

Central Coast Council

Public Interest Disclosure Procedure



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Policy No.: CCC123

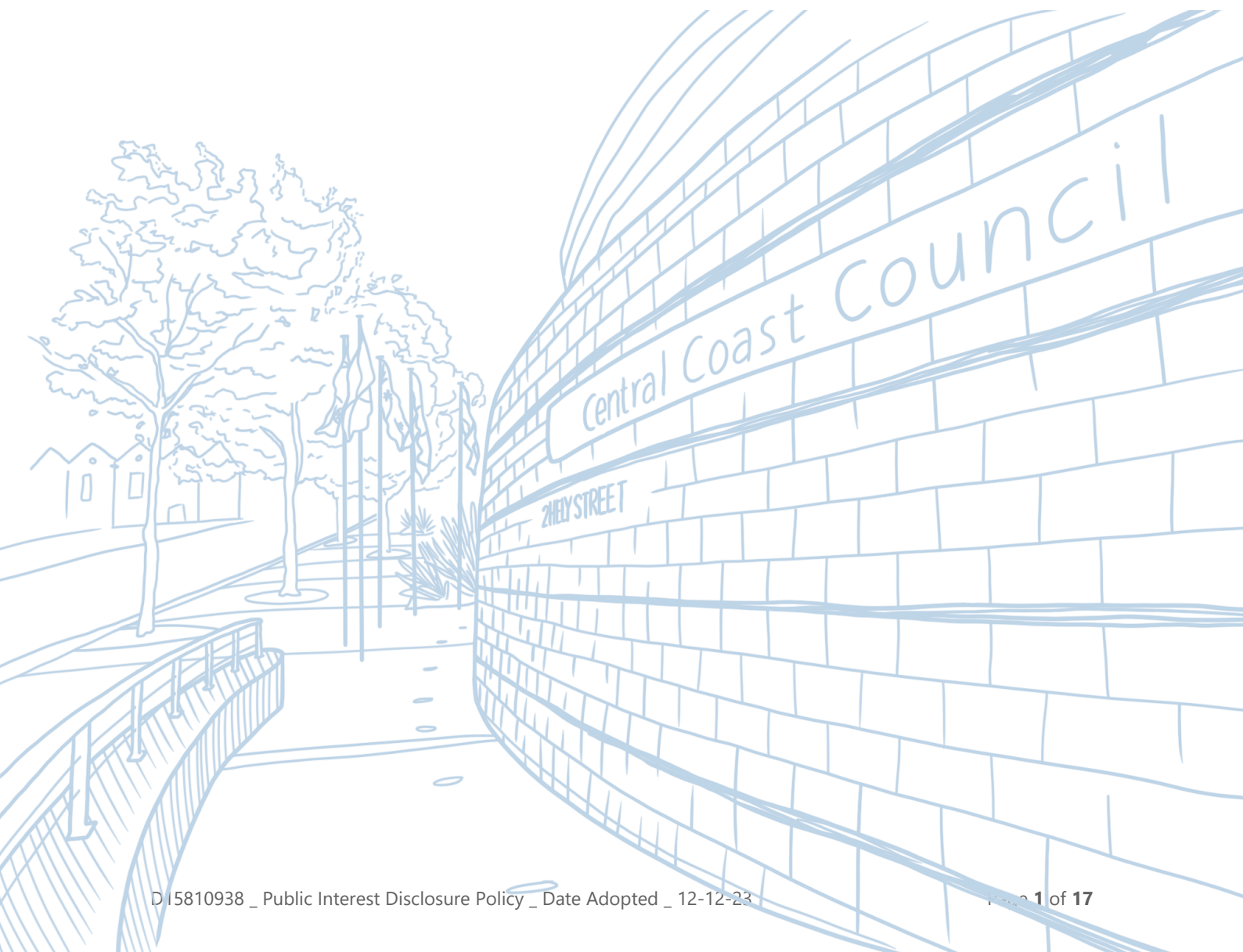


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1. Procedure Purpose

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- ~~1.1.~~ This Procedure outlines the process that will be followed when Central Coast Council (**Council**) receives a report of known or suspected serious wrongdoing. All reports of serious wrongdoing will be treated with confidentiality and care and handled in accordance with this Procedure, Council's Public Interest Disclosure Policy and the *Public Interest Disclosures Act 2022* (**PID Act**).

