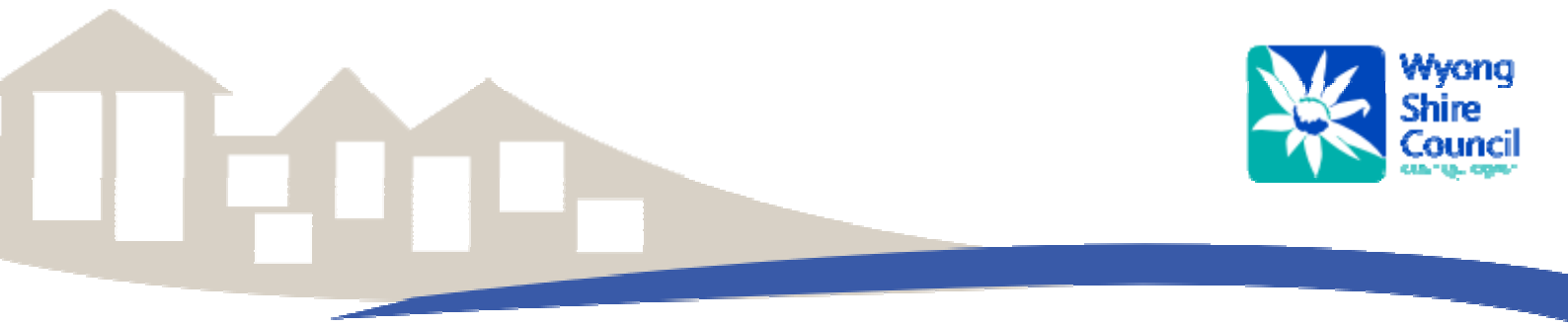


Wyong Shire Council

ORDINARY COUNCIL MEETING

ENCLOSURES

Wednesday, 27 June, 2012



WYONG SHIRE COUNCIL
ENCLOSURES TO THE
ORDINARY COUNCIL MEETING
 TO BE HELD IN THE COUNCIL CHAMBER,
 WYONG CIVIC CENTRE, HELY STREET, WYONG
 ON WEDNESDAY, 27 JUNE 2012 ,
 COMMENCING AT 5:00 PM

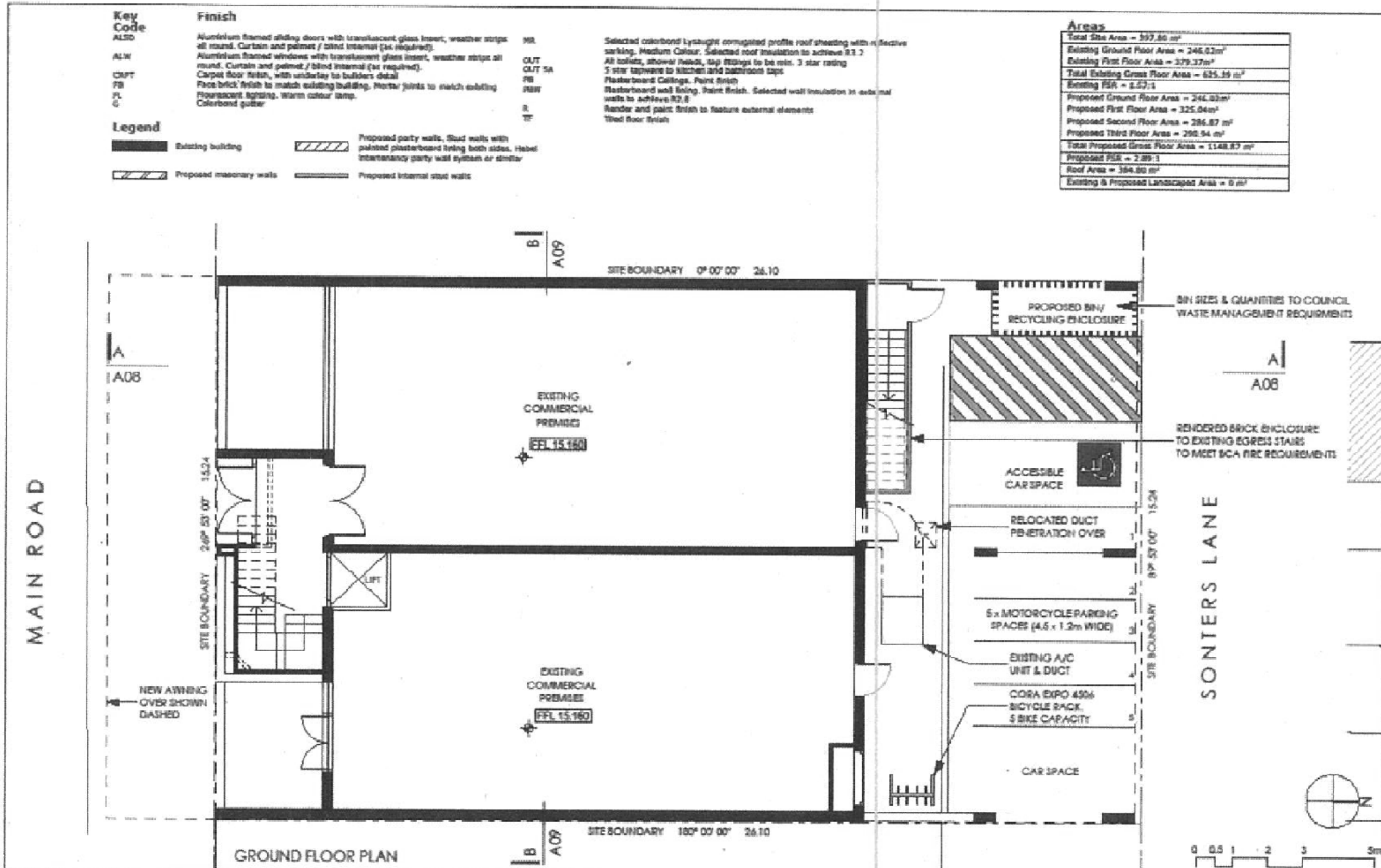
INDEX

PLANNING REPORTS

- 2.1 DA/1148/2011 - Proposed Three-Storey Boarding House above existing Commercial Premises at Toukley**
Attachment 5: Development Plans A3..... 3

GENERAL REPORTS

- 4.1 Review of the Model Code of Conduct for Local Councils - Request for Submissions on Consultation Draft**
Attachment 1: Consultation Drafts - Model Code of Conduct, Procedures, Amendment to Local Government Act - June 2012..... 8
- 4.3 Community Facilities Strategy**
Attachment 1: Community Facilities Strategy Summary Report..... 88
- 4.4 Learning Community Strategy**
Attachment 1: Wyong Shire Learning Community Strategy 118
- 5.7 Outstanding Questions on Notice and Notices of Motion**
Attachment 1: Table of Outstanding Questions on Notice and Notices of Motion 27 June 2012..... 191



Areas	
Total Site Area	= 397.80 m ²
Existing Ground Floor Area	= 246.02m ²
Existing First Floor Area	= 379.37m ²
Total Existing Gross Floor Area	= 625.39 m ²
Existing FSR	= 1.57:1
Proposed Ground Floor Area	= 246.02m ²
Proposed First Floor Area	= 325.04m ²
Proposed Second Floor Area	= 286.87 m ²
Proposed Third Floor Area	= 290.94 m ²
Total Proposed Gross Floor Area	= 1148.87 m ²
Proposed FSR	= 2.89:1
Roof Area	= 396.80 m ²
Existing & Proposed Landscaped Area	= 0 m ²

Key Code	Finish	Code	Finish
ALSD	Aluminium framed sliding doors with translucent glass insert, weather strips all round. Curtain and pelmet / blind internal (as required).	MR	Selected colorbond Lysaght corrugated profile roof sheeting with reflective sarking. Medium Colour. Selected roof insulation to achieve R1.2
ALW	Aluminium framed windows with translucent glass insert, weather strips all round. Curtain and pelmet / blind internal (as required).	OUT SA	All toilets, shower heads, tap fittings to be min. 3 star rating
CAPT	Carpet floor finish, with underlay to builders detail	PB	5 star tapware to kitchen and bathroom taps
FB	Face brick finish to match existing building. Mortar joints to match existing	PSW	Plasterboard Ceilings. Paint finish
FL	Fluorescent lighting. Warm colour lamp.	R	Plasterboard wall lining. Paint finish. Selected wall insulation in external walls to achieve R2.8
G	Colorbond gutter	TF	Render and paint finish to feature external elements
			Tiled floor finish

Legend	
	Existing building
	Proposed party walls, stud walls with painted plasterboard lining both sides. Hebel instantaneous party wall system or similar
	Proposed masonry walls
	Proposed internal stud walls

Plans of Proposed Development

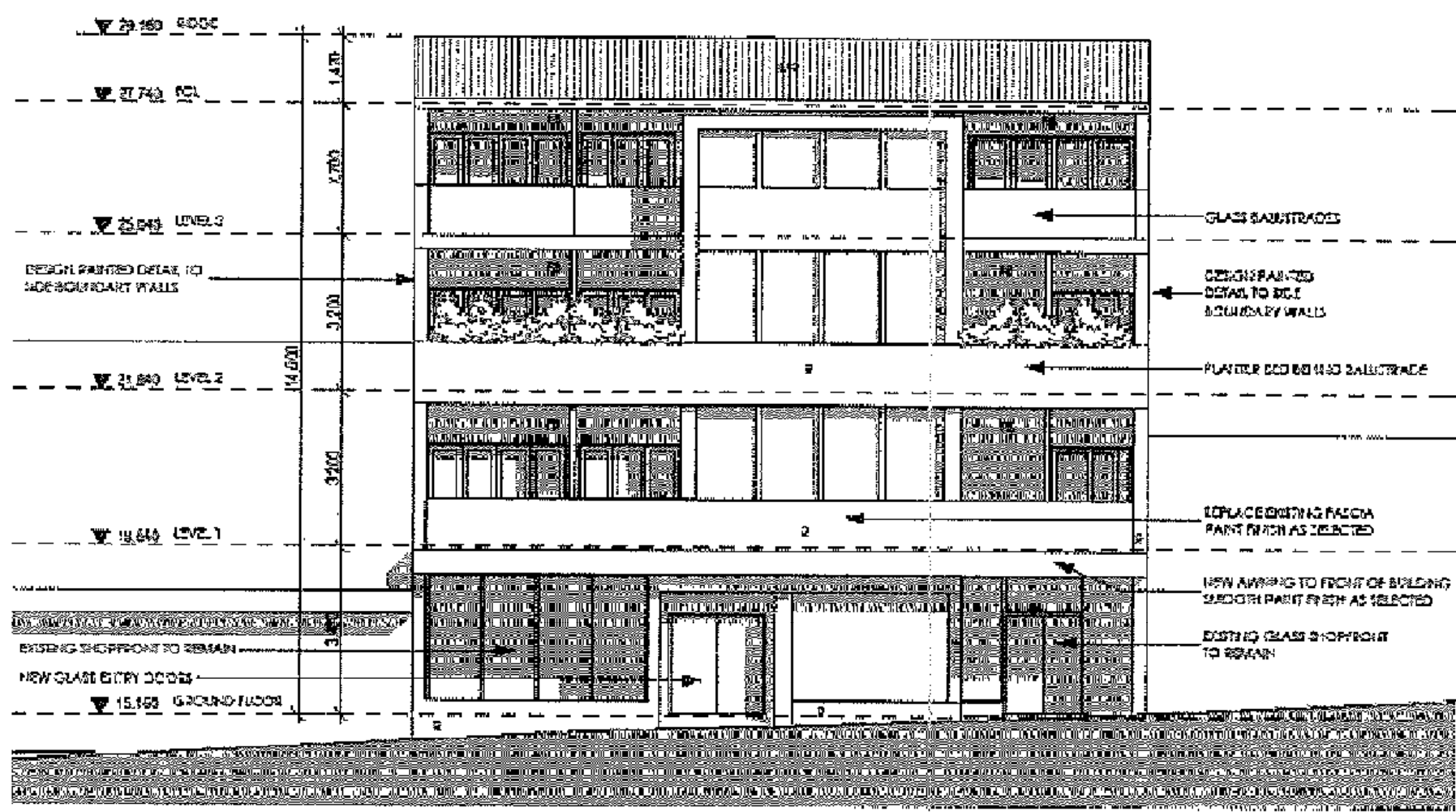
<table border="1"> <thead> <tr> <th>DATE</th> <th>ISSUE</th> <th>REVISIONS</th> </tr> </thead> <tbody> <tr> <td>07/08/11</td> <td>A</td> <td>Issue for client approval</td> </tr> <tr> <td>18/08/11</td> <td>B</td> <td>4th level added. Issue for client approval</td> </tr> <tr> <td>21/09/11</td> <td>C</td> <td>Issue for pre-DA approval</td> </tr> <tr> <td>06/12/11</td> <td>D</td> <td>Issue for DA approval</td> </tr> <tr> <td>13/05/12</td> <td>E</td> <td>Revisions to DA drawings as per Council feedback</td> </tr> </tbody> </table>	DATE	ISSUE	REVISIONS	07/08/11	A	Issue for client approval	18/08/11	B	4th level added. Issue for client approval	21/09/11	C	Issue for pre-DA approval	06/12/11	D	Issue for DA approval	13/05/12	E	Revisions to DA drawings as per Council feedback	<p>BRANVEL DEVELOPMENTS PTY LTD Building Design & Drafting Service ABN 23 106 363 251</p> <ul style="list-style-type: none"> Residential Design Industrial Buildings Commercial Buildings Child care centres Member of the Building Designers Assoc of NSW Accredited Building Designer Accreditation No 6202 	PH: 0401 968 201 FAX: 4643-2912 P.O Box 121 Narellan NSW 2567 e: jason@branveldevelopments.com.au w: www.branveldevelopments.com.au	PROJECT: Proposed three storey boarding house rooms AT: Lot 30 DP 17931 No 268 Main Road TOUKLEY FOR: Cavallaro & Co TITLE: Ground Floor Plan	DATE: Aug 11 DRAWN: CR JOB NO: 006/2011	SCALE: 1:100 @ A3 SHEET: A02
DATE	ISSUE	REVISIONS																					
07/08/11	A	Issue for client approval																					
18/08/11	B	4th level added. Issue for client approval																					
21/09/11	C	Issue for pre-DA approval																					
06/12/11	D	Issue for DA approval																					
13/05/12	E	Revisions to DA drawings as per Council feedback																					

