaint relates to a decision of elected Council, Panel or a Committee under delegation;

d the complaint pertains to conduct relating to a matter before a Court, Coroner, Tribunal, or the Industrial Relations Commission;

e the complaint relates to matters under investigation by NSW Police or a NSW Government oversight agency

f The complaint relates to the appointment or dismissal of an employee for any industrial or disciplinary issue;

g a complaint relates to the actions or conduct of private individuals, unless such persons were Council officers at the time such conduct was alleged;

h there is insufficient information available;

i the complainant declines or refuses to provide further information and/or there are threats made against Council, or a member of staff: or

j a significant period of time has lapsed since the complainant became aware of the conduct about which the complaint is centred, i.e. 12 months or more.

2.3 Managing Risks Associated with Investigations

When an individual reports wrongdoing and Council determines to investigate the matter, the investigator will give due consideration to any risks that the reporter, or any other person, may face during the investigation, such as risks of workplace conflict or difficulties. The investigator shall incorporate relevant strategies into the investigation plan to deal with those risks.

Investigations that involve high levels of risk for the reporter, such as Public Interest Disclosures or reports of sexual harassment require much more detailed assessment of risks to participants in investigations. The Public Interest Disclosures Policy, Sexual Harassment Prevention and Response Management Policy and the Sexual Harassment Reporting and Response Procedure outline more detail in this regard.

3 Commencement of Investigations

The following process applies to all matters that are directly referred to the Public Officer by the General Manager:

3.1 Preliminary Assessment

- Upon receipt of a complaint or allegation a brief assessment of the complaint will be undertaken to determine if matter should be referred to another officer of Council or to an external oversight agency.
- For any matter to be managed by the Public Officer a preliminary fact-finding process will be undertaken to determine, amongst other issues, the veracity of any allegations. These initial inquiries will be undertaken discreetly, mainly done via desktop and system review, with only limited discussion with officers if required.
- No findings of fact or determinations of actions are to arise from the preliminary fact-finding process.
- Following the preliminary fact-finding process the Public Officer will brief the General Manager and provide a summary of the issues, and a recommendation of whether to proceed to investigation.

3.2 Approval to Commence

- The General Manager will approve any investigations and referral of any associated matters to other officers of Council if required.
- If an investigation relates to the General Manager, the Lord Mayor shall undertake all responsibilities of the General Manager that are outlined in this policy.
- Once the investigation process commences this Policy is to be followed at all times.

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4 Determining the Nature and Type of Investigation

Once a complaint has been assessed as warranting investigation, it must be clearly determined whether the investigation relates to policies, procedures and practices OR the conduct of individuals. Determining the nature of the investigation at the outset has important bearing on issues such as the powers necessary (and in some cases available) to investigate the complaint and the resources that will be needed to undertake the investigation.

4.1 Authority to Commence an Investigation

Authorisation to commence a formal investigation, in accordance with this policy will be required from the General Manager.

4.2 Prioritisation

Investigations undertaken by Council will be prioritised commensurate with the risks to the organisation, seriousness of the incident and available resources. The Public Officer will review each complaint with a view towards assessing its 'seriousness'. In this context, the term 'serious' will denote the following:

- threat to life or threat of serious injury;
- matters involving potential child abuse or child safety and welfare issues;
- threat posing significant financial or reputational injury to Council;
- threat posing significant legislative non-compliance; and/or
- threat exposing significant systemic deficiencies within business processes and/or implementation.

4.3 Public Interest Disclosures

If an inquiry arises out of a public interest disclosure the disclosure will be managed in accordance with Council's Public Interest Disclosures Policy. If the disclosure requires investigation, the investigation will be conducted in accordance with this policy. Such investigations will generally be conducted by the Public Officer, or an external investigator.

4.4 Code of Conduct

Complaints about a breach of the Code of Conduct by the General Manager, the Lord Mayor, or a Councillor will be subject to the provisions of the Code of Conduct and will be dealt with in accordance with the Procedures for the Administration of the Code of Conduct. If the complaints about the General Manager, the Lord Mayor, or a Councillor require investigation by Council, the investigation will be conducted by the appointed panel of Conduct Reviewers.

4.5 Child Protection Complaints

Child Protection investigations will generally be conducted by the Public Officer, who is also Council's appointed Child Protection Officer. The General Manager may also authorise an external investigator to investigate a child protection matter as deemed appropriate to the circumstances.