2. Procedure Scope

- 2.1. This Procedure applies to, and for the benefit of, all public officials in NSW as outlined in the Public Interest Disclosure Policy.
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3. When will a report will be a PID?

- 3.1. When a public official makes a report of suspected or possible wrongdoing in the public sector, their report will be a PID if it has certain features as set out in the PID Act.
- 3.2. Some internal complaints or internal grievances may also be PIDs, if they have the features of a PID. If an internal complaint or grievance is a report of serious wrongdoing, Council will consider whether it is a PID. If it is a PID, Council will deal with it as set out in accordance with this Policy, other relevant Council policies and any applicable industrial instruments.
- 3.3. It is important that Council quickly recognises that it has received a PID. This is because once a PID is received, the person who has made the report is entitled to certain protections. Council also has certain decisions to make on how it will deal with the PID and how it will protect and support the person who has made the report.
- 3.4. There are three types of PIDs in the PID Act. These are:
- 3.4.1. *Voluntary PID*: This is a PID where a report has been made by a public official because they decided, of their own accord, to come forward and disclose what they know. Voluntary PIDs are the types of PIDs most people have in mind when they think about public interest reporting and 'whistleblowing'.
 - 3.4.2. *Mandatory PID*: This is a PID where a public official has made a report about serious wrongdoing because they have a legal obligation to make that report, or because making that report is an ordinary aspect of their role or function in an agency.
 - 3.4.3. *Witness PID*: This is a PID where a person discloses information during an investigation of serious wrongdoing following a request or requirement of the investigator.
- 3.5. While this Procedure mostly relates to making a voluntary PID and how Council will deal with voluntary PIDs, those who make a mandatory PID or a witness PID are still entitled to protection.

4. Who can make a voluntary PID?

- 4.1.** A public official can make a voluntary PID about serious wrongdoing relating to any agency, not just the agency they are working for. This means that Council may receive PIDs from public officials outside Council. It also means that a public official can make a PID to any agency, including an integrity agency like the Independent Commission Against Corruption (**ICAC**) and the NSW Ombudsman. Appendix B of this policy has a list of integrity agencies.

What should be included in a report?

- 4.2.** The maker of a disclosure should provide as much information as possible so Council can deal with the report effectively. This includes:
- 4.2.1. date, time and location of key events;
 - 4.2.2. names of person(s) involved in the suspected wrongdoing, their role, title and how they are involved;
 - 4.2.3. their relationship with the person(s) involved (i.e. whether they work closely with them);
 - 4.2.4. their explanation of the matter they are reporting;
 - 4.2.5. how they became aware of the matter you are reporting;
 - 4.2.6. possible witnesses; and
 - 4.2.7. other information they have that supports their report.

What if I am not sure if my report is a PID?

- 4.3.** The maker of a disclosure should report all wrongdoing they become aware of regardless of whether they think it is serious wrongdoing. It is important for Council to understand what is or may be occurring.
- 4.4.** Council is responsible for making sure the report is handled appropriately under the PID Act, or if it is not a PID, in line with our other policies and procedures for dealing with reports, allegations or complaints.

5. Who can voluntary PIDs be made to?

- 5.1.** A report can be made inside Council to:
- 5.1.1. The Chief Executive Officer
 - 5.1.2. The Disclosure Coordinator
 - 5.1.3. a Disclosure Officer for Council — a list of Disclosure Officers for Council and their contact details can be found at Appendix A of the Public Interest Disclosure policy and on Council's intranet
 - 5.1.4. the manager of the person making the disclosure — this is the person who directly, or indirectly, supervises them. It can also be the person

who they directly, or indirectly, report to. A person may have more than one manager. Their manager will make sure that the report is communicated to a disclosure officer on their behalf or may accompany them while they make the report to a disclosure officer.

