



## Central Coast Council

# Internal Ombudsman Charter

### 1. Mission and Purpose

- 1.1 This Charter and the operation of the Internal Ombudsman reflect the commitment of Council in operating to a high standard of ethical conduct and decision-making, administrative conduct, corporate governance and being corruption free.
- 1.2 The Internal Ombudsman provides residents, community members, ratepayers, local businesses, staff, Councillors and other Council stakeholders with an 'independent ear' regarding complaints about: administrative conduct; corrupt conduct; misconduct; or maladministration.
- 1.3 The Internal Ombudsman conducts independent and impartial investigations and reviews of administrative processes and services provided by the Council.
- 1.4 The Internal Ombudsman will investigate matters detailed below at paragraph 3 and provide the Council and affected parties with the results of the investigation and make recommendations regarding required corrective action and process improvements where relevant.
- 1.5 The Internal Ombudsman may provide, or recommend, guidance and assistance to staff and proactive education regarding continuous improvement in administrative processes, good governance and ethical decision-making.
- 1.6 The Internal Ombudsman will provide procedural fairness, accountability, transparency and fairness when investigating complaints.
- 1.7 This Charter has been agreed upon and adopted by Council and provides a framework for the operation of the office and relevant delegations. This Charter details the functions and powers of the Internal Ombudsman and these are subject to change. The Internal Ombudsman Charter will be reviewed annually.
- 1.8 The Internal Ombudsman will abide by Council's Code of Conduct and relevant policies and procedures in relation to any work conducted for, in relation to, or on behalf of the Council.

### 2. Scope

- 2.1 The operations of the Internal Ombudsman apply to all Council functions and activities, staff, Councillors, and other delegates of Council.



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- 2.2 The Internal Ombudsman will report to the Chief Executive Officer
- 2.3 All staff, Councillors, and other delegates of Council are to cooperate fully with the Internal Ombudsman in any investigation to be carried out and must comply with any lawful direction given by the Internal Ombudsman or associated staff in connection with any investigation undertaken or any recommendation made by the Internal Ombudsman pursuant to this Charter.
- 2.4 All staff, Councillors, and other delegates of Council shall be bound by the Internal Ombudsman recommendations, once, as relevant to the circumstances, the Chief Executive Officer, Mayor, or the elected Council or Council's Audit, Risk and Improvement Committee has accepted them.

### **3. What the Internal Ombudsman will investigate**

- 3.1 The Internal Ombudsman will review and investigate the following types of matters including, but not limited to:
- a) All Council administrative processes, Council Committees, and other staff matters as determined by the Chief Executive Officer pursuant to Council's Code of Conduct and Complaints and Feedback Management Policy.
  - b) Any failure to comply with Council's Code of Conduct or policies or procedures including but not limited to conflict of interests, tender processes, release of confidential information, secondary employment and gifts and benefits.
  - c) Council's lack of attention to matters or review of Council's complaint handling procedures.
  - d) Anonymous matters will be considered for review or investigation, but only if adequate detail is provided to allow the matter to be reviewed or investigated.
  - e) Receipt and referral of allegations of poor administration, maladministration, corruption, breach of privacy or other alleged improper conduct by Council or Council Officials from external agencies including, but not limited to, NSW Independent Commission for Corruption (ICAC), the NSW Ombudsman, NSW Anti-Discrimination Board, Human Rights Commission or the Office of the Local Government.
  - f) Referral of internal matters from the Chief Executive Officer, Mayor, Internal Audit and Council's Audit, Risk and Improvement Committee.
  - g) Public Interest Disclosures and, including, breaches of disclosure obligations.
- 3.2 The Internal Ombudsman may also provide ad-hoc or verbal or written probity advice to staff, Councillors, or Council delegates.