Investigations into child protection matters will be conducted in accordance with the following guidance document issued by the Office of the Children's Guardian:

Planning and conducting an investigation – The NSW Reportable Conduct Scheme – Fact sheet 4

Where there is an inconsistency between this Policy and the Office of the Children's Guardian Fact Sheet, Council staff will follow the guidance of the fact sheet.

4.6 Referral by Elected Council

The elected Council may refer a matter, by resolution, that is before Council for consideration to the Public Officer (via the General Manager) for investigation. The Public Officer shall, subject to any special directions of Council, investigate the matter, as far as it is possible within the jurisdiction established, and report to Council.

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4.7 Notifying Management

An investigation involves a preliminary fact-finding process to determine, amongst other issues, the veracity of any allegation/s and involvement of other individual/s. These initial inquiries will be undertaken discreetly for these reasons.

The investigator or person acting under the direction of the Public Officer has authority to approach employees and make inquiries with those employees to obtain information to assist in the 'fact finding' phase of an investigation. Managers will not necessarily be informed of approaches to employees during the 'fact finding' phase of an investigation.

Managers should be aware that their role is one of independence and they should not attempt to influence an investigation. Criminal, fraudulent and corruption investigations are specialised undertakings and require independence to operate impartially and effectively.

5 The Role of Investigator

In all cases, the role of the investigator is to ascertain all relevant facts pertaining to a complaint and at the conclusion of the fact-finding exercise to report their findings. This task must be conducted in an impartial, independent and objective manner.

The success of an investigation will often come down to the integrity and ability of the person conducting it. An investigator must be neutral in relation to the parties to a dispute but must also be aware of any power imbalance between the parties.

An investigation will be query based rather than an adversarial process. The investigator has no stake in the complaint itself, or in the outcome of the investigation.

The nature of any allegation will clearly be enunciated to staff at the commencement of the interview. Although investigations are dynamic and require a flexible approach, they will be conducted within legislative requirements and the principles of procedural fairness.

5.1 Choosing an Investigator

Depending on the nature of the complaint, the resources of Council and any relevant legislative prescriptions, the investigation may be conducted internally or referred to an external agency or contract investigator. The choice of investigator will be guided by the nature of the complaint, and any relevant legislative prescriptions or technical requirements.

Where at all possible, an investigation should not be conducted by anyone with direct involvement with the person or matter the subject of the complaint.

All investigations must be conducted without bias, in an impartial and objective manner. No one with an actual or reasonably perceived conflict of interest should be appointed or remain as an investigator.

In general, investigations authorised under this policy will be undertaken by the Public Officer or an external investigator, however the General Manager may identify an alternate investigator at their discretion.

5.2 Investigation Skills

Criminal, fraudulent and corruption investigations involving serious allegations will only be conducted by personnel, or external investigators, with the appropriate skills, qualifications and training.

5.3 Referring Matters for External Investigation

Except for the circumstances outlined in this section, complaints will generally be investigated internally by the Public Officer.

The General Manager may authorise referral of a matter to an external investigator who sits on the Code of Conduct Review Panel, or to any other appropriate qualified and experienced investigator as deemed appropriate to the circumstances.

Matters may be referred to an appropriate external government agency for investigation or other action if required by legislation or the matter involves alleged criminal conduct.

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5.4 Referral to a Business Unit

Where a matter is assessed as 'less than serious' but still requires review or investigation, that matter will be referred to the People and Culture Division for investigation and action in conjunction with Divisional management.

If a Divisional Manager is mentioned in, or subject of the complaint, or has a conflict of interest, then the People and Culture Division will manage the matter with the relevant Director for investigation and resolution. Public Officer

Any such matters will be managed in accordance with the Workplace Investigations Procedure.

At any time during the complaint investigation, should the Divisional Manager identify any issues, which they regard as serious or corrupt, they will refer the matter back to the Public Officer for further attention.

6 The Investigation

6.1 Terms of Reference

It is important to establish the focus and set limits on an investigation. This can be achieved by clearly outlining, at commencement, the investigation objectives and by drawing up terms of reference for the investigation. Objectives must be relevant, realistic, achievable and within jurisdiction. The terms of reference effectively set out the boundaries for an investigation, and the investigation can be concluded when the terms of reference have been fulfilled.

Setting the terms of reference requires the key issues arising out of the complaint to be clarified. In drafting the terms of reference for an investigation, the findings that might logically or conceivably be reached by the investigation should be considered, though pre-judgment should be avoided in doing so.

The terms of reference for any matter to be investigated in accordance with this policy shall require the approval of the General Manager.

6.2 Developing an Investigation Plan

The first step in preparing an investigation plan is to clarify exactly what is being alleged in the complaint. It is critical to define what it is that is the subject of the investigation. A single complaint may contain a number of separate allegations. Each allegation needs to be individually dealt with.