Making a report to a recipient outside of Council

- 5.2.** A public official can also make a report to a public official in another agency (meaning an agency they do not work for) or an integrity agency. These include:
- 5.2.1. the *head of another agency* — this means the head of any public service agency
 - 5.2.2. an *integrity agency* — a list of integrity agencies is located at Appendix B of the Public Interest Disclosure Policy
 - 5.2.3. a *disclosure officer for another agency* — ways to contact disclosure officers for other agencies is located in an agency's PID policy which can be found on their public website
 - 5.2.4. a *Minister or a member of a Minister's staff* but the report must be made in writing.
- 5.3.** If a public official chooses to make a disclosure outside of Council, it is possible that their disclosure will be referred back to Council so that appropriate action can be taken.

Making a report to a recipient outside of Council

- 5.4.** Disclosures to MPs or journalists are different to other reports. A disclosure made to an MP or journalist will only be considered a voluntary PID in the following circumstances:
- 5.4.1. The maker of the disclosure first made substantially the same disclosure (described here as a 'previous disclosure') to someone who can receive disclosures;
 - 5.4.2. The previous disclosure must be substantially true;
 - 5.4.3. The previous disclosure was not anonymous;
 - 5.4.4. The maker of the previous disclosure did not waive, in writing, the right to receive information relating to the previous disclosure; and
 - 5.4.5. The maker of the previous disclosure did not receive either of the following from Council:
 - a) notification that Council will not investigate the serious wrongdoing and will also not refer the previous disclosure to another agency, or
 - b) the following information at the end of the investigation period:
 - i. notice of Council's decision to investigate the serious wrongdoing

- ii. a description of the results of an investigation into the serious wrongdoing
- iii. details of proposed or recommended corrective action as a result of the previous disclosure or investigation.

5.5. Investigation period means:

- 5.5.1. after six months from the previous disclosure being made, or
- 5.5.2. after 12 months if the maker of the previous disclosure applied for an internal review of the agency's decision within six months of making the disclosure.

6. Criteria for voluntary PIDs

6.1. A report is a voluntary PID if it has the following five features:

- 6.1.1. A report is made by a public official;
- 6.1.2. It is made to a person who can receive voluntary PIDs ;
- 6.1.3. The public official honestly and reasonably believes that the information they are providing shows (or tends to show) serious wrongdoing (as outlined in the PID Act and Council's Public Interest Disclosure Policy);
- 6.1.4. The report was made orally or in writing; and
- 6.1.5. The report is voluntary (meaning it is not a mandatory or witness PID).

6.2. The maker of a voluntary PID is not to be expected to prove that what they reported actually happened or is serious wrongdoing. They do have to honestly believe, on reasonable grounds, that the information they are reporting shows or tends to show serious wrongdoing.

6.3. Even though the maker of a voluntary PID does not have to prove the serious wrongdoing happened or provide evidence, a mere allegation with no supporting information is unlikely to meet this test.

6.4. If Council makes an error and does not identify that an individual has made a voluntary PID, they will still be entitled to the protections under the PID Act.

6.5. If the person making a disclosure believes Council has made an error by not identifying that they have made a voluntary PID, they should raise this with a nominated Disclosure Officer or the contact officer for their report. If they are still not satisfied with this outcome, they can seek an internal review or contact the NSW Ombudsman. Council may also seek to conciliate the matter.

7. Procedure for dealing with PIDs

- 7.1.** When Council receives a report, it will determine whether the report is a voluntary PID or another type of disclosure.

Report is not a voluntary PID

- 7.2.** If the report does not meet the requirements of a voluntary PID as outlined above, Council will advise the reporter and outline how it proposes to deal with the concerns raised in the report.
- 7.3.** Even if the report is not a voluntary PID, it will be dealt with in accordance with Council's policies and procedures.
- 7.4.** If the reporter disagrees with Council's assessment, they can request an internal review by contacting Council's Chief Executive Officer. Council can, but does not have to, request the NSW Ombudsman to conciliate the matter.