#### **4. What the Internal Ombudsman will not investigate**

4.1 The Internal Ombudsman will not review and investigate, or will cease to investigate the following types of matters including, but not limited to:

- a) That concerns a review of a decision of the elected Council, or committee of Council or decisions made by the Regional Planning Panel and the Local Planning Panel, or matters awaiting determination, such as Development Applications before Council.
- b) That are not part of Council's functions or businesses.
- c) That relate to the conduct of staff or Councillors or delegates, where the complainant has had knowledge of the matter for more than three (3) months before making the complaint (refer to the Procedures of the Administration of the Model Code of Conduct for Local Councils in NSW).
- d) That require initial referral to external agencies including but not limited to: the NSW Independent Commission for Corruption (ICAC), the Office of the Local Government, the NSW Ombudsman or the NSW Police.
- e) The merits of Development Applications and/or planning decisions made by Council or the Regional Planning Panel or the Local Planning Panel.
- f) That adequate details of the complaint are not available to allow proper investigation.
- g) That are frivolous, vexatious or not made in good faith or concern a trivial matter.
- h) That adequate remedy of right of appeal already exists, whether or not the complainant uses that remedy or right of appeal.
- i) Where legal proceedings have commenced or they are already before or under investigation by a court, coroner or other tribunal or government agency.
- j) That relate to the appointment or dismissal of an employee or any industrial or disciplinary issue, other than in relation to the administrative process of the appointment, dismissal or disciplinary issue.
- k) That concern a private individual.
- l) That concern a staff member in their capacity as a private citizen.
- m) The complainant declines or refuses to provide further information to allow investigation and/or there are threats made against Council.
- n) The Internal Ombudsman does not conduct Council audits.

- 4.2 However, any matters that are listed above but are considered systemic, reflect a pattern of conduct and/or are serious and significant may be investigated immediately, or reviewed by the Internal Ombudsman upon direction by the Chief Executive Officer.
- 4.3 The Internal Ombudsman may refer matters as appropriate to any other internal Council departments or senior person to investigate or to any external government agency to investigate as appropriate.
- 4.4 The Internal Ombudsman will not act as a community advocate, nor support any organisation or body or defend Council.
- 4.5 The Internal Ombudsman will not provide legal advice to staff, councillors or complainants.
- 4.6 As the Council is a Water Authority pursuant to s. 285 and Schedule 3 of the Water Management Act 2000, the Internal Ombudsman may review recommendations made by staff in accordance with Council policies.
- 4.7 When the Internal Ombudsman decides not to investigate or ceases to investigate a matter, the Internal Ombudsman will inform the complainant in writing of the decision and provide the reason for the decision.
- 4.8 The Internal Ombudsman will not re-investigate complaints that have been finalised previously unless there are new allegations of wrong doing or the complainant has new information, that was not available at the time of the original decision

## **5. Who can make complaints?**

- 5.1 Anyone can make a complaint to the Internal Ombudsman provided it concerns Council's operations and functions and is within the Internal Ombudsman jurisdiction. Complaints may be received from residents, community members, ratepayers, local businesses, staff, Councillors and other Council stakeholders.
- 5.2 Complaints must be made in writing to either the Council or direct to the Internal Ombudsman.
- 5.3 Internal Ombudsman staff are available in person or by telephone to discuss matters as to whether the Internal Ombudsman is the correct entity to handle the complaint or refer matters appropriately.
- 5.4 Internal Ombudsman staff can provide assistance to persons who wish to make a complaint but are unable to submit a written complaint themselves.

## **6. Confidentiality and Privacy**

- 6.1 All parties to a matter investigated by the Internal Ombudsman are required to maintain confidentiality in relation to all correspondence and reports, any conversations or discussions and any interviews conducted. The processes of the Internal Ombudsman are undertaken in private and in a secure location.
- 6.2 Records management and the handling of personal and private information within the Internal Ombudsman unit are in accordance with Council policy.
- 6.3 Staff and Councillors are also bound by the confidentiality and privacy provisions of Council's Code of Conduct.
- 6.4 Complainant's details will not be disclosed unless written consent from the complainant has been provided or it is necessary for procedural fairness to any parties involved.

## **7. Access to information**

- 7.1 The Internal Ombudsman will have access to all relevant information upon which to conduct a fair investigation. Any investigation of electronic information held by Council will be undertaken in accordance with relevant legislation and Council policies.