Complaints should be investigated and resolved in a timely manner. An investigation plan should identify anticipated timeframes for completion of a matter. This requires consideration of current case loads by the Public Officer, as well as the importance of the matter having regard to priorities of matters requiring investigation.

If an external investigator is appointed the investigator will provide a copy of the proposed investigation plan to the Public Officer or Public Officer, as appropriate, for approval.

It is noted that the investigation plan will evolve and be updated throughout the investigation to reflect and react to information identified during the process, this could result in changes to investigation scope, allegations, witnesses and timelines.

6.3 Maintaining Confidentiality

Confidentiality will, to the extent that it is lawful and the investigative process allows, be maintained during inquiries. Employees and contractors have a right to expect that information provided will be treated in confidence. As a rule, information will only be provided on a 'need to know' basis.

Investigators must abide by any confidentiality requirements applying to the investigation. Maintaining confidentiality:

- minimises the risk of harm to the parties to a complaint;
- is the most effective protection available to a whistle-blower;

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- reduces the opportunities for evidence to become contaminated;
- encourages witnesses to be forthcoming in their evidence; and
- protects the investigator from the possibility of an action in defamation.

Investigators must also impress upon all witnesses their obligation to keep details of the investigation confidential.

6.4 Procedural Fairness

Due process must be observed in every investigation. Any decision affecting an individual that has been made without affording that individual procedural fairness is liable to be challenged and set aside. Procedural fairness requires an investigator to:

- inform people against whose interests a decision may be made of the substance of any allegations against them or grounds for adverse comment in respect of them;
- provide people with a reasonable opportunity to put their case, whether in writing, at a hearing or otherwise;
- hear all parties to a matter and consider submissions;
- make reasonable inquiries or investigations before making a decision;
- ensure that no person decides a case in which they have a direct interest; and
- act fairly and without bias and conduct the investigation without undue delay.

There are limited circumstances where there may be an overriding public interest in short-circuiting certain procedural fairness requirements. These occasions are very rare and will normally involve serious risks to personal safety or to substantial amounts of public funds. The obligation to provide procedural fairness should not be viewed as an impediment to conducting a smooth investigation.

6.5 Trauma Informed Approach to Participants

In developing the investigation plan the investigator shall be mindful of the need for people participating in an investigation to be comfortable, informed and engaged. The approach taken will be dependent on the individual needs of participants but would include such things as encouraging the use of support persons, gathering information from participants in an accessible way (e.g. over multiple sessions, or via written response and meeting), providing opportunities for participants to see the location of the interview prior to the interview itself. Other additional actions that may be appropriate include meeting the investigator prior to an interview, conducting the interview at the person's home or at a safe location of their choosing.

6.6 Meetings and Right to be Heard

The Public Officer may hold meetings, obtain information from any person and make such inquiries, as they consider necessary, as part of an investigation; and no person is entitled, as of right, to be heard by the Public Officer except in their own defence.

6.7 Right to Silence

Councillors and staff have a right to remain silent during investigations being conducted by the Public Officer. If it is reasonable, under the circumstances, for the Councillor or staff member to remain silent then no adverse inference may be drawn by the Public Officer. However, it must be stressed to the subject of any investigation that if they choose not to answer a question put to them, the outcome of the investigation may not fully reflect their account of the matter, as the Public Officer can only make a determination based on the information they are provided with.

Whilst an individual is not bound to answer any question or produce any document or thing if that material would have a tendency to expose that person to conviction for a crime (commonly referred to as the privilege against self-incrimination), employees are under an obligation to answer questions in an employment context honestly, and failure to answer at all may constitute a disciplinary matter.

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6.8 Standard of Proof

In disciplinary and administrative investigations, allegations must be proved according to the balance of probabilities. This standard of proof requires that it must be more probable than not that the allegations are made out. The strength of evidence necessary to establish an allegation on the balance of probabilities may vary according to the seriousness of the issues involved.

7 Gathering Evidence

7.1 Conduct of Interviews

Interviews with witnesses will be conducted face-to-face, unless it is not practicable to do so. Where it is not reasonably practicable to interview witnesses during a face-to-face meeting it may be necessary for the investigator to explore other options, such as conducting an interview by telephone, videoconference (e.g. Teams) and/or by obtaining a written statement from the witness.

Reasonable notice will be provided to witnesses who are required for an interview. Council can require employees to cooperate with ethics investigations into alleged misconduct by an employee, which may include requiring employees to attend interviews with the investigator(s).