Key Code	Finish
ALSD	Aluminium framed sliding doors with aluminium glass insert, weather strips all round, curtains and pelmets / blind internal (as required)
ALW	Aluminium framed windows with aluminium glass insert, weather strips all round, curtains and pelmets / blind internal (as required)
CRMT	Carpet door mats, with underlay to trichter detail
FL	Face back brick to match existing building. Marker lines to match existing
TL	Recessed lighting, Warmwhite lamp
C	Carbond paint

Legend	
	Existing building
	Proposed party walls. Stud walls with partial plasterboard lining both sides. Heavy interlocking party wall systems or similar
	Proposed masonry walls
	Proposed internal stud walls

Selected car-bond type-slope corrugated profile roof cladding with reflective coating. Mattam Colour. Selected flat insulation to achieve R2.2
 All timber, show work, (3) (10) (4) in Section. 3 star rating
 5 star exposure to UV rays and insecticide tape
 Hardboard Cladding. Pale finish
 Media lined wall spray. Paint Color. Selected wall insulation to achieve R2.2
 Render and paint finish to feature external elements
 Tiled roof 250%

AREA	
Site Area	317.85 m ²
Existing Ground Floor Area	748.01 m ²
Existing First Floor Area	779.17 m ²
Total Existing Ground Floor Area	675.39 m ²
Existing PDA	2.57:1
Proposed Ground Floor Area	248.85 m ²
Proposed First Floor Area	225.84 m ²
Proposed Second Floor Area	245.87 m ²
Proposed Third Floor Area	241.94 m ²
Total Proposed Ground Floor Area	1248.83 m ²
Proposed PDA	2.89:1
Roof Area	256.89 m ²
Existing & Proposed Landscaped Area	8 m ²



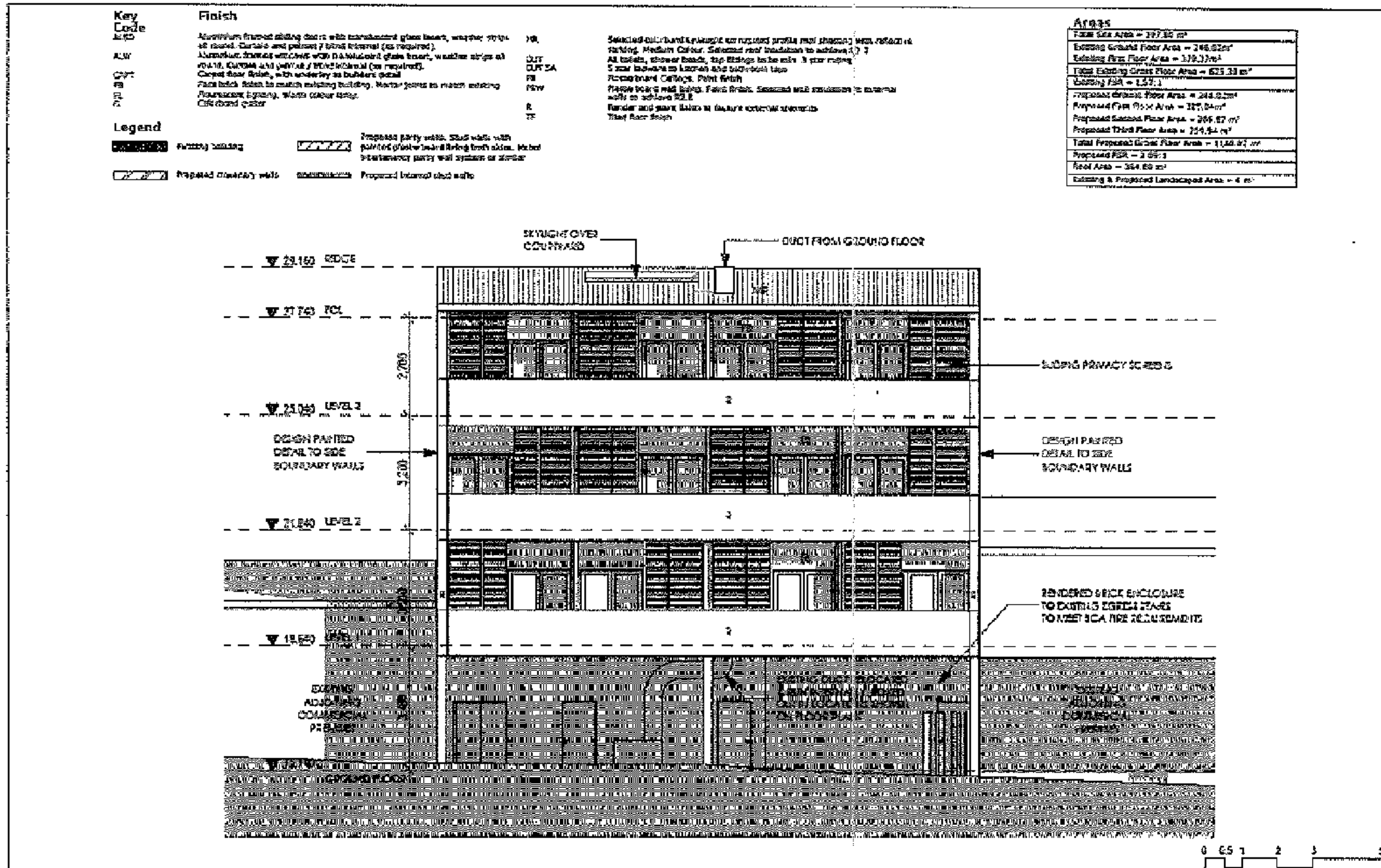
DATE	REV	DESCRIPTION
07/09/11	A	Issue for client approval
18/09/11	B	4th level added. Issue for client approval
21/09/11	C	Issue for pre-DA approval
06/12/11	D	Issue for DA approval
13/02/12	E	Revisions to DA drawings as per Council feedback

BRANVEL
DEVELOPMENTS PTY LTD
Building Design & Drafting Services
Aust 33 494 243 241

- Residential Alterations
- Residential Design
- Industrial Buildings
- Commercial Buildings
- Civil and Water
- Member of the Building Designers Association of NSW
- Accredited Building Designer
- Accredited DA Designer

PH 0438 958 261
FAX 4918 2912
P.O. Box 321
Kareela NSW 2567
e info@branveldevelopments.com.au
w www.branveldevelopments.com.au

PROJECT:	Proposed three storey boarding house rooms	DATE:	Aug 11	DRAWN:	CR	SCALE:	1:100 @ A3
AT:	Lot 30 DP 17981 No 268 Main Road TOURKLEY	JOB NO:			SHEET		
FOR:	Cavallaro & Co	DATE:	008/2011	ADG			
TITLE:	Main Road Elevation (South)						



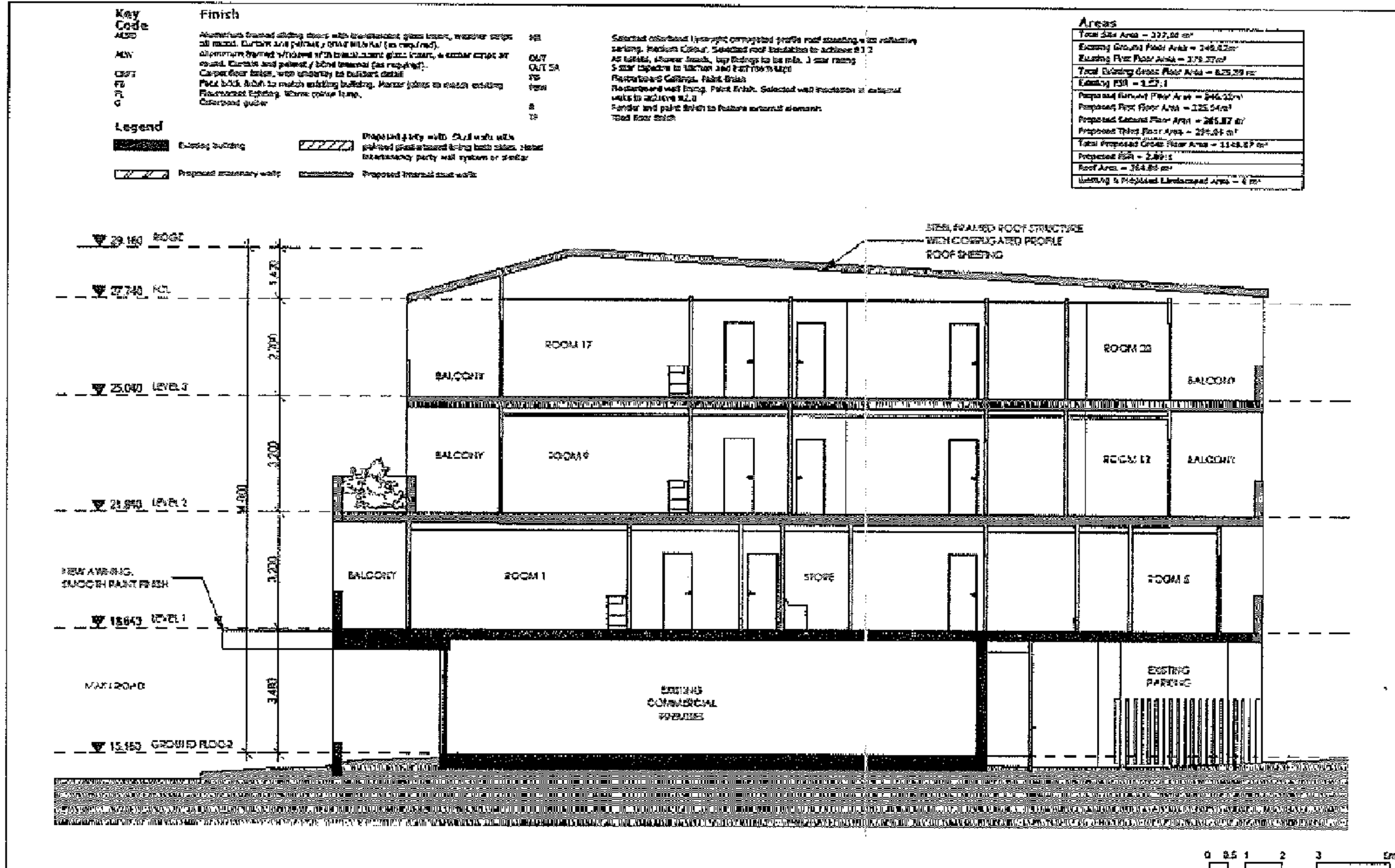
Key Code	Finish
ALW	Aluminium framed sliding doors with laminated glass insert, weather strips at reveal. Curtains and pelmet 7 strand internal (as required).
CPWT	Carpet floor finish, with underlay as builders detail.
FR	Flashed door finish to match existing building. Master joints to match existing.
FL	Flourescent lighting, white ceiling trays.
CR	Ceiling board plaster.