## **8. Reviews and Investigations**

- 8.1 The Internal Ombudsman will advise people as soon as possible when unable to deal with any part of their complaint and provide advice about where such issues and/or complaints may be directed.
- 8.2 The Internal Ombudsman will address each complaint with integrity and in an equitable, objective, professional and unbiased manner and ensure that the person handling a complaint is different from any staff member whose conduct or service is being complained about.
- 8.3 Conflicts of interests, whether actual or perceived, will be managed responsibly.
- 8.4 The process for reviews and investigations conducted by the Internal Ombudsman will operate around the following basic principles, as the Internal Ombudsman considers necessary:
  - a) Review of the matter as to its jurisdiction and priority allocated.
  - b) An acknowledgement letter or email will be sent to the complainant.
  - c) Preliminary documentation review of any records or information available in relation to the issues raised including any current policies and procedures applicable to the matter and site inspections where relevant.

- d) Interviews with the relevant person(s).
  - e) Preparation of a confidential report to the Chief Executive Officer or as appropriate to the Mayor or the Council or the Chairman of the Council's Audit, Risk and Improvement Committee, which will include:
    - i A review of the evidence available to the investigation.
    - ii Determinations on the complaint.
    - iii Appropriate recommendations on the matters investigated.
    - iv Any other issues identified which are not directly associated with the matters under review or investigation will be noted for further review by Council.
  - f) A letter to the complainant detailing the results of the investigation and any actions, if appropriate giving consideration to relevant privacy legislative requirements and industrial instruments. Information provided to the complainant detailing the results of some investigations may therefore be limited.
- 8.5 The procedures adopted and undertaken by the Internal Ombudsman will comply with relevant legislation and Council policies and follow best practice.
- 8.6 The Internal Ombudsman will handle complaints using procedures that are in line with the NSW Ombudsman's Effective Complaint Handling Guidelines (2017); the Internal Ombudsman will keep accurate records and complaint data will be stored as required under the State Records Act 1998.
- 8.7 The Internal Ombudsman will assess and prioritise complaints in accordance with the urgency and/or seriousness of the issues raised. The timeframe for the investigation will be determined by the allocation of the priority of the complaint and other work constraints of the Internal Ombudsman. The Internal Ombudsman will, when required, prioritise investigations as follows – complaints relating to fraud and corruption, complaints referred by an external agency, complaints relating to a breach of legislation, non-urgent complaints about an action taken by Council staff.
- 8.8 The Internal Ombudsman may refer matters to other bodies, internal or external to Council for investigation, due to the nature of the matter or the current resourcing of the Internal Ombudsman or the urgency of the matter.
- 8.9 The Internal Ombudsman may utilise the services of Council's Panel of Code of Conduct Reviewers or other investigators in accordance with the relevant procurement legislative requirements and guidelines.

## **9. Investigation Reports and Recommendations**

9.1 Where, after completing an investigation, the Internal Ombudsman is of the opinion that a decision, recommendation, act, omission or procedure of an employee or Councillor or delegate of the Council:

- a) Is contrary to law
- b) Is unjust, oppressive or improperly discriminatory
- c) Is based on a rule of law or practice that is unjust, oppressive or improperly discriminatory
- d) Is based in whole or in part on a mistake of law or fact or on an irrelevant ground or consideration
- e) Is related to the application of arbitrary, unreasonable or unfair procedure
- f) Was made without providing adequate reasons or
- g) involves maladministration or misconduct of any kind,

then the Internal Ombudsman shall provide a confidential written report of the opinion, with reasons, to the Chief Executive Officer, or as appropriate, to the Mayor or the Council or the Chairman of the relevant member Council's Audit, Risk and Improvement Committee.

9.2 In making an investigation report, the Internal Ombudsman may recommend to the Chief Executive Officer or as appropriate, to the Mayor or the Council or the Chairman of the Council's Audit, Risk and Improvement Committee that:

- a) The matter be referred to the Chief Executive Officer for further consideration, including but not limited to disciplinary proceedings to commence.
- b) An omission or delay be rectified.
- c) A decision or recommendation by an employee or employees of the Council be revoked or varied.
- d) Reasons be given by an employee or employees of the Council for a decision.
- e) A practice or procedure be altered.
- f) A statute, regulation or by law be reconsidered.
- g) The Council pay compensation to a complainant.
- h) The Council provide a particular service.
- i) The Council amend or not impose a charge or condition in relation to a particular service,
- j) The Council supply a good or service or undertake any necessary corrective or other work to resolve a complaint.
- k) The Council make an appropriate correction, deletion or addition to a record.
- l) Such other steps are taken as the Internal Ombudsman considers reasonable and just.