When an employee is informed that they are required to attend an interview they will also be advised:

- That Council has commenced a workplace investigation and will be provided a summary of the issue(s) under investigation.
- Details of the person(s) conducting the investigation
- any applicable requirements in relation to confidentiality
- reasonable notice of the requirement to attend an interview (date, time and location)
- that they may request the presence of a support person or a union representative during the interview.

7.2 Recording of Interviews

Investigations that relate to serious allegations of criminal, fraudulent or corrupt conduct will be electronically recorded unless the employee objects, in which case contemporaneous notes will be taken by the interviewer. The Investigator may elect to have a dedicated transcriber attend the interview in this regard. If an electronic recording of interview is made, the employee will be provided with a copy of the transcript once it is available. The employee may be provided with an electronic copy of the interview on request.

For all other matters under investigation the Public Officer, or other appointed investigator, may electronically record an interview if they deem it appropriate.

7.3 Third Party Observers / Support Persons

Witnesses and interviewees should generally be permitted the presence of a third party during an interview. Having a person of their choice present can make the witness feel more comfortable and this will make the interview easier to conduct, and minimise impacts on the witness. Best practice requires that an investigator will offer a support person to a witness or interviewee. An investigator must ensure that any third party permitted to be present:

- understands that they are an observer, and may not take part in the discussion or interview;
- understands that they must not act as an advocate;
- is not a potential witness;
- has not agreed to assist any other witnesses to the investigation; and
- undertakes to respect the confidentiality of the issues discussed in the interview.

Witnesses or interviewees who are under the age of 18 years must have a support person present during any interview.

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7.4 Expert Evidence

Depending on the nature of the matters under investigation, an investigator may require the services of a professional expert, such as a document examiner, a handwriting expert, an accountant, a valuer or an engineer. An investigator should ensure that any expert statement prepared suitably qualifies the maker of the statement, by specifying the things that make the person an expert. This is particularly important if there is any likelihood of the expert evidence being used in later formal proceedings.

7.5 Securing Documentary Evidence

Documentary evidence is an important and usually reliable source of information available to an investigator. One of the first steps an investigator should take is to secure originals of any relevant documentary evidence. This will preserve the evidence and prevent any attempts at tampering with the documents. A receipt should be left, and the originals should be securely stored, and photocopies used for the investigation. A clear record should also be kept on the investigation file noting when, where and how documents were obtained.

7.6 Recording and Storing Information

A central investigation file must be maintained by the Public Officer. The file should be a complete record of the investigation, documenting every step, including all discussions, phone calls, interviews, decisions and conclusions made during the course of the investigation. The file must be securely stored to prevent unauthorised access, damage or alteration, and to maintain confidentiality.

If an investigation is conducted by an external investigator, the Public Officer must regularly obtain from the investigator all relevant information collected as part of the investigation for appropriate storage. Such information should be stored in a central investigation file.

7.7 Granting Access to Documents

An investigator must be aware of any statutory rights of access that the person the subject of the complaint may have as well as any statutory exemptions that apply. Where no statutory requirements are applicable, an investigator must refer any person seeking access to investigation materials to make an application under the Government Information (Public Access) Act 2009.

7.8 Site Inspections

Sometimes a proper understanding of the issues will require a site inspection. In many circumstances, site inspections can provide visual information and context to a complaint. The Public Officer (or an investigator under that person's delegation) may:

a at a reasonable time enter, remain on and inspect premises owned or occupied by Council;

b converse in private with any person on the premises and otherwise investigate matters within the jurisdiction of the Public Officer;

c require a person to furnish information, or produce a document, or thing in the person's possession or control that relates to an investigation at a time and place specified by the Public Officer, whether or not the document or thing is in the custody or under the control of Council; and

d make copies of a document produced under this section.

During any site inspection, employees retain the right to have a support person, (mutually agreed with the Public Officer) present during any conversation with the Public Officer.

7.9 Hinder or Resist

A staff member who wilfully and without justification does any of the following, will be guilty of a breach of this Policy and may be subject to disciplinary action:

- obstructs, hinders or resists the Public Officer or any other person in the performance of an investigation under this Policy; or
- fails to comply with a request of the Public Officer or a delegate of the Public Officer; or
- makes a false statement to, or misleads or attempts to mislead, the Public Officer or any other person in the performance of an investigation under this Policy

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The Public Officer will report such matters to the General Manager in the final investigation report. The Public Officer will make no recommendations as to what action should be taken. The General Manager will make a determination as to what action is to be taken. The General Manager's determination will be in accordance with relevant HR policies.