Legend	Symbol	Description
[Hatched Box]	[Hatched Box]	Existing building
[Hatched Box]	[Hatched Box]	Proposed party walls
[Hatched Box]	[Hatched Box]	Proposed boundary walls
[Hatched Box]	[Hatched Box]	Proposed internal stud walls

FR	Selected built-in wardrobes for proposed private room showing with recessed parking. Medium Colour. Selected roof insulation to achieve U > 2.
OUT	All toilets, shower basins, tap fittings to be only 3 star rating.
OUT SA	5 star insulation to L6000 and L6000-both type.
FR	Accommodate Ceilings. Paint finish.
FRW	Plaster board wall lining. Faced finish. Sealed with expansion to external walls to achieve R2.0.
R	Render and paint finish to feature external elevations.
FR	Wall floor finish.

Areas	
Room Size Area	= 297.85 m ²
Existing Ground Floor Area	= 246.82m ²
Existing First Floor Area	= 178.37m ²
Total Existing Gross Floor Area	= 625.33 m ²
Existing FSR	= 1.57:1
Proposed Ground Floor Area	= 246.82m ²
Proposed First Floor Area	= 227.04m ²
Proposed Second Floor Area	= 206.87 m ²
Proposed Third Floor Area	= 254.94 m ²
Total Proposed Gross Floor Area	= 1,135.67 m ²
Proposed FSR	= 3.65:1
Room Area	= 364.88 m ²
Building & Proposed Landscaped Area	= 4 m ²

<table border="1"> <thead> <tr> <th>No.</th> <th>Issue</th> <th>Description</th> </tr> </thead> <tbody> <tr> <td>01/08/11</td> <td>A</td> <td>Issue for client approval</td> </tr> <tr> <td>18/08/11</td> <td>B</td> <td>4th level added. Issue for client approval</td> </tr> <tr> <td>21/08/11</td> <td>C</td> <td>Issue for pre-DA approval</td> </tr> <tr> <td>08/12/11</td> <td>D</td> <td>Issue for DA approval</td> </tr> <tr> <td>18/05/12</td> <td>E</td> <td>Revisions to DA drawings as per Council feedback.</td> </tr> </tbody> </table>	No.	Issue	Description	01/08/11	A	Issue for client approval	18/08/11	B	4th level added. Issue for client approval	21/08/11	C	Issue for pre-DA approval	08/12/11	D	Issue for DA approval	18/05/12	E	Revisions to DA drawings as per Council feedback.	<p>BRANVEL DEVELOPMENTS PTY LTD Building Design & Drafting Service ABN 33 788 333 237</p> <ul style="list-style-type: none"> Residential Alterations Industrial Buildings Commercial Buildings Child care centres Member of the Building Designers Assoc of NSW Accredited Building Designer Accreditation No 6728 	<p>PH: 0408 958 201 FAX: 4848-2912 P.O. Box 121 Narellan NSW 2567 e: psara@branveldevelopments.com.au w: www.branveldevelopments.com.au</p>	<p>PROJECT: Proposed three storey boarding house rooms SITE: Lot 30 DP 17931 No 268 Main Road TOWKLEY FOR: Cavaliero & Co TITLE: Sockers Lane Elevations (North)</p>	<p>DATE: Aug 11 DRAWN: CR SCALE: 1:100 @ A3 SHEET: A07</p>
No.	Issue	Description																				
01/08/11	A	Issue for client approval																				
18/08/11	B	4th level added. Issue for client approval																				
21/08/11	C	Issue for pre-DA approval																				
08/12/11	D	Issue for DA approval																				
18/05/12	E	Revisions to DA drawings as per Council feedback.																				



Key Code	Finish
ALSD	Aluminium framed sliding doors with translucent glass insert, weather strip all round. Curtain and pelmet / blind with rail (as required).
AW	Aluminium framed windows with translucent glass insert, a curtain strip all round. Curtain and pelmet / blind (as required).
CBT	Carpenter floor joists, with underlay to suit floor detail.
FB	Fibre brick finish to match existing building. Maxter joints to match existing.
FL	Fluorescent lighting. Warm colour temp.
G	Coloured gutter.

Selected coloured lightweight corrugated profile roof standing with reflective lining. Medium Colour. Selected roof insulation to achieve R1.2
 As above, above finish, lay things to be r/c. 1 star rating
 5 star capacity to sustain and 2 star to 10 MPa
 Reinforced Concrete. Paint Finish
 Reinforced wall framing. Paint Finish. Selected wall protection of external walls to achieve R1.0
 Render and paint finish to feature external elements.
 Total floor finish

Areas	
Total Site Area	= 327.00 m ²
Existing Ground Floor Area	= 149.82m ²
Existing First Floor Area	= 278.27m ²
Total Existing Gross Floor Area	= 828.09 m ²
Existing FSR	= 1.27:1
Proposed Ground Floor Area	= 246.20m ²
Proposed First Floor Area	= 225.54m ²
Proposed Second Floor Area	= 265.87 m ²
Proposed Third Floor Area	= 224.04 m ²
Total Proposed Gross Floor Area	= 1148.87 m ²
Proposed FSR	= 2.89:1
Roof Area	= 364.88 m ²
Unbuilt & Proposed Landscaped Area	= 4 m ²

Legend	
	Existing building
	Proposed boundary walls
	Proposed party walls with full walls with polished plasterboard to be both sides. Hotel interlocking party wall system or similar
	Proposed internal stud work

DATE	BY	REVISIONS
07/08/11	A	Issue for client approval
18/08/11	B	4th level added. Issue for client approval
21/08/11	C	Issue for pre-DIA approval
04/09/11	D	Issue for DIA approval
13/09/11	E	Revisions to DA drawings as per Council feedback

1. The Designer is not to be held responsible for the accuracy of the information provided by the client.
 2. The Designer is not to be held responsible for the accuracy of the information provided by the client.
 3. The Designer is not to be held responsible for the accuracy of the information provided by the client.

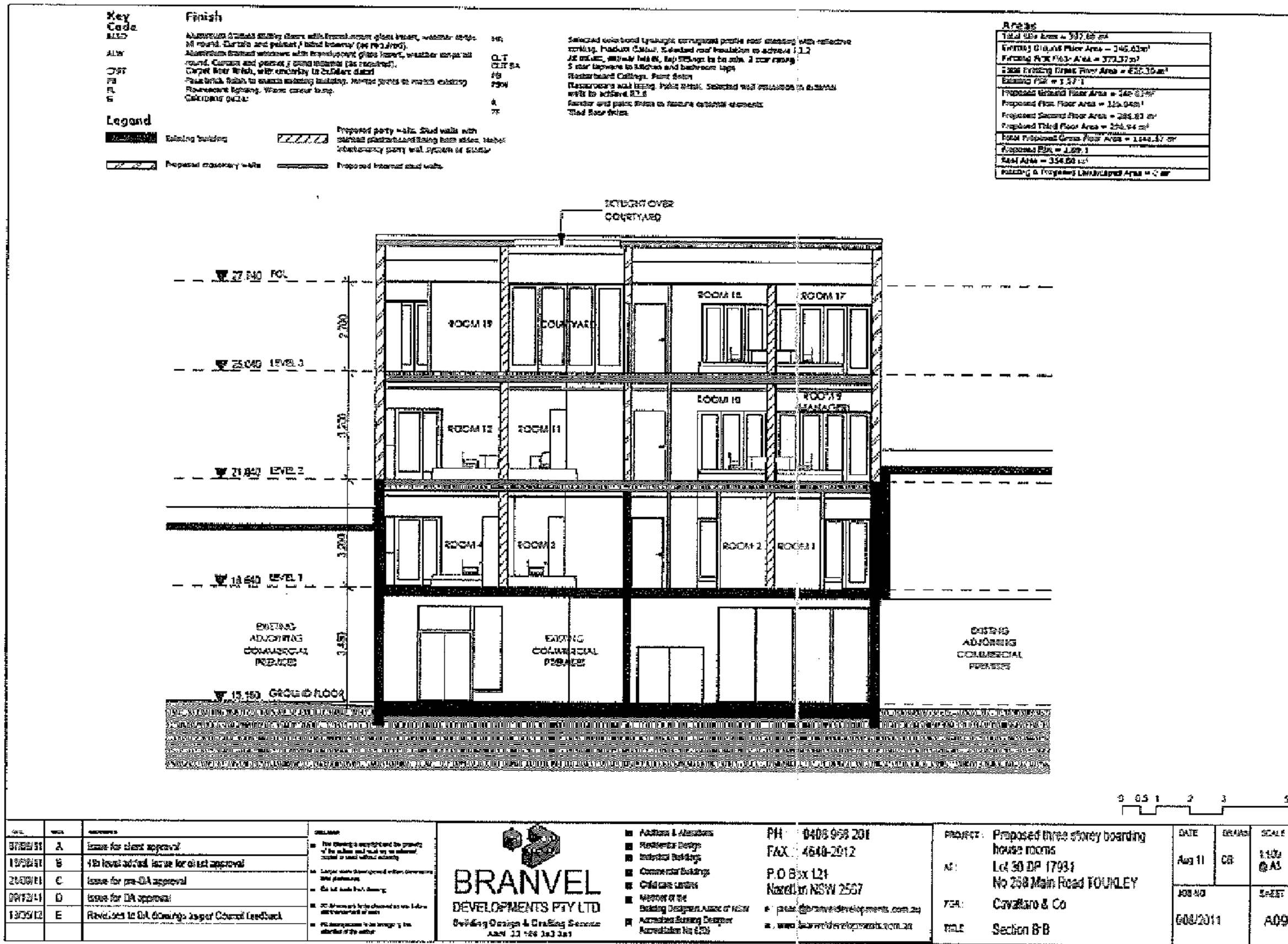
BRANVEL DEVELOPMENTS PTY LTD
 Building Design & Drafting Services
 April 30 585 343 241

- Architects & Architects
- Residential Design
- Commercial Buildings
- Commercial Buildings
- Commercial Buildings
- Commercial Buildings
- Commercial Buildings
- Commercial Buildings
- Commercial Buildings
- Commercial Buildings

PH: 0408 968 201
 FAX: 0454-2912
 P.O. Box 121
 Harefield NSW 2567
 e: jason@branveldevelopments.com.au
 w: www.branveldevelopments.com.au

PROJECT: Proposed three storey boarding house rooms
 SITE: Lot 30 DP 17931 No 268 Main Road TOURLEY
 FSA: Cavallaro & Co
 TITLE: Section A/A

DATE	DRAMA	SCALE
Aug 11	CR	1:100 @ A3
JOS/RO		SHEET
009/2011		A08



Division of Local Government
Department of Premier and Cabinet

Review of the Model Code of Conduct for Local Councils in NSW



May 2012

Consultation Drafts

1. BACKGROUND

The original version of the Model Code of Conduct for Local Councils in NSW (the Model Code) commenced operation on 1 January 2005. A revised version of the Model Code subsequently came into force on 27 June 2008 and operates to this day.