- 9.3 It is the Chief Executive Officer's responsibility to address recommendations made by the Internal Ombudsman and ensure their implementation within the Council. The exception to this is when a conflict of interest may occur by referring the matter to the Chief Executive Officer in which case the matter is referred to the Mayor. If for some reasons both the Chief Executive Officer and the Mayor are perceived to have a conflict of interest then the matter is referred direct to the elected Council to address the recommendations. The Internal Ombudsman may recommend that such recommendation be provided in a confidential meeting with Council.
- 9.4 A complaint about the Mayor, Chief Executive Officer or a Councillor in relation to a Code of Conduct breach is reported in accordance with the Procedures of the Administration of the Model Code of Conduct for Local Councils in NSW.
- 9.5 Council is required to record each recommendation made by the Internal Ombudsman, take appropriate action and record what action has been taken by Council, by whom and when, for each recommendation made by the Internal Ombudsman.
- 9.6 Any concerns that the Internal Ombudsman has regarding the failure of Council to implement the Internal Ombudsman recommendations may be reported to the elected Council, the Chairman of the Council's Audit, Risk and Improvement Committee and/or the relevant government agency as appropriate.
- 9.7 The Internal Ombudsman cannot amend any operational decisions made by Council or Council officers.
- 9.8 The Internal Ombudsman will follow the *NSW Ombudsman's Effective Complaint Handling Guidelines* and may from time to time document and implement its own specific procedures and processes regarding the management and investigation of complaints.

## **10. Review of an Internal Ombudsman Decision**

- 10.1 No proceedings of the Internal Ombudsman is necessarily negated or invalid because of technical defects in the conduct of the investigation. Any such defects in the conduct of an investigation will be considered individually in terms of their impact on the outcome of the investigation.
- 10.2 The Internal Ombudsman's recommendations can only be reviewed by a body external to the Council.



## **11. Breach and Penalty**

11.1 A person who wilfully and without justification:

- a) Obstructs, hinders or resists the Internal Ombudsman or any other person in the performance of the functions and duties of the Internal Ombudsman under this Governance Charter
- b) Fails to comply with a request of the Internal Ombudsman or
- c) Makes a false statement to, or misleads or attempts to mislead, the Internal Ombudsman or any other person in the exercise or performance of the functions and duties of the Internal Ombudsman under this Charter,

will be considered in breach of this Charter and may be liable to disciplinary action in accordance with Council's Code of Conduct and other relevant policies.

## **12. Reporting**

12.1 The Internal Ombudsman will prepare and submit quarterly reports to the Council by way of a Governance Dashboard.

12.2 The Internal Ombudsman will participate in an internal forum whose purpose is to monitor the Governance Dashboard enhancing communication between key functions across the Council including Governance, People and Culture, Customer Service, Internal Audit and Finance.

12.3 The Internal Ombudsman will prepare and submit an annual report to be included in Council's Annual Report on the operations of the Internal Ombudsman office or as requested by Council.

12.4 The Internal Ombudsman will provide a quarterly report to the Audit, Risk and Improvement Committee and will meet with the members of the Committee annually in camera or as arranged with the Committee without the presence of management.

## **13. Resourcing and Reporting Line**

13.1 The Internal Ombudsman shall report to the Chief Executive Officer.

13.2 Resourcing of the Internal Ombudsman office regarding appointed staff, their ongoing performance and other staff related matters are determined by the Chief Executive Officer and implemented in accordance with Council's recruitment policies.

13.3 Other resources required by the Internal Ombudsman will be determined and funded by Council's operational budget and authorised by the Chief Executive Officer.

## 14. Definitions

<b>Best Practice</b>	Means commercial or professional procedures that are accepted or prescribed as being correct or most effective.
<b>Chief Executive Officer</b>	Means the Chief Executive Officer or their delegate or authorised representative as appointed by the elected Council.
<b>Confidentiality</b>	Means the characteristic of information being disclosed only to authorised persons or organisations in the authorised manner.
<b>Corruption</b>	As per the definition in the Independent Commission Against Corruption Act 1988 Section 8:

### **8 General nature of corrupt conduct**

- (1) *Corrupt conduct is—*
- (a) *any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or*
  - (b) *any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or*
  - (c) *any conduct of a public official or former public official that constitutes or involves a breach of public trust, or*
  - (d) *any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.*
- (2) *Corrupt conduct is also any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority and which could involve any of the following matters—*
- (a) *official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition),*
  - (b) *bribery,*
  - (c) *blackmail,*
  - (d) *obtaining or offering secret commissions,*
  - (e) *fraud,*
  - (f) *theft,*

- (g) *perverting the course of justice,*
  - (h) *embezzlement,*
  - (i) *election bribery,*
  - (j) *election funding offences,*
  - (k) *election fraud,*
  - (l) *treating,*
  - (m) *tax evasion,*
  - (n) *revenue evasion,*
  - (o) *currency violations,*
  - (p) *illegal drug dealings,*
  - (q) *illegal gambling,*
  - (r) *obtaining financial benefit by vice engaged in by others,*
  - (s) *bankruptcy and company violations,*
  - (t) *harbouring criminals,*
  - (u) *forgery,*
  - (v) *treason or other offences against the Sovereign,*
  - (w) *homicide or violence,*
  - (x) *matters of the same or a similar nature to any listed above,*
  - (y) *any conspiracy or attempt in relation to any of the above.*
- (2A) *Corrupt conduct is also any conduct of any person (whether or not a public official) that impairs, or that could impair, public confidence in public administration and which could involve any of the following matters—*
- (a) *collusive tendering,*
  - (b) *fraud in relation to applications for licences, permits or other authorities under legislation designed to protect health and safety or the environment or designed to facilitate the management and commercial exploitation of resources,*
  - (c) *dishonestly obtaining or assisting in obtaining, or dishonestly benefiting from, the payment or application of public funds for private advantage or the disposition of public assets for private advantage,*
  - (d) *defrauding the public revenue,*
  - (e) *fraudulently obtaining or retaining employment or appointment as a public official.*

**Council**

Means Central Coast Council, being the organisation responsible for the administration of Council affairs and operations and the implementation of Council policy and strategies.

**Councillor** Means any person elected or appointed to civic office, including the Mayor and Deputy Mayor.

**Council Official** Includes Councillors, members of Staff of Council, Administrators, Council Committee Members, delegates of Council, contractors, community members of wholly advisory committees and volunteers.

**Council policy** Means policy created and approved by the elected members of the Central Coast Council.

**Delegate of Council** Means a person (other than a Councillor or member of Staff of Council) or body, and the individual members of that body, to whom a function of Council is delegated.

**Fraud** As per the definition in the Crimes Act 1900 Section 192(e):

**192(e) Fraud**

- (1) *A person who, by any deception, dishonestly--*
- (a) *obtains property belonging to another, or*
  - (b) *obtains any financial advantage or causes any financial disadvantage,*
- is guilty of the offence of fraud.*
- (2) *A person's obtaining of property belonging to another may be dishonest even if the person is willing to pay for the property.*
- (3) *A person may be convicted of the offence of fraud involving all or any part of a general deficiency in money or other property even though the deficiency is made up of any number of particular sums of money or items of other property that were obtained over a period of time.*

**Internal Ombudsman** Means the person appointed to the position of Internal Ombudsman of the Office of the Internal Ombudsman.

**Maladministration** As per the definition in the Public Interest Disclosures Act 1994 Section 11:

**11 Disclosure to Ombudsman concerning maladministration**

...

- (2) *For the purposes of this Act, conduct is of a kind that amounts to maladministration if it involves action or inaction of a serious nature that is—*
- (a) *contrary to law, or*

- (b) *unreasonable, unjust, oppressive or improperly discriminatory, or*
- (c) *based wholly or partly on improper motives.*

**Procedural Fairness** Means acting fairly in administrative decision making. It relates to the fairness of the procedure by which a decision is made.

## **15. References**

*Office of Local Government Model Code of Conduct for Local Councils in NSW*

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

*Local Government Act 1993*

*Ombudsman Act 1974 NSW*

*NSW Ombudsman's Effective Complaint Handling Guidelines*

*Independent Commission Against Corruption Act 1988*

*Public Interest Disclosures Act 1994*

*Privacy and Personal Information Protection Act 1998*

### **Approved:**



David Farmer, Chief Executive Officer

**Date:** 23 April 2021

**Next Review Due By:**