Reports of voluntary PIDs

- 7.5.** If Council receives a report of a voluntary PID, or looks like it may be a voluntary PID, the maker of the disclosure will receive the following information:
- 7.5.1. An acknowledgment that the report has been received. This acknowledgment will:
- a) state that the report will be assessed to identify whether it is a PID;
 - b) state that the PID Act applies to how Council deals with the report;
 - c) provide clear information on how to access this PID policy; and
 - d) provide the details of a contact person and available supports.
- 7.5.2. If the report is a voluntary PID, Council will inform the maker of the disclosure as soon as possible how it intends to deal with the report. This may include:
- a) that Council is investigating the serious wrongdoing;
 - b) that Council will refer the report to a different agency (if appropriate) to deal with the voluntary PID. If Council does this, it will provide details of this referral and a contact person within the other agency; or
 - c) If Council decides to take no action, it will tell the reporter the reasons for this decision. The NSW Ombudsman will also be notified of this decision.
- 7.5.3. If Council decides to investigate the serious wrongdoing, it will provide the maker of the disclosure with updates on the investigation at least every three months.

- 7.5.4. Once the investigation is complete, Council will provide the following to the reporter:
 - a) The investigation findings; and/or
 - b) Information about any corrective action as a result of the investigation/s.
- 7.5.5. Corrective action could include taking disciplinary action against someone or amending Council's practices, policies and procedures.
- 7.6.** There may be some details about both the findings made as a result of the investigation and the corrective action taken that cannot be revealed. In these circumstances, Council will provide appropriate reasoning.
- 7.7.** Depending on the initial report, there may be some circumstances where Council cannot provide its findings (i.e. anonymous reports).

If an investigation finds that serious wrongdoing has occurred

- 7.8.** If it is found that serious wrongdoing or other misconduct has occurred, Council will take the most appropriate corrective action. This can include:
 - 7.8.1. taking action against persons involved in the wrongdoing (such as termination of employment, relocation, a caution or reprimand)
 - 7.8.2. an apology;
 - 7.8.3. improving internal policies to adequately prevent and respond to similar instances of wrongdoing; or
 - 7.8.4. providing additional education and training to staff where required.
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8. Confidentiality

- 8.1.** Council will endeavour to keep the identity of the reporter confidential in accordance with the PID Act.
- 8.2.** There are certain circumstances under the PID Act that allow for the disclosure of identifying information. These include:
 - 8.2.1. where the person consents in writing to the disclosure;
 - 8.2.2. where it is generally known that the person is the maker of the voluntary PID because of their voluntary self-identification as the maker;
 - 8.2.3. when the public official or Council reasonably considers it necessary to disclose the information to protect a person from detriment;
 - 8.2.4. where it is necessary the information be disclosed to a person whose interests are affected by the disclosure;
 - 8.2.5. where the information has previously been lawfully published;

- 8.2.6. when the information is disclosed to a medical practitioner or psychologist for the purposes of providing medical or psychiatric care, treatment or counselling to the individual disclosing the information;
 - 8.2.7. when the information is disclosed for the purposes of proceedings before a court or tribunal;
 - 8.2.8. when the disclosure of the information is necessary to deal with the disclosure effectively; or
 - 8.2.9. if it is otherwise in the public interest to disclose the identifying information.
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9. Protection against detrimental action for makers of PIDs

- 9.1.** A person cannot take detrimental action against another person because they have made a voluntary PID or are considering making a PID. Detrimental action includes bullying, harassment, intimidation or dismissal.