The Model Code is an evolving document. While the framework for managing complaints about council officials has vastly improved over the 6 years the Model Code has been in operation, we agree that there remains scope for further refinement and improvement.

Over the three years in which the revised Model Code has been in operation, we have identified or have had brought to our attention a number of areas where the Model Code has not operated in the manner in which it was intended or where its operation could be improved.

We commenced a comprehensive review last year at the request of the Minister for Local Government, the Hon. Don Page MP. We issued a discussion paper in which we outlined the issues that had been raised with us about the operation of the current version of the Model Code. We asked you about any other areas where you considered the Model Code required improvement and asked for your suggestions on how best to make those improvements. We also asked for your views on possible options for improving the Model Code to address the issues that have been raised with us.

We received a total of 122 submissions in response to our discussion paper from a diverse range of sources. Based on our consideration of your submissions we prepared a reform proposal with respect to the Model Code and the misbehaviour provisions of the *Local Government Act 1993* (the Act).

We issued a position paper in which we outlined our proposal and asked you for your comments. We also held workshops around the State to discuss the proposal and to identify possible improvements to it.

We received close to 100 submissions in response to our position paper from a diverse range of sources. Our workshops were also well attended. Based on the

feedback we received from submissions and the workshops we have refined our proposal. The changes to our proposal are outlined below.

2. WHAT IS THE PURPOSE OF THIS PAPER?

Based on our consideration of the feedback we received on our position paper, we have now finalised our reform proposal. We have drafted the following for the purposes of implementing our final proposal:

- Proposed amendments to the Model Code (the amendments are highlighted in bold)
- Proposed new procedures for the administration of the Model Code
- Proposed amendments to the Local Government Act 1993 and Local Government (General) Regulation 2005 (the amendments are highlighted in bold)

As foreshadowed in the position paper, we now seek your comment on the technical detail of the proposed changes.

We request that submissions be made in writing and sent to the following postal address:

Division of Local Government
Department of Premier and Cabinet
Locked Bag 3015
NOWRA NSW 2541

Alternatively, submissions may be emailed to dlg@dlg.nsw.gov.au.

We ask that submissions be received by **Tuesday, 26 June 2012**.

Should you wish to contact us to discuss the consultation drafts or the Model Code of Conduct Review, you may contact Mr John Davies, the Leader of the Division's Council Governance Team, on telephone 02 4428 4139.

3. WHAT ARE OUR REFORM OBJECTIVES?

In preparing a reform proposal, we have had regard to the following needs identified in the submissions we received in relation to the discussion paper:

- For councils to be ultimately responsible for the management of complaints about the conduct of their officials.
- To put in place a framework for managing such complaints that is rigorous, cost-effective and promotes public confidence.
- To ensure that only those matters that warrant investigation are investigated and that alternative resolution strategies are available for those matters that do not warrant investigation.
- For all councils, regardless of their size and location to be able to access a pool of independent and suitably qualified persons to undertake investigations where they are warranted.
- To provide greater clarity and certainty in relation to the procedural requirements of the code at the same time as allowing flexibility.
- To ensure the code has more “teeth”.
- To ensure that rights are adequately protected and that appropriate checks and balances are in place.
- To put in place adequate protections and disincentives to prevent the misuse of the code.
- To minimise the exposure of councils to costly appeal processes in the Courts.
- To remove the current obstacles to the more effective exercise of the Division’s powers under the misbehaviour provisions of the Act and to provide it with more options for managing misbehaviour.

- To make the penalties that may be applied by the Chief Executive and the Pecuniary Interest and Disciplinary Tribunal in relation to misbehaviour more effective in deterring and managing such conduct.

What we intend to do to deliver on these reform objectives is described below.

4. WHAT IS BEING PROPOSED?

As foreshadowed in the Position Paper, in the interests of simplicity, we intend to split the Model Code into two instruments:

- A Model Code of Conduct for Local Councils in NSW (comprising solely of the prescribed standards of conduct), and
- Procedures for the Administration of the Model Code (comprising of the procedural requirements of the Code) (referred to below as the “Model Code procedures”)

In relation to the standards of conduct prescribed under the Model Code, we are proposing to make the following changes:

- In the interests of simplicity and clarity, to remove the “context” section of the Model Code. This is largely educational material and does not constitute enforceable standards of conduct. This will now be incorporated into the better practice Guidelines to the Model Code that will be developed separately.
- Prohibit binding caucus votes that prevent councillors from exercising their discretion. However councillors will still be permitted to meet to discuss council business ahead of meetings;
- Refine the provisions relating to the disclosure of reportable political donations to align them with subsequent amendments to the relevant legislation and to eliminate loopholes;

- Include provisions to address the loss of quorum arising from compliance with requirements under the code;
- Expand the prohibition on the acceptance of cash to include cash-like gifts;
- Amend the provisions relating to relationships between council officials to allow councillors to provide information to the Chair of the audit committee, to prohibit staff from participating in political activities that interfere with their duty to serve a council in a politically neutral manner and to allow councillors to discuss the general manager's performance with him or her;
- Remove loopholes in the provisions that relate to the use of council resources for election purposes; and
- Create a new class of standards relating to the maintenance of the integrity of the code of conduct. Breaches of these standards will be dealt with by the Division under the misbehaviour provisions.

Proposals made in the Position Paper about the disclosure of gifts and benefits of nominal value, councillors meeting with developers or objectors, councillors and staff discussing industrial policy matters and guidance on the application of the code to contractors and volunteers will **not** be included in the revised Model Code. They may, however, be made as better practice suggestions in the Guidelines to the Model Code.

In relation to the Model Code procedures, we are proposing to make the following changes:

- Councils will be able to establish their own panels of conduct reviewers or to establish regional panels
- An option will be created to allow councils to use conduct reviewers from a panel established by a prescribed organisation
- The selection process and criteria for conduct reviewers will be prescribed

- To limit the misuse of the procedures to deal with non code of conduct matters “Code of conduct complaint” will be a defined term
- Complaints must be made within 3 months
- General Managers and Mayors will no longer have any role in the management of complaints about councillors or the General Manager beyond the initial receipt of complaints. General Managers and Mayors will however retain the option to resolve complaints informally at the outset should they choose to do so, but this will be at their discretion.
- Councils will be required to nominate a member of staff other than the General Manager to be a complaints coordinator for the purposes of providing administrative support for the code. This will ensure complaints are dealt with at arms length from the General Manager and Mayor.
- The process for dealing with complaints about councillors and General Managers will be simplified. Where the current code prescribes a 3-tier process, (ie preliminary assessment by the General Manager or Mayor, investigation by a conduct reviewer and determination by the council), under our proposed changes, complaints will be dealt with from start to finish by a conduct reviewer at arms length from the council.
- Preliminary assessment of complaints will be undertaken by independent conduct reviewers
- Limited provision will be made for the Division of Local Government to undertake a preliminary assessment role for a council in relation to complaints made by or about a person where the number or nature of complaints made by or about the person imposes an undue cost burden on the council or impedes the effective administration of the council’s code
- A time limit will be imposed on the preliminary assessment of complaints
- Conduct reviewers will only be permitted to investigate a matter where they are satisfied the alleged conduct is sufficiently serious to warrant investigation and cannot be resolved by alternate means

- Provision will be made for the use of conduct review committees of three persons to investigate matters in limited circumstances
- The investigation process including procedural fairness requirements will be more clearly prescribed
- Councils will no longer make a determination that there has been a breach of the code. Determinations will now be made by the investigator
- Investigation reports will no longer be dealt with in the public domain. The only investigation reports that will be reported to council will be those recommending the imposition of a more severe sanction (eg censure)
- An amendment to section 10A of the Act will be sought to permit councils to consider investigation reports in closed meetings
- Councils' role in relation to code of conduct matters will be limited to imposing more severe sanctions (eg censure) where such sanctions have been recommended by the investigator. Councils will have limited discretion in the imposition of a sanction
- Lesser sanctions (eg training or counselling) will be implemented by the general manager or, in the case of a complaint about the General Manager, by the Mayor
- Where a person has a sanction imposed on them, they will have a limited right to request a review of the determination by the Division

We do **not** propose to proceed with the proposal made in the position paper to prescribed regional groups of councils. As stated above, it will be left to individual councils to determine how to configure their local arrangements for the administration of the code in a way that best suits their needs.

We also do **not** propose to proceed with the proposal made in the position paper for councils to nominate a neighbouring General Manager to undertake the preliminary assessment of complaints. As stated above, this role will now be undertaken by independent contracted conduct reviewers.

As foreshadowed in the position paper, we propose to seek amendments to the Act to simplify and streamline the process for taking action under the misbehaviour provisions.

We propose to seek amendments to the Act to change the term “misbehaviour” to “misconduct”. We believe this will more accurately reflect the nature of the conduct dealt with under those provisions.

We also propose to seek amendments to give the Division more options for managing misbehaviour under the Act. Accordingly the misbehaviour provisions will no longer focus simply on “suspension” as the sole form of action available for misbehaviour but will also refer to a broader range of options known collectively as “disciplinary action”.

Our proposed amendments will also confer on the Division the option of “calling in” code of conduct matters so that they may be dealt with under the misbehaviour provisions instead of a council’s code of conduct.

The amendments will maintain the existing two avenues for seeking disciplinary action to be taken against councillors under the misbehaviour provisions. These are:

- Action by the Chief Executive, Local Government as delegate of the Director General, Department of Premier and Cabinet
- Action by the Local Government Pecuniary Interest and Disciplinary Tribunal

Under our proposed amendments, the sanctions available to the Chief Executive will be strengthened to include suspension for up to three months.

The sanctions available to the Tribunal will be strengthened to align with those available for breaches of the pecuniary interest provisions of the Act. Under our proposed amendments, the Tribunal will be able to disqualify a councillor from holding civic office for up to 5 years for misbehaviour.

Under our proposed amendments, the Chief Executive and the Tribunal may take into consideration previous incidents of misbehaviour in imposing these sanctions.

5. WHAT DO WE WANT FROM YOU?

Attached to this paper are the following:

- Proposed amendments to the Model Code of Conduct (the amendments are highlighted in bold)
- Proposed new procedures for the administration of the Model Code
- Proposed amendments to the Local Government Act 1993 and Local Government (General) Regulation 2005 (the amendments are highlighted in bold).

We want to ensure that our proposed changes are workable and will provide for the more effective and efficient administration of the code of conduct.

To this end, we would like to hear your views on our proposed changes. In particular, we would like to hear your views on the following:

- Do you agree with the proposals? If not why not?
- Is there anything unclear about our proposed drafting?
- If so, how could it be said more clearly?
- Is there anything we have missed?
- Are there any loopholes?
- Does any of our proposed drafting carry potential unforeseen consequences?

We request that you make your submissions in writing to the following postal address:

Model Code of Conduct Review
Division of Local Government
Locked Bag 3015
NOWRA NSW 2541

Alternatively your submission may be lodged electronically via email to: dlg@dlg.nsw.gov.au .

We ask that submissions be received by **Tuesday, 26 June 2012**.