8 Concluding an Investigation

8.1 Draft Investigation Report of Findings

The Public Officer shall prepare, or have the relevant investigator prepare, a "draft report on findings" including the following detail:

- Executive summary or covering memorandum;
- The terms of reference of the investigation;
- The name of the investigator and details about authorisation of the investigation;
- Sources of information and methodology used;
- List of witnesses interviewed or who provided information
- Relevant legislation and/or policies;
- A statement of all relevant facts and evidence;
- Confirmation that the person/s subject to accusations have had the opportunity to respond
- The conclusions or findings reached and the basis for them;
- The report is not to contain any recommendations or commentary on potential disciplinary action that may be undertaken.
- Recommendations to overcome shortcomings or problems identified; and
- Any other general issues raised by the investigation (i.e. recommendations for systems improvements, the introduction or alteration of policies or procedures)

The draft report should not contain findings against any individual unless that individual has been advised of the original allegation/s and afforded the opportunity to respond.

The draft report on findings shall be provided to the General Manager only and is provided to allow the opportunity for the General Manager to ascertain if the information in the report supports the findings and if further enquires need to be made before finalising the report. If the General Manager requests further enquiries to be made into a matter, an updated draft report shall be provided to the General Manager.

The draft report is not to be provided to any person other than the General Manager without the express permission of the General Manager, unless required to comply with statutory requirements.

8.2 Final Investigation Report of Findings

The Public Officer shall prepare, or have the relevant investigator prepare, a "final report on findings" following advice from the General Manager that no further enquiries are required in relation to the matter. The final report shall contain all elements outlined as required in a draft report.

The final report is not to be provided to any person other than the General Manager without the express permission of the General Manager, unless required to comply with statutory requirements.

The final report will not be provided to the complainant, in general an appropriate summary of findings and recommendations may be provided to the complainant, upon acceptance of the final report by the General Manager.

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9 Legislative Requirements

Where appropriate, investigations carried out under this policy must give consideration to the *NSW Public Interest Disclosures Act 2022*, especially in relation to confidentiality of staff who report misconduct, and proactively managing any reprisal action.

Access to information requests related to investigations carried out under this policy, including final reports, are to be determined by Council's Right to Information Officers pursuant to the *NSW Government Information (Public Access) Act 2009*.

The Children's Guardian Amendment (Child Safe Scheme) 2021 (NSW) provides the regulatory framework requiring child-related organisations in NSW to comply with the Child Safe Standards, as recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse.

10 Review

This Policy will be reviewed on a rolling basis every three years from the date of each adoption of the policy.

11 Reporting

The General Manager is obligated to report any suspected or actual corrupt conduct within the organisation to the NSW Independent Commission Against Corruption (**ICAC**) pursuant to section 11 of the *NSW ICAC Act 1988*.

A general summary of activities undertaken in accordance with this policy will be reported to the Audit Risk and Improvement Committee on a regular basis, with all identifying information removed.

12 Roles and Responsibilities

12.1 Public Officer

The responsibility for the conduct, management and coordination of investigations within Wollongong City Council lies with the Public Officer. The Public Officer will ensure that Council has adopted recognised best practice standards for conducting investigations, in accordance with the guidelines established by the NSW Ombudsman.

The Public Officer shall report directly to the General Manager on the outcome of internal/external investigations. The exception to this is when the General Manager has a conflict of interest – in such circumstance, the Public Officer shall report directly to the Lord Mayor on the outcome of investigations. Where both are deemed to have a conflict of interest, the Public Officer shall take the advice of the Council as to appropriate alternate arrangements deemed suitable by that officer, for appropriate reporting on the outcomes of the investigation.

The Public Officer is to report regularly to the General Manager on the progress of authorised investigations as well as matters arising during the course of investigations.

12.2 General Manager

The General Manager is responsible for authorising all investigations relating to this policy and ensuring that external persons or bodies are appropriately notified.

The General Manager will appoint a suitably qualified person to the position of the Public Officer.

13 Associated Policies and Procedures

- Code of Conduct
- Procedures for the Administration of the Code of Conduct
- Public Interest Disclosures Policy
- Workplace Surveillance Policy

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ETHICAL CONDUCT INVESTIGATIONS — COUNCIL POLICY

APPROVAL AND REVIEW		
Responsible Division	Customer and Business Integrity Division	
Date/s adopted	*EMC* [updated by policy owner]	*Council* [To be inserted by Governance]
Date/s of previous adoptions	14 July 2014 30 October 2017	
Date of next review	[Not more than two years from last adoption]	

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