Protections for makers of voluntary PIDs

Protection from detrimental action

- 9.2.** Detrimental action against a person is an act or omission that causes, comprises, involves or encourages detriment to a person or a threat of detriment to a person (whether express or implied). Detriment to a person includes:
- 9.2.1. injury, damage or loss;
 - 9.2.2. property damage;
 - 9.2.3. reputational damage;
 - 9.2.4. intimidation, bullying or harassment;
 - 9.2.5. unfavourable treatment in relation to another person's job;
 - 9.2.6. discrimination, prejudice or adverse treatment;
 - 9.2.7. disciplinary proceedings or disciplinary action; or
 - 9.2.8. any other type of disadvantage.
- 9.3.** Detrimental action does not include:
- 9.3.1. lawful action taken by a person or body to investigate serious wrongdoing or other misconduct;
 - 9.3.2. the lawful reporting or publication of a finding of serious wrongdoing or other misconduct;
 - 9.3.3. the lawful making of adverse comment, resulting from investigative action;
 - 9.3.4. the prosecution of a person for a criminal offence; or

- 9.3.5. reasonable management action taken by someone in relation to a person who made or may make a PID. For example, a reasonable appraisal of a PID maker's work performance.
- 9.4.** Council will assess and take steps to mitigate the risk of detrimental action occurring against the person who made the PID, including:
 - 9.4.1. Maintaining confidentiality of the reporter's details;
 - 9.4.2. Minimising the amount of staff involved in the process;
 - 9.4.3. Ensuring the security of records; and/or
 - 9.4.4. Ensuring all Council staff are provided with awareness training concerning PIDs.
- 9.5.** It is a criminal offence for someone to take detrimental action against a person because they have made or may make a voluntary PID. It is punishable by a maximum penalty of 200 penalty units or imprisonment for five years or both.
- 9.6.** A person may seek compensation or apply for a court order (injunction) where detrimental action is threatened or has occurred (i.e, an order to prevent dismissal or to require reinstatement).
- 9.7.** A person who makes a PID can still be subject to reasonable management action (such as ordinary performance reviews and performance management). It is not detrimental action under the PID Act if such action is not taken because of the PID.

Immunity from civil and criminal liability

- 9.8.** Some public officials are often subject to a duty of confidentiality that prevents them disclosing certain information that they obtain or become aware of at work. Sometimes, in order to make a PID, public officials will need to breach or disregard such confidentiality duties. If that happens, a public official cannot be disciplined, sued or criminally charged for breaching confidentiality.

Confidentiality

- 9.9.** Public officials and agencies must not disclose information tending to identify a person as the maker of a voluntary PID unless doing so is permitted by the PID Act.

Protection from liability for own past conduct

- 9.10.** The Attorney General can give the maker an undertaking that a disclosure of their own past conduct will not be used against them if a person discloses their own wrongdoing or misconduct while making a report. This undertaking can only be given on application by an integrity agency to the Attorney General.

Reporting detrimental action

- 9.11.** If a maker of a disclosure experiences adverse treatment or detrimental action, such as bullying or harassment, this should be reported immediately.

- 9.12.** Any experience of adverse treatment or detrimental action can be reported directly to Council, or to one of the integrity agencies located at Appendix B of the Policy.
- 9.13.** If Council becomes aware of an allegation that a detrimental action offence has occurred or may occurred, Council will:
- 9.13.1. take all steps possible to stop the action and protect the person(s);
 - 9.13.2. take appropriate disciplinary action against anyone that has taken detrimental action;
 - 9.13.3. refer any evidence of a detrimental action offence to the Commissioner of Police and the ICAC or the Law Enforcement Conduct Commission (whichever is applicable); and
 - 9.13.4. notify the NSW Ombudsman about the allegation of a detrimental action offence being committed.
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10. Review and dispute resolution

Internal review

- 10.1.** If a maker of a disclosure experiences adverse treatment or detrimental action, such as bullying or harassment, this should be reported immediately.
- 10.2.** People who make voluntary PIDs can seek internal review of the following decisions made by Council:
- 10.2.1. that Council is not required to deal with the report as a voluntary PID;
 - 10.2.2. to stop dealing with the report because Council decided it was not a voluntary PID;
 - 10.2.3. to not investigate the serious wrongdoing and not refer the report to another agency; and
 - 10.2.4. to cease investigating the serious wrongdoing without either completing the investigation or referring the report to another agency for investigation.
- 10.3.** An application for an internal review must be made in writing within 28 days of the applicant being informed of Council's decision. The application should state the reasons why Council's decision should not have been made. Any other relevant material should be submitted with the application.
- 10.4.** An application for internal review must be dealt with by a person who was not substantially involved in making the decision or dealing with the disclosure.