Should you wish to discuss the consultation drafts or the Model Code of Conduct Review, please contact Mr John Davies, the Leader of the Division's Council Governance Team, on telephone 02 4428 4139.

6. WHERE TO FROM HERE?

We will consider your comments prior to recommending the final Model Code and Model Code procedures to the Minister for consideration.

As with previous versions of the Model Code we intend to supplement the new Model Code and procedures with amended Guidelines to assist in their interpretation. We also intend to reissue an updated education package to assist councils to raise awareness among councillors, staff, delegates and committee members of any new requirements under the new Model Code and procedures.

7. LIST OF ATTACHMENTS

1. Summary version of the proposed new Model Code
2. Draft revised Model Code
3. Proposed procedures for the administration of the Model Code
4. Proposed amendments to the *Local Government Act 1993*

SUMMARY

PROPOSED NEW MODEL CODE OF CONDUCT

Standards of conduct for council officials

Council officials play a vital role in serving local communities.

To do this effectively you will want to uphold the highest standards of behaviour to ensure the public has trust and confidence in local government.

What are the expected standards of behaviour?

The following standards of behaviour are expected of council officials. You must:

- not conduct yourself in a manner that is likely to bring the council into disrepute
- act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions
- treat others with respect at all times
- consider issues consistently, promptly and fairly
- not harass, discriminate against, or support others who do so
- ensure that development decisions are properly made and that parties involved in the development process are dealt with fairly
- not participate in binding caucus votes
- avoid or appropriately manage any conflict of interests
- take all reasonable steps to ascertain the source of and report any reportable political donations
- not accept money or gifts of value and avoid situations that give rise to the appearance of securing favourable treatment
- in the case of councillors, not direct council staff or influence staff in the exercise of their role
- in the case of staff, ensure efficient and effective operation of the council's organisation and ensure the implementation of the decisions of the council without delay
- examine and make available information in accordance with Government Information (Public Access) Act 2009 and the council's charter.
- use and secure information appropriately
- use council resources ethically, effectively, efficiently and carefully in the course of official duties
- not make complaints improperly or take detrimental action in response to complaints about standards of behaviour.

Council officials include councillors, members of staff of council, administrators appointed under section 256 of the Act, members of council committees, conduct reviewers and delegates of council.

These standards are described in detail in the Model Code of Conduct for Local Councils in NSW. The code is a legal document that all officials are obliged to

understand and follow. The Model Code forms the basis of each council's own code of conduct.

What happens if the standards are not met?

In the very small number of cases where council officials fail to follow this code, this will be dealt with in accordance with the procedure for administration of the Model Code.

Complaints about a breach of these standards by anyone other than the general manager are to be made at first instance to general manager. Complaints about the general manager are to be made to the Mayor. In most cases where the complaint cannot be resolved informally, the process involves investigation by an independent conduct reviewer. The process for dealing with complaints is summarised in the flowchart below.

Breaches of these standards by delegates or council committee members may result in the following action:

- censure
- requirement of apology
- prosecution
- removal or restriction of delegation

Breaches by council staff may result in disciplinary action, termination or such other penalty permitted under the relevant industrial award.

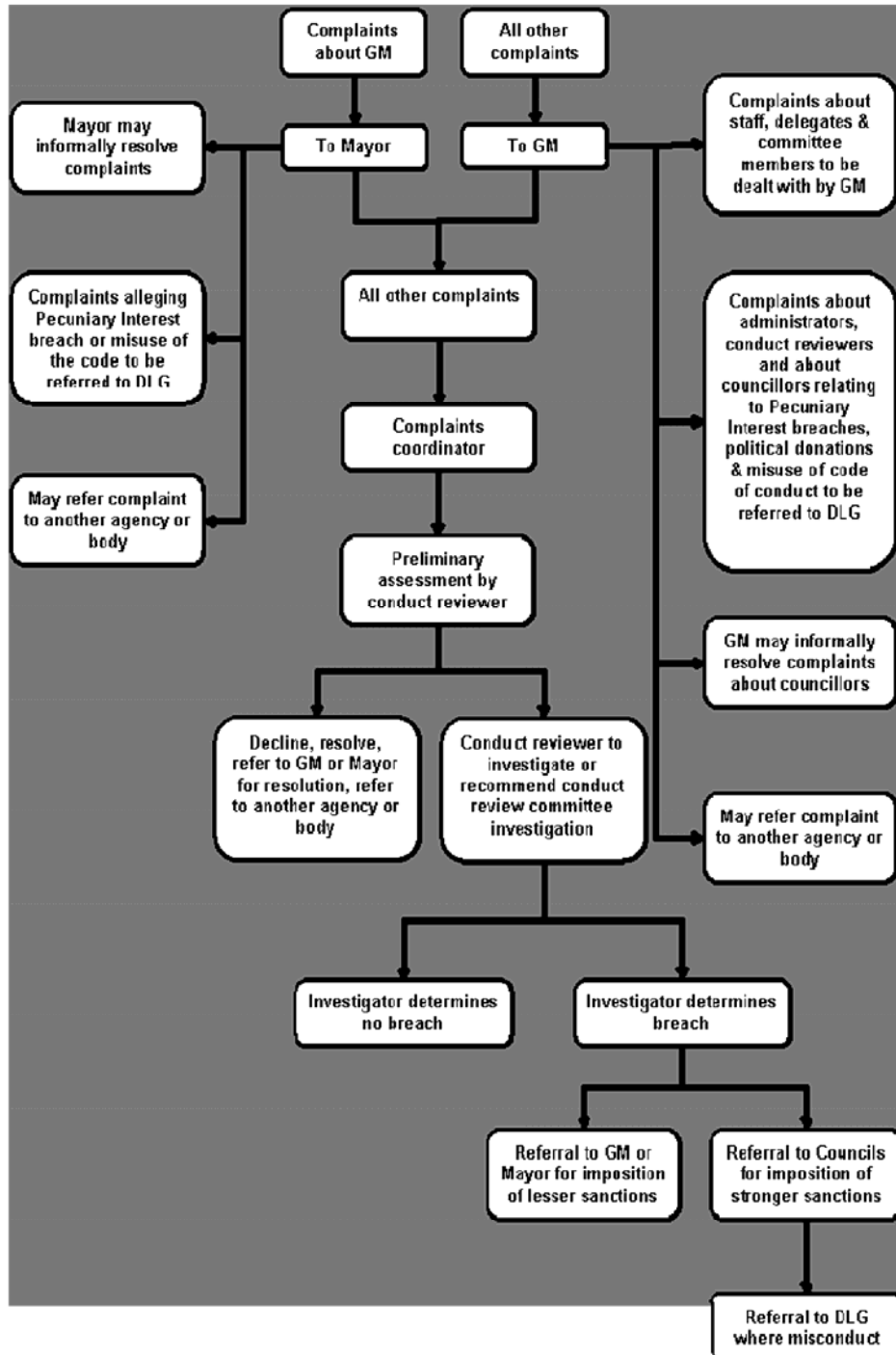
Breaches by the general manager may result in the following action

- requirement for training
- counselling
- requirement for apology
- findings of inappropriate conduct made public
- action under the general manager's contract

Breaches by councillors may result in the following action:

- requirement for training
- counselling
- requirement for apology
- findings of inappropriate conduct made public
- censure
- referral to the Division of Local Government for disciplinary action including but not limited to suspension for up to 3 months
- referral by the Division to the Pecuniary Interest and Disciplinary Tribunal for suspension of up to 6 months or disqualification from holding civic office.

Understanding the process for code of conduct breaches





Premier & Cabinet
Division of Local Government

The Model Code of Conduct for Local Councils in NSW

May 2012

TABLE OF CONTENTS

PART 1	INTRODUCTION	17
PART 2	PURPOSE OF THE CODE OF CONDUCT.....	17
PART 3	GENERAL CONDUCT OBLIGATIONS	18
PART 4	CONFLICT OF INTERESTS	20
PART 5	PERSONAL BENEFIT.....	25
PART 6	RELATIONSHIP BETWEEN COUNCIL OFFICIALS	27
PART 7	ACCESS TO INFORMATION AND COUNCIL RESOURCES	29
PART 8	MAINTAINING THE INTEGRITY OF THIS CODE	32
PART 9	DEFINITIONS.....	34

PART 1 INTRODUCTION

This Model Code of Conduct for Local Councils in NSW ("the Model Code of Conduct") is made for the purposes of section 440 of the *Local Government Act 1993* ("the Act"). Section 440 of the Act requires every council to adopt a code of conduct that incorporates the provisions of the Model Code. For the purposes of section 440 of the Act, the Model Code of Conduct comprises all sections of this document.

Councillors, administrators, members of staff of council, independent conduct reviewers, members of council committees including the conduct review committee and delegates of the council must comply with the applicable provisions of council's code of conduct in carrying out their functions as council officials. It is the personal responsibility of council officials to comply with the standards in the code and regularly review their personal circumstances with this in mind.

Failure by a councillor to comply with the standards of conduct prescribed under this code constitutes misconduct for the purposes of the *Local Government Act 1993* (the Act). The Act provides for a range of penalties that may be imposed on councillors for misconduct, including suspension or disqualification from civic office.

Failure by a member of staff to comply with council's code of conduct may give rise to disciplinary action.

A set of guidelines has also been developed to assist councils to review and enhance their codes of conduct. The guidelines support this code and provide further information and examples on the provisions in this code.

PART 2 PURPOSE OF THE CODE OF CONDUCT

The Model Code of Conduct sets the minimum requirements of conduct for council officials in carrying out their functions. The Model Code is prescribed by regulation.

The Model Code of Conduct has been developed to assist council officials to:

- understand the standards of conduct that are expected of them
- enable them to fulfil their statutory duty to act honestly and exercise a reasonable degree of care and diligence (section 439)
- act in a way that enhances public confidence in the integrity of local government.

PART 3 GENERAL CONDUCT OBLIGATIONS

General conduct

- 3.1 You must not conduct yourself in carrying out your functions in a manner that is likely to bring the council or holders of civic office into disrepute. Specifically, you must not act in a way that:
- a) contravenes the Act, associated regulations, council's relevant administrative requirements and policies
 - b) is detrimental to the pursuit of the charter of a council
 - c) is improper or unethical
 - d) is an abuse of power or otherwise amounts to misconduct
 - e) causes, comprises or involves intimidation, harassment or verbal abuse
 - f) causes, comprises or involves discrimination, disadvantage or adverse treatment in relation to employment
 - g) causes, comprises or involves prejudice in the provision of a service to the community. (*Schedule 6A*)
- 3.2 You must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions under the Act or any other Act. (*section 439*)
- 3.3 You must treat others with respect at all times.

Fairness and equity

- 3.4 You must consider issues consistently, promptly and fairly. You must deal with matters in accordance with established procedures, in a non-discriminatory manner.
- 3.5 You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case. You must not take irrelevant matters or circumstances into consideration when making decisions.

Harassment and discrimination

- 3.6 You must not harass, discriminate against, or support others who harass and discriminate against colleagues or members of the public. This includes, but is not limited to harassment and discrimination on the grounds of sex, pregnancy, age, race, responsibilities as a carer, marital status, disability, homosexuality, transgender grounds or if a person has an infectious disease.

Development decisions

- 3.7 You must ensure that development decisions are properly made and that parties involved in the development process are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the development assessment process.
- 3.8 In determining development applications, you must ensure that no action, statement or communication between yourself and applicants or objectors

conveys any suggestion of willingness to provide improper concessions or preferential treatment.

Binding caucus votes

3.9 You must not participate in binding caucus votes.

3.10 For the purposes of clause 3.9, a binding caucus vote is a process whereby a group of councillors establish a predetermined position on a matter before the council by way of a vote or other means that has the effect of compelling members of the group to vote on that matter in accordance with that position regardless of the merits of the matter or any personal views members of the group may have on the matter.

3.11 Clause 3.9 does not prohibit councillors from discussing a matter before the council prior to considering the matter in question at a council meeting.

PART 4 CONFLICT OF INTERESTS

- 4.1 A conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty.
- 4.2 You must avoid or appropriately manage any conflict of interests. The onus is on you to identify a conflict of interests and take the appropriate action to manage the conflict in favour of your public duty.
- 4.3 Any conflict of interests must be managed to uphold the probity of council decision-making. When considering whether or not you have a conflict of interests, it is always important to think about how others would view your situation.
- 4.4 Private interests can be of two types: pecuniary or non-pecuniary.

What is a pecuniary interest?

- 4.5 A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. (*section 442*)
- 4.6 A person will also be taken to have a pecuniary interest in a matter if that person's spouse or de facto partner or a relative of the person or a partner or employer of the person, or a company or other body of which the person, or a nominee, partner or employer of the person is a member, has a pecuniary interest in the matter. (*section 443*)
- 4.7 Pecuniary interests are regulated by Chapter 14, Part 2 of the Act. The Act requires that:
 - a) councillors and designated persons lodge an initial and an annual written disclosure of interests that could potentially be in conflict with their public or professional duties (*section 449*)
 - b) councillors and members of council committees disclose an interest and the nature of that interest at a meeting, leave the meeting and be out of sight of the meeting and not participate in discussions or voting on the matter (*section 451*)
 - c) designated persons immediately declare, in writing, any pecuniary interest. (*section 459*)
- 4.8 Designated persons are defined at section 441 of the Act, and include, but are not limited to, the general manager and other senior staff of the council.
- 4.9 Where you are a member of staff of council, other than a designated person (as defined by section 441), you must disclose in writing to your supervisor or the general manager, the nature of any pecuniary interest you have in a matter you are dealing with as soon as practicable.

What is a non-pecuniary conflict of interests?

4.10 Non-pecuniary interests are private or personal interests the council official has that do not amount to a pecuniary interest as defined in the Act. These commonly arise out of family, or personal relationships, or involvement in sporting, social or other cultural groups and associations and may include an interest of a financial nature.

4.11 The political views of a councillor do not constitute a private interest.

Managing non-pecuniary conflict of interests

4.12 Where you have a non-pecuniary interest that conflicts with your public duty, you must disclose the interest fully and in writing, even if the conflict is not significant. You must do this as soon as practicable.

4.13 If a disclosure is made at a council or committee meeting, both the disclosure and the nature of the interest must be recorded in the minutes. This disclosure constitutes disclosure in writing for the purposes of clause 4.12.

4.14 How you manage a non-pecuniary conflict of interests will depend on whether or not it is significant.

4.15 As a general rule, a non-pecuniary conflict of interests will be significant where a matter does not raise a pecuniary interest but it involves:

- a) a relationship between a council official and another person that is particularly close, for example, parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse, current or former spouse or partner, de facto or other person living in the same household
- b) other relationships that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship
- c) an affiliation between the council official and an organisation, sporting body, club, corporation or association that is particularly strong.

4.16 If you are a council official, other than a member of staff of council, and you have disclosed that a significant non-pecuniary conflict of interests exists, you must manage it in one of two ways:

- a) remove the source of the conflict, by relinquishing or divesting the interest that creates the conflict, or reallocating the conflicting duties to another council official
- b) have no involvement in the matter, by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in section 451(2) of the Act apply

4.17 If you determine that a non-pecuniary conflict of interests is less than significant and does not require further action, you must provide an explanation of why you consider that the conflict does not require further action in the circumstances.

- 4.18 If you are a member of staff of council, the decision on which option should be taken to manage a non-pecuniary conflict of interests must be made in consultation with your manager.
- 4.19 Despite clause 4.16(b), a councillor who has disclosed that a significant non-pecuniary conflict of interests exists may participate in a decision to delegate council's decision-making role to council staff, or appoint another person or body to make the decision in accordance with the law. This applies whether or not council would be deprived of a quorum if one or more councillors were to manage their conflict of interests by not voting on a matter in accordance with clause 4.16(b) above.

Reportable political donations

- 4.20 Councillors should note that matters before council involving political or campaign donors may give rise to a non-pecuniary conflict of interests.
- 4.21 Councillors should take all reasonable steps to ascertain the source of any reportable political donations.**
- 4.22 Where a councillor has received a direct benefit to their election campaign from a reportable political donation:**
- a) made by a major political donor or a related entity in the previous four years; and
 - b) where the major political donor or related entity has a matter before council,
- then the councillor must declare a non-pecuniary conflict of interests, disclose the nature of the interest, and manage the conflict of interests in accordance with clause 4.16(b).
- 4.23 The obligation to disclose and manage a conflict of interests under clause 4.22 will only arise where there is a direct and demonstrable connection between the reportable political donation in question and any benefit to the election campaign of the councillor.**
- 4.24 For the purposes of this Part (Part 4):**
- a) a "reportable political donation" is a "reportable political donation" for the purposes of section 86 of the *Election Funding, Expenditure and Disclosures Act 1981*,
 - b) a "major political donor" is a "major political donor" for the purposes of section 84 of the *Election Funding, Expenditure and Disclosures Act 1981*, and
 - c) a "related entity", is a "related body corporate" for the purposes of section 50 of the *Commonwealth Corporations Act 2001*.
- 4.25 Councillors should note that political **donations** below \$1,000, or political donations to a registered political party or group by which a councillor is endorsed, may still give rise to a non-pecuniary conflict of interests. Councillors should determine whether or not such conflicts are significant and take the appropriate action to manage them.

- 4.26 If a councillor has received a **direct benefit to their election campaign from a reportable political donation** of the kind referred to in clause 4.22, that councillor is not prevented from participating in a decision to delegate council's decision-making role to council staff or appointing another person or body to make the decision in accordance with the law (see clause 4.19 above).

Loss of quorum as a result of compliance with this Part

- 4.27 Where a majority of councillors are precluded from consideration of a matter under this Part (Part 4), the council must resolve to delegate consideration of the matter in question to another person.
- 4.28 **Where a majority of councillors are precluded from consideration of a matter under this part (Part 4), and the matter in question concerns the exercise of a function that may not be delegated under section 377 of the Act, the councillors may apply in writing to the Chief Executive to be exempted from complying with a requirement under this Part.**
- 4.29 **The Chief Executive will only exempt a councillor from complying with a requirement under this Part where**
- a) **compliance by councillors with a requirement under the Part in relation to a matter before the council will result in the loss of a quorum, and**
 - b) **the matter before the council relates to the exercise of a function of the council that may not be delegated under section 377 of the Act.**
- 4.30 **A councillor who would otherwise be precluded from participating in the consideration of a matter under this Part (Part 4) is permitted to participate in consideration of the matter, if:**
- a) **the matter is a proposal relating to**
 - i) **the making of a principal environmental planning instrument applying to the whole or a significant part of the council's area, or**
 - ii) **the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant part of the council's area, and**
 - b) **the councillor declares any interest they have in the matter that would otherwise have precluded their participation in consideration of the matter under this part.**

Other business or employment

- 4.31 If you are a member of staff of council considering outside employment or contract work that relates to the business of the council or that might conflict with your council duties, you must notify and seek the approval of the general manager in writing. (*section 353*)

4.32 As a member of staff, you must ensure that any outside employment or business you engage in will not:

- a) conflict with your official duties
- b) involve using confidential information or council resources obtained through your work with the council
- c) require you to work while on council duty
- d) discredit or disadvantage the council.

Personal dealings with council

4.33 You may have reason to deal with your council in your personal capacity (for example, as a ratepayer, recipient of a council service or applicant for a consent granted by council). You must not expect or request preferential treatment in relation to any matter in which you have a private interest because of your position. You must avoid any action that could lead members of the public to believe that you are seeking preferential treatment.

PART 5 PERSONAL BENEFIT

For the purposes of this section, a reference to a gift or benefit does not include a political donation or contribution to an election fund that is subject to the provisions of the relevant election funding legislation.

Gifts and benefits

- 5.1 You must avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to secure favourable treatment from you or from the council.
- 5.2 You must take all reasonable steps to ensure that your immediate family members do not receive gifts or benefits that give rise to the appearance of being an attempt to secure favourable treatment. Immediate family members ordinarily include parents, spouses, children and siblings.

Token gifts and benefits

- 5.3 Generally speaking, token gifts and benefits include:
- a) free or subsidised meals, beverages or refreshments provided in conjunction with:
 - iii) the discussion of official business
 - iv) council work related events such as training, education sessions, workshops
 - v) conferences
 - vi) council functions or events
 - vii) social functions organised by groups, such as council committees and community organisations.
 - b) invitations to and attendance at local social, cultural or sporting events
 - c) gifts of single bottles of reasonably priced alcohol to individual council officials at end of year functions, public occasions or in recognition of work done (such as providing a lecture/training session/address)
 - d) ties, scarves, coasters, tie pins, diaries, chocolates or flowers.

Gifts and benefits of value

- 5.4 Notwithstanding clause 5.3, gifts and benefits that have more than a token value include, but are not limited to, tickets to major sporting events (such as state or international cricket matches or matches in other national sporting codes (including the NRL, AFL, FFA, NBL)), corporate hospitality at a corporate facility at major sporting events, discounted products for personal use, the frequent use of facilities such as gyms, use of holiday homes, free or discounted travel.

How are offers of gifts and benefits to be dealt with?

- 5.5 You must not:
- a) seek or accept a bribe or other improper inducement
 - b) seek gifts or benefits of any kind
 - c) accept any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your public duty
 - d) accept any gift or benefit of more than token value

e) accept an offer of cash or a **cash-like gift**, regardless of the amount.

5.6 For the purposes of clause 5.5(e), a “cash-like gift” includes but is not limited to gift vouchers, credit cards, debit cards with credit on them, prepayments such as phone or internal credit, memberships or entitlements to discounts.

5.7 Where you receive a gift or benefit of more than token value that cannot reasonably be refused or returned, this must be disclosed promptly to your supervisor, the Mayor or the general manager. The recipient, supervisor, Mayor or general manager must ensure that any gifts or benefits of more than token value that are received are recorded in a Gifts Register. The gift or benefit must be surrendered to council, unless the nature of the gift or benefit makes this impractical.

Improper and undue influence

5.8 You must not use your position to influence other council officials in the performance of their public or professional duties to obtain a private benefit for yourself or for somebody else. A councillor will not be in breach of this clause where they seek to influence other council officials through the appropriate exercise of their representative functions.

5.9 You must not take advantage (or seek to take advantage) of your status or position with or of functions you perform for council in order to obtain a private benefit for yourself or for any other person or body.

PART 6 RELATIONSHIP BETWEEN COUNCIL OFFICIALS

Obligations of councillors and administrators

- 6.1 Each council is a body corporate. The councillors or administrator/s are the governing body of the council. The governing body has the responsibility of directing and controlling the affairs of the council in accordance with the Act and is responsible for policy determinations, for example, those relating to industrial relations policy.
- 6.2 Councillors or administrators must not:
- a) direct council staff other than by giving appropriate direction to the general manager in the performance of council's functions by way of council or committee resolution, or by the Mayor or administrator exercising their power under section 226 of the Act (*section 352*)
 - b) in any public or private forum, direct or influence or attempt to direct or influence, any other member of the staff of the council or a delegate of the council in the exercise of the functions of the member or delegate (*Schedule 6A of the Act*)
 - c) contact a member of the staff of the council on council related business unless in accordance with the policy and procedures governing the interaction of councillors and council staff that have been authorised by the council and the general manager
 - d) contact or issue instructions to any of council's contractors or tenderers, including council's legal advisers, unless by the Mayor or administrator exercising their power under section 226 of the Act. **This does not apply to council's external auditors or the Chair of council's audit committee who, in the course of their work, may be provided with information by individual councillors.**

Obligations of staff

- 6.3 The general manager is responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation of the decisions of the council without delay.
- 6.4 Members of staff of council must:
- a) give their attention to the business of council while on duty
 - b) ensure that their work is carried out efficiently, economically and effectively
 - c) carry out lawful directions given by any person having authority to give such directions
 - d) give effect to the lawful decisions, policies, and procedures of the council, whether or not the staff member agrees with or approves of them
 - e) **ensure that any participation in political activities does not conflict with their primary duty to serve the council in a politically neutral manner.**

Obligations during meetings

- 6.5 You must act in accordance with council's Code of Meeting Practice, if council has adopted one, and the *Local Government (General) Regulation 2005* during council and committee meetings.
- 6.6 You must show respect to the chair, other council officials and any members of the public present during council and committee meetings or other formal proceedings of the council.