Voluntary dispute resolution

- 10.5.** If a dispute arises between Council and a reporter, Council may request the NSW Ombudsman to facilitate a voluntary conciliation.
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11. Responsibilities

Compliance, monitoring and review

Chief Executive Officer

- 11.1.** The Chief Executive Officer is responsible for:
- 11.1.1. fostering a workplace culture where reporting is encouraged;
 - 11.1.2. receiving disclosures from public officials;
 - 11.1.3. ensuring there is a system in place for assessing disclosures;
 - 11.1.4. ensuring Council complies with this policy and the PID Act; and
 - 11.1.5. ensuring that Council has appropriate systems for:
 - a) overseeing internal compliance with the PID Act;
 - b) supporting public officials who make voluntary PIDs, including by minimising the risk of detrimental action;
 - c) implementing corrective action if serious wrongdoing is found to have occurred;
 - d) complying with reporting obligations regarding allegations or findings of detrimental action; and
 - e) complying with yearly reporting obligations to the NSW Ombudsman.

Disclosure Coordinator

- 11.2.** The Disclosure Coordinator is responsible for:
- 11.2.1. receiving reports from public officials;
 - 11.2.2. receiving reports when they are passed on to them by managers and disclosure officers;
 - 11.2.3. ensuring reports are dealt with appropriately;
 - 11.2.4. ensuring that any oral reports that have been received are recorded in writing;
 - 11.2.5. assess the report to determine whether it complies with the PID Act;
 - 11.2.6. assessing any risks and managing the investigation of the PID; and
 - 11.2.7. ensure compliance with reporting obligations in accordance with the PID Act.

Disclosure officers

- 11.3.** Disclosure officers are responsible for:
- 11.3.1. receiving reports from public officials;
 - 11.3.2. receiving reports when they are passed on to them by managers;
 - 11.3.3. referring reports to the Disclosures Coordinator; and

- 11.3.4. ensuring that any oral reports that have been received are recorded in writing.

Managers

- 11.4. The responsibilities of managers include:
 - 11.4.1. receiving reports from persons that report to them or that they supervise; and
 - 11.4.2. passing on reports they receive to a disclosure officer or the Disclosures Coordinator.

All employees

- 11.5. All employees must:
 - 11.5.1. report suspected serious wrongdoing or other misconduct;
 - 11.5.2. use their best endeavours to assist in an investigation of serious wrongdoing if asked to do so; and
 - 11.5.3. treat any person dealing with or investigating reports of serious wrongdoing with respect and confidentially.
- 11.6. All employees must not take detrimental action against any person who has made, may in the future make, or is suspected of having made, a PID.

Reporting

- 11.7. Council provides an annual return to the NSW Ombudsman which includes:
 - 11.7.1. information about voluntary PIDs received by Council during each return period (yearly with the start date being 1 July);
 - 11.7.2. action taken by Council to deal with voluntary PIDs during the return period; and
 - 11.7.3. how Council promoted a culture in the workplace where PIDs are encouraged.

Records management

- 11.8. Council must keep full and accurate records with respect to all information received in connection with the PID Act. This ensures Council complies with its obligations under the *State Records Act 1998*.
- ~~11.9. Staff must maintain all records relevant to administering this protocol in accordance with Council's [Information and Records Management Policy](#).~~