Inappropriate interactions

- 6.7 You must not engage in any of the following inappropriate interactions:
- a) Councillors and administrators approaching staff and staff organisations to discuss individual staff matters and not broader industrial policy issues.
 - b) Council staff approaching councillors and administrators to discuss individual staff matters and not broader industrial policy issues.
 - c) Council staff refusing to give information that is available to other councillors to a particular councillor.
 - d) Councillors and administrators who have lodged a development application with council, discussing the matter with council staff in staff-only areas of the council.
 - e) Councillors and administrators being overbearing or threatening to council staff.
 - f) Councillors and administrators making personal attacks on council staff in a public forum.
 - g) Councillors and administrators directing or pressuring council staff in the performance of their work, or recommendations they should make.
 - h) Council staff providing ad hoc advice to councillors and administrators without recording or documenting the interaction as they would if the advice was provided to a member of the community.
 - i) Council staff meeting with **development applicants or objectors to development applications** alone AND outside office hours to discuss development applications or proposals.
 - j) Councillors attending on-site inspection meetings with lawyers and/or consultants engaged by council associated with current or proposed legal proceedings unless permitted to do so by council's general manager or, in the case of the Mayor or administrator, exercising their power under section 226 of the Act.
- 6.8 It is appropriate that staff and staff organisations have discussions with councillors in relation to matters of industrial policy.
- 6.9 **Notwithstanding clause 6.7, councillors and administrators may discuss issues with the general manager relating to the general manager's employment and performance provided they do so in a manner that is consistent with the requirements of the general manager's employment contract.**

PART 7 ACCESS TO INFORMATION AND COUNCIL RESOURCES

Councillor and administrator access to information

- 7.1 The general manager and public officer are responsible for ensuring that members of the public, councillors and administrators can gain access to the documents available under the *Government Information (Public Access) Act 2009*.**
- 7.2 The general manager must provide councillors and administrators with information sufficient to enable them to carry out their civic office functions.
- 7.3 Members of staff of council must provide full and timely information to councillors and administrators sufficient to enable them to carry out their civic office functions and in accordance with council procedures.
- 7.4 Members of staff of council who provide any information to a particular councillor in the performance of their civic duties must also make it available to any other councillor who requests it and in accordance with council procedures.
- 7.5 Councillors and administrators who have a private (as distinct from civic) interest in a document of council have the same rights of access as any member of the public.

Councillors and administrators to properly examine and consider information

- 7.6 Councillors and administrators must properly examine and consider all the information provided to them relating to matters that they are dealing with to enable them to make a decision on the matter in accordance with council's charter.

Refusal of access to documents

- 7.7 Where the general manager and public officer determine to refuse access to a document sought by a councillor or administrator they must act reasonably. In reaching this decision they must take into account whether or not the document sought is required for the councillor or administrator to perform their civic duty (see clause 7.2). The general manager or public officer must state the reasons for the decision if access is refused.

Use of certain council information

- 7.8 In regard to information obtained in your capacity as a council official, you must:
- a) only access council information needed for council business
 - b) not use that council information for private purposes
 - c) not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for yourself, or any other person or body, from any information to which you have by virtue of your office or position with council
 - d) only release council information in accordance with established council policies and procedures and in compliance with relevant legislation.

Use and security of confidential information

7.9 You must maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible.

7.10 In addition to your general obligations relating to the use of council information, you must:

- a) protect confidential information
- b) only release confidential information if you have authority to do so
- c) only use confidential information for the purpose it is intended to be used
- d) not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person
- e) not use confidential information with the intention to cause harm or detriment to your council or any other person or body
- f) not disclose any information discussed during a confidential session of a council meeting.

Personal information

7.11 When dealing with personal information you must comply with:

- a) *the Privacy and Personal Information Protection Act 1998,*
- b) *the Health Records and Information Privacy Act 2002,*
- c) the Information Protection Principles and Health Privacy Principles,
- d) council's privacy management plan,
- e) the Privacy Code of Practice for Local Government

Use of council resources

7.12 You must use council resources ethically, effectively, efficiently and carefully in the course of your official duties, and must not use them for private purposes (except when supplied as part of a contract of employment) unless this use is lawfully authorised and proper payment is made where appropriate.

7.13 Union delegates and consultative committee members may have reasonable access to council resources for the purposes of carrying out their industrial responsibilities, including but not limited to:

- a) the representation of members with respect to disciplinary matters
- b) the representation of employees with respect to grievances and disputes
- c) functions associated with the role of the local consultative committee.

7.14 You must be scrupulous in your use of council property, including intellectual property, official services and facilities, and must not permit their misuse by any other person or body.

7.15 You must avoid any action or situation that could create the appearance that council property, official services or public facilities are being improperly used for your benefit or the benefit of any other person or body.

- 7.16 You must not use council property or facilities for the purpose of assisting your election campaign or the election campaign of others unless the property or facilities are otherwise available for use or hire by the public and any publicly advertised fee is paid for use of the property or facility.**
- 7.17 You must not use council letterhead, council crests and other information that could give the appearance it is official council material for:**
- a) the purpose of assisting your election campaign or the election campaign of others, or**
 - b) for other non-official purposes.**
- 7.18 You must not convert any property of the council to your own use unless properly authorised.
- 7.19 You must not use council's computer resources to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature.

Councillor access to council buildings

- 7.20 Councillors and administrators are entitled to have access to the council chamber, committee room, mayor's office (subject to availability), councillors' rooms, and public areas of council's buildings during normal business hours and for meetings. Councillors and administrators needing access to these facilities at other times must obtain authority from the general manager.
- 7.21 Councillors and administrators must not enter staff-only areas of council buildings without the approval of the general manager (or delegate) or as provided in the procedures governing the interaction of councillors and council staff.
- 7.22 Councillors and administrators must ensure that when they are within a staff area they avoid giving rise to the appearance that they may improperly influence council staff decisions.

PART 8 MAINTAINING THE INTEGRITY OF THIS CODE

8.1 You must not conduct yourself in a manner that is likely to undermine confidence in the integrity of this code or its administration.

Complaints made for an improper purpose

8.2 You must not make a complaint or cause a complaint to be made for an improper purpose.

8.3 For the purposes of clause 8.2, a complaint is made for an improper purpose where it is trivial, frivolous, vexatious or not made in good faith, or where it otherwise lacks merit and has been made substantially for one or more of the following purposes:

- a) to intimidate or harass another council official,
- b) to damage another council official's reputation,
- c) to obtain a political advantage,
- d) to influence a council official in the exercise of their official functions or to prevent or disrupt the exercise of those functions,
- e) to influence the council in the exercise of its functions or to prevent or disrupt the exercise of those functions,
- f) to avoid disciplinary action under this code,
- g) to take reprisal action against a person for making a complaint under this code except as may be otherwise specifically permitted under this code,
- h) to take reprisal action against a person for exercising a function prescribed under the procedures for the administration of this code except as may be otherwise specifically permitted under this code,
- i) to prevent or disrupt the effective administration of this code.

Detrimental action

8.4 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for a complaint they have made under this code except as may be otherwise specifically permitted under this code.

8.5 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for any function they have exercised under this code except as may be otherwise specifically permitted under this code.

8.6 For the purposes of clauses 8.4 and 8.5 detrimental action is an action causing, comprising or involving any of the following:

- a) injury, damage or loss,
- b) intimidation or harassment,
- c) discrimination, disadvantage or adverse treatment in relation to employment,
- d) dismissal from, or prejudice in, employment,
- e) disciplinary proceedings.

Compliance with requirements under this code

- 8.7 You must not engage in conduct that is calculated to impede or disrupt the consideration of a matter under this code.
- 8.8 You must comply with a reasonable and lawful request made by a person exercising a function under this code.
- 8.9 You must comply with a practice ruling made by the Division of Local Government.
- 8.10 Where you are a councillor, you must comply with any council resolution requiring you to take action as a result of a breach.

Disclosure of information about the consideration of a matter under this code

- 8.11 You must report breaches of this code in accordance with the reporting requirements under this code.
- 8.12 You must not make allegations of suspected breaches of this code at council meetings or in other public forums.
- 8.13 You must not disclose information about the consideration of a matter under this code unless the disclosure is otherwise permitted under this code.

Complaints alleging a breach of this part

- 8.14 Complaints alleging a breach of this Part (Part 8) by a councillor, the general manager or an administrator are to be made to the Division of Local Government.
- 8.15 Complaints alleging a breach of this Part (Part 8) by other council officials are to be made to the general manager for consideration under the procedures prescribed under the Regulation for the administration of this code.

PART 9 DEFINITIONS

In the Model Code of Conduct the following definitions apply:

the Act	the Local Government Act 1993
act of disorder	see the definition in clause 256 of the <i>Local Government (General) Regulation 2005</i>
administrator	a person appointed under section 256 of the Act
Chief Executive	Chief Executive of the Division of Local Government, Department of Premier and Cabinet
conflict of interests	a conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty.
council official	includes councillors, members of staff of council, administrators appointed under section 256 of the Act, members of council committees, conduct reviewers and delegates of council
delegate of council	a person or body, and the individual members of that body, to whom a function of council is delegated
designated person	see the definition in section 441 of the Act
election campaign	includes council, State and Federal election campaigns
personal information	information or an opinion about a person whose identity is apparent, or can be determined from the information or opinion
the Regulation	the Local Government (General) Regulation 2005

The term “you” used in the Model Code of Conduct refers to council officials.

The phrase, “this code” used in the Model Code of Conduct refers also to the procedures for the administration of the Model Code of Conduct prescribed under the Local Government (General) Regulation 2005.



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

May 2012

TABLE OF CONTENTS

PART 1	INTRODUCTION	37
PART 2	DEFINITIONS	37
PART 3	ADMINISTRATIVE FRAMEWORK	38
PART 4	HOW MAY CODE OF CONDUCT COMPLAINTS BE MADE?	40
PART 5	HOW ARE CODE OF CONDUCT COMPLAINTS TO BE MANAGED?	41
PART 6	PRELIMINARY ASSESSMENT	47
PART 7	OPERATIONS OF CONDUCT REVIEW COMMITTEES	51
PART 8	INVESTIGATIONS	53
PART 9	RIGHTS OF REVIEW	61
PART 10	PROCEDURAL IRREGULARITIES	63
PART 11	PRACTICE DIRECTIONS	63
PART 12	REPORTING ON COMPLAINTS STATISTICS	64

PART 1 INTRODUCTION

These procedures (“the Model Code Procedures”) are prescribed for the purposes of the administration of the Model Code of Conduct for Local Councils in NSW (“the Model Code of Conduct”). Both the Model Code and Model Code Procedures are made under section 440 of the *Local Government Act 1993* (“the Act”) and the Local Government (General) Regulation 2005 (“the Regulation”).

Section 440 of the Act requires every council to adopt a code of conduct and procedures for the administration of the code of conduct that incorporate the provisions of the Model Code and Model Code Procedures respectively.

In adopting procedures for the administration of their adopted codes of conduct, councils may supplement the prescribed Model Code Procedures. However provisions of a council’s adopted procedures that are not consistent with those prescribed under the Model Code Procedures will have no effect.