12. Definitions

Act	means the <i>Local Government Act 1993</i> .
Agency	has the meaning given by section 16 of the <i>Public Interest Disclosures Act 2022</i> .
Chief Executive Officer	means the Chief Executive Office of Central Coast Council.
Council	means Central Coast Council
Council Officer	has the meaning provided for in Council's Code of Conduct, and includes councillors, members of staff of a council, administrators, council committee members, delegates of council, contractors, community members of wholly advisory committees and volunteers
Disclosure Officer	means those nominated in this Policy to receive reports under the <i>Public Interest Disclosures Act 2022</i>
Disclosures Coordinator	means the most senior Disclosure Officer within Council.
Integrity agency	has the meaning given by section 19 of the <i>Public Interest Disclosures Act 2022</i>
Manager	has the meaning given by section 15 of the <i>Public Interest Disclosures Act 2022</i>
Permanently maintained worksite	means a worksite that is permanently maintained by Council where people are employed and where there is at least one officer ordinarily working.
Public official	has the meaning given by section 14 of the <i>Public Interest Disclosures Act 2022</i> .

13. Procedure Administration

Business Group	Corporate Services
Responsible Officer	Unit Manager Governance Risk and Legal
Associated Policy (if any, reference document(s) number(s))	Public Interest Disclosure Policy (D15810716)
Procedure Review Date	Four years from date of adoption unless legislated otherwise
File Number / Document Number	D15810938
Relevant Legislation (reference specific sections)	<p>This Procedure supports Council's compliance with the following legislation:</p> <ul style="list-style-type: none"> ▪ <i>Public Interest Disclosures Act 2022</i>
Relevant desired outcome or objectives as per Council's Delivery Program	<p>Theme 4: Responsible</p> <p>Goal G: Good governance and great partnerships</p> <p>R-G3: Provide leadership that is transparent and accountable, makes decisions in the best interest of the community, ensures Council is financially sustainable and adheres to a strong audit process.</p>
Related Policies / Protocols / Procedures / Documents (reference document numbers)	<ul style="list-style-type: none"> ▪ Information and Records Management Policy (D14025241) ▪ Code of Conduct (D15487987) ▪ Delegations Register ▪ Complaints and Feedback Management Policy (D14928768)

14. Procedure Authorisations

No.	Authorised Function	Authorised Business Unit / Role(s)
TBA	Receive reports of suspected wrongdoing that may or may not be public interest disclosures in accordance with the Policy and this Procedure	Roles nominated at Appendix A of the Policy
TBA	Accept reports of suspected wrongdoing as public interest disclosures in accordance with the Policy and this Procedure	Chief Executive Officer
TBA	Deal with and handle public interest disclosures in accordance with the Policy and this Procedure	Chief Executive Officer Disclosures Coordinator

15. Procedure History

Revision	Date Approved / Authority	Description Of Changes
1	12 December 2023 Minute No. 228/23 (adoption)	New procedure created to reflect the updated Model PID Policy and changes to the <i>Public Interest Disclosures Act 2022</i> .

16. Appendices

Appendix 1: Public Interest Disclosure form

Appendix 1 - Public Interest Disclosure form



Public Interest Disclosure form

To be completed by a reporter and submitted to a nominated disclosures officer

(Refer to the Public Interest Disclosure Policy for further details – Completion of this form is not mandatory but is designed to assist when making a Public Interest report under the [Public Interest Disclosures Act 2022](#))

Details of reporter <i>(You can make an anonymous report by leaving this section blank)</i>		
Name:		
Position:		
Division/Unit:		Preferred method of contact
Telephone:		<input type="checkbox"/> Telephone
Email:		<input type="checkbox"/> Email
Postal address:		<input type="checkbox"/> Post
Details of the wrongdoing being reported		
Description:		
<ul style="list-style-type: none"> • What happened? • Where did this happen? • When did this happen? • Is it still happening? <i>[Attach an additional page if required]</i>		
How did you become aware of this?		
Name and position of people involved in the wrongdoing:	Name	Position
Attach any additional relevant information or indicate where supporting evidence may be found:	Supporting evidence	Attached
		<input type="checkbox"/>
		<input type="checkbox"/>
		<input type="checkbox"/>
Name and position of other people who may have additional information:	Name	Position
Statement		
I honestly believe that the above information shows or tends to show wrongdoing.		
<hr/> Signature of reporter <i>(Do not sign if you want to make an anonymous report)</i>		<hr/> Date report submitted <i>(Essential information)</i>