A set of guidelines has also been developed to assist councils in the implementation of these procedures.

PART 2 DEFINITIONS

For the purposes of the procedures, the following definitions apply:

“the Act”	the Local Government Act 1993
“administrator”	a person appointed under section 256 of the Act.
“code of conduct”	a code of conduct adopted under section 440 of the Act
“code of conduct complaint”	a complaint that alleges conduct on the part of a council official acting in their official capacity that on its face, if proven, would constitute a breach of the standards of conduct prescribed under the council’s code of conduct.
“complainant”	a person who makes a code of conduct complaint.
“complainant councillor”	a councillor who makes a code of conduct complaint.
“complaints coordinator”	a person appointed by the general manager under these procedures as a complaints coordinator.

“conduct reviewer”	a person appointed under these procedures to review allegations of breaches of the code of conduct by councillors or the general manager.
“council committee member”	a person other than a councillor or member of staff of a council who is a member of a committee of the council
“council official”	includes councillors, members of staff of council, administrators, council committee members, conduct reviewers and delegates of council.
“delegate of council”	a person (other than a councillor or member of staff of a council) or body and the individual members of that body to whom a function of the council is delegated.
“the Division”	the Division of Local Government, Department of Premier and Cabinet
“investigator”	a conduct reviewer or conduct review committee
“the Regulation”	the Local Government (General) Regulation 2005
“subject person”	a person whose conduct is the subject of investigation by a conduct reviewer or conduct review committee under these procedures

PART 3 ADMINISTRATIVE FRAMEWORK

The establishment of a panel of conduct reviewers

- 3.1 The council must by resolution establish a panel of conduct reviewers.
- 3.2 The council may by resolution enter into an arrangement with one or more other councils to share a panel of conduct reviewers.
- 3.3 The panel of conduct reviewers is to be established following a public expression of interest process.
- 3.4 An expression of interest for members of the council's panel of conduct reviewers must, at a minimum, be advertised locally and in the Sydney metropolitan area.

- 3.5 To be eligible to be a member of a conduct review committee, a person must, at a minimum, meet the following requirements:
- a) knowledge of the local government context, and
 - b) knowledge of investigative processes including but not limited to procedural fairness requirements and the requirements of the Public Interest Disclosures Act 1994, and
 - c) knowledge and experience of one or more of the following:
 - i) investigations, or
 - ii) law, or
 - iii) public administration, or
 - iv) public sector ethics, or
 - v) alternative dispute resolution, and
 - d) meet the eligibility requirements for membership of a panel of conduct reviewers under clause 3.6.
- 3.6 A person will not be eligible to be a member of the panel of conduct reviewers if they are
- a) a councillor, or
 - b) a nominee for election as a councillor, or
 - c) an administrator, or
 - d) an employee of a council, or
 - e) a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or
 - f) a nominee for election as a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or
 - g) a person who has a conviction for an indictable offence that is not an expired conviction.
- 3.7 A person is not precluded from being a member of the council's panel of conduct reviewers if they are a member of another council's panel of conduct reviewers.
- 3.8 A panel of conduct reviewers established under this Part is to have a term of up to four years.
- 3.9 The council may terminate the panel of conduct reviewers at any time by resolution.
- 3.10 When the term of the conduct reviewers concludes or is terminated, the council must establish a new panel of conduct reviewers in accordance with the requirements of this Part.
- 3.11 A person who was a member of a previous panel of conduct reviewers established by the council may be a member of subsequent panels of conduct reviewers established by the council.

The appointment of complaints coordinators

- 3.12 The general manager must appoint a senior and suitably qualified member of staff of the council to act as a complaints coordinator.

- 3.13 The general manager may appoint other senior and suitably qualified members of staff to act as alternates to the complaints coordinator.
- 3.14 The general manager must not undertake the role of complaints coordinator.
- 3.15 The person appointed as complaints coordinator must also be a nominated disclosures officer appointed for the purpose of receiving and managing reports of wrongdoing under the *Public Interest Disclosures Act 1994*.
- 3.16 The role of the complaints coordinator is to:
- a) coordinate the management of complaints made under the council's code of conduct,
 - b) liaise with and provide administrative support to a conduct reviewer or conduct review committee,
 - c) liaise with the Division of Local Government, and
 - d) arrange the annual reporting of code of conduct complaints statistics.

PART 4 HOW MAY CODE OF CONDUCT COMPLAINTS BE MADE?

What is a "code of conduct complaint"?

- 4.1 For the purpose of these procedures, a code of conduct complaint is a complaint that alleges conduct on the part of a council official acting in their official capacity that on its face, if proven, would constitute a breach of the standards of conduct prescribed under the council's code of conduct.
- 4.2 Only code of conduct complaints are to be dealt with under these procedures.

When must a code of conduct complaint be made?

- 4.3 A code of conduct complaint must be made within three months of the alleged conduct occurring or within three months of the complainant becoming aware of the alleged conduct.

How may a code of conduct about a council official other than the general manager be made?

- 4.4 All code of conduct complaints other than those relating to the general manager are to be made to the general manager in writing.
- 4.5 Where a code of conduct complaint about a council official other than the general manager cannot be made in writing, the complaint must be

confirmed with the complainant in writing as soon as possible after the receipt of the complaint.

- 4.6 In making a code of conduct complaint about a council official other than the general manager, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.
- 4.7 The general manager or, where the complaint is referred to a conduct reviewer, the conduct reviewer, will consider the complainant's preferences in deciding how to deal with the complaint.
- 4.8 Notwithstanding clauses 4.4 and 4.5, where the general manager becomes aware of a possible breach of the council's code of conduct, he or she may initiate the process for the consideration of the matter under these procedures without a written complaint.

How may a code of conduct complaint about the general manager be made?

- 4.9 Code of conduct complaints about the general manager are to be made to the Mayor in writing.
- 4.10 Where a code of conduct complaint about the general manager can not be made in writing, the complaint must be confirmed with the complainant in writing as soon as possible after the receipt of the complaint.
- 4.11 In making a code of conduct complaint about the general manager, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.
- 4.12 The Mayor or, where the complaint is referred to a conduct reviewer, the conduct reviewer, will consider the complainant's preferences in deciding how to deal with the complaint.
- 4.13 Notwithstanding clauses 4.9 and 4.10, where the Mayor becomes aware of a possible breach of the council's code of conduct by the general manager, he or she may initiate the process for the consideration of the matter under these procedures without a written complaint.

PART 5 HOW ARE CODE OF CONDUCT COMPLAINTS TO BE MANAGED?

How are code of conduct complaints about staff (other than the general manager) to be dealt with?

- 5.1 The general manager is responsible for making enquiries or causing enquiries to be made into code of conduct complaints about members of staff of council and for determining the outcome of such complaints.

- 5.2 Where the general manager decides not to make enquiries into a code of conduct complaint about a member of staff, the general manager will give the complainant reasons in writing for their decision.
- 5.3 Without limiting clause 5.2, the general manager may decide not to enquire into the matter on grounds that the complaint is trivial, frivolous, vexatious or not made in good faith.
- 5.4 Enquiries made into staff conduct that might give rise to disciplinary action must occur in accordance with the relevant industrial instrument and make provision for procedural fairness including the right of an employee to be represented by their union.
- 5.5 Sanctions for staff depend on the severity, scale and importance of the breach and must be determined in accordance with any relevant industrial instruments or contracts.

How are code of conduct complaints about delegates of council and council committee members to be dealt with?

- 5.6 The general manager is responsible for making enquiries or causing enquiries to be made into code of conduct complaints about delegates of council and council committee members and for determining the outcome of such complaints.
- 5.7 Where the general manager decides not to make enquiries into a code of conduct complaint about a delegate of council or a council committee member, the general manager will give the complainant reasons in writing for their decision.
- 5.8 Without limiting clause 5.7, the general manager may decide not to enquire into the matter on grounds that the complaint is trivial, frivolous, vexatious or not made in good faith.
- 5.9 Sanctions for delegates of council and/or members of council committees depend on the severity, scale and importance of the breach and may include one or more of the following:
 - a) censure,
 - b) requiring the person to apologise to any person adversely affected by the breach,
 - c) prosecution for any breach of the law,
 - d) removing or restricting the person's delegation,
 - e) removing the person from membership of the relevant council committee, or
 - f) revising any of council's policies or procedures
- 5.10 Prior to imposing a sanction against a delegate of council or a council committee member under clause 5.9, the general manager or any person making enquiries on behalf of the general manager must comply with the requirements of procedural fairness. In particular:

- a) the substance of the allegation (including the relevant provision/s of council's code of conduct that the alleged conduct is in breach of) must be put to the person the subject of the allegation, and
- b) the person must be given an opportunity to respond to the allegation, and
- c) the general manager must consider the person's response in deciding whether to impose a sanction under clause 5.9.

How are code of conduct complaints about conduct reviewers to be dealt with?

- 5.11 The general manager is to refer all code of conduct complaints about conduct reviewers to the Division for its consideration.
- 5.12 The general manager must notify the complainant of the referral of their complaint in writing.
- 5.13 The general manager must implement any recommendation made by the Division as a result of its consideration of a code of conduct complaint about a conduct reviewer.

How are code of conduct complaints about administrators to be dealt with?

- 5.14 The general manager is to refer all code of conduct complaints about administrators to the Division for its consideration.
- 5.15 The general manager must notify the complainant of the referral of their complaint in writing.

How are code of conduct complaints about councillors to be dealt with?

- 5.16 The general manager is to refer the following code of conduct complaints about councillors to the Division:
 - a) complaints alleging a breach of the pecuniary interest provisions of the Act,
 - b) complaints alleging a failure to comply with a requirement under the code of conduct to disclose and appropriately manage conflicts of interests arising from reportable political donations (see section 328B),
 - c) complaints alleging a breach of Part 8 of the code of conduct relating to the maintenance of the integrity of the code, and
 - d) complaints the subject of a special complaints management arrangement with the Division under clause 5.39.
- 5.17 Where the general manager refers a complaint to the Division under clause 5.16, the general manager must notify the complainant of the referral in writing.

- 5.18 Where the general manager considers it to be practicable and appropriate to do so, he or she may seek to resolve code of conduct complaints about councillors, other than those requiring referral to the Division under clause 5.16, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology.
- 5.19 Where the general manager resolves a code of conduct complaint under clause 5.18 to their satisfaction, the general manager must notify the complainant in writing of the steps taken to resolve the complaint and this will serve to finalise the consideration of the matter under these procedures.
- 5.20 The general manager must refer all code of conduct complaints about councillors other than those referred to the Division under clause 5.16 or resolved under clause 5.18 to the complaints coordinator.

How are code of conduct complaints about the general manager to be dealt with?

- 5.21 The Mayor is to refer the following code of conduct complaints about the general manager to the Division:
- a) complaints alleging a breach of the pecuniary interest provisions of the Act,
 - b) complaints alleging a breach of Part 8 of the code of conduct relating to the maintenance of the integrity of the code, and
 - c) complaints the subject of a special complaints management arrangement with the Division under clause 5.39.
- 5.22 Where the Mayor refers a complaint to the Division under clause 5.21, the Mayor must notify the complainant of the referral in writing.
- 5.23 Where the Mayor considers it to be practicable and appropriate to do so, he or she may seek to resolve code of conduct complaints about the general manager, other than those requiring referral to the Division under clause 5.16, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology.
- 5.24 Where the Mayor resolves a code of conduct complaint under clause 5.23 to their satisfaction, the Mayor must notify the complainant in writing of the steps taken to resolve the complaint and this will serve to finalise the consideration of the matter under these procedures.
- 5.25 The Mayor must refer all code of conduct complaints about the general manager other than those referred to the Division under clause 5.21 or resolved under clause 5.23 to the complaints coordinator.