

# Fraud Control Policy

<b>Date policy was adopted:</b>		<b>CEO Signature and date</b>  <i>M. J. Thompson</i>
<b>Resolution number:</b>		
<b>Next Policy review date:</b>		
<b>Reference number:</b>		
<b>Strategic Pillar</b>		
<b>Responsible Branch</b>		27 February 2020

# Fraud Control

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## 1. OUTCOMES:

- 1.1. Council has zero tolerance to fraud, and will address the risk of fraud through maintaining a control framework that:
- promotes an ethical culture
  - clearly articulates the roles and responsibilities of Councillors and Council employees for addressing fraud and fraud risks
  - maintains controls to prevent the occurrence of fraud
  - maintains controls to detect fraud and potential fraud
  - ensures Councillors, employees and contracted providers are aware of Council's stance on fraud and their fraud control responsibilities
  - provides mechanisms for instances of fraud or suspected fraud to be reported by Councillors, employees, contracted service providers and the public
  - ensures all instances of fraud or suspected fraud are effectively investigated, and responded to.

## 2. POLICY:

- 2.1 The Chief Executive Officer will ensure that Council maintains a fraud control framework that is aligned to the structure, operations and fraud risk profile of Council.
- 2.2 The Executive and managers will ensure that Council's fraud control framework is implemented and maintained within their area of responsibility and authority.
- 2.3 A program of fraud risk assessments and fraud control health checks will be conducted to ensure Council's fraud control framework effectively addresses its fraud risk profile.
- 2.4 Results of fraud risk assessments and fraud control health checks are to be used to develop and maintain a Fraud Control and Corruption Control Plan that will detail specific actions to be taken to ensure Council's fraud control framework provides for the effective prevention and detection of, and response to, fraud.
- 2.5 Council will ensure the identity of any person, or persons, providing information, and the nature of that information in relation to any fraud or alleged fraud is kept confidential. Council will ensure the privacy of employees, including contracted providers, will be protected at all times.
- 2.6 All persons reporting or providing information in relation to fraudulent or potentially fraudulent acts will be made aware of the Public Interest Disclosures Act 1994, the protections it provides, and mechanisms for providing information in accordance with that Act.
- 2.7 Alleged fraudulent activity by Councillors or Council staff that are the subject of a Public Interest Disclosure will be dealt with in accordance with the Code of Conduct investigation procedures. However, all other provisions of Council's 'Public Interest Disclosure – Internal Reporting' Policy apply.

# Fraud Control

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- 2.8 Council will investigate all instances of fraud or suspected fraud, and will refer matters to the NSW Police Service or the Independent Commission Against Corruption as appropriate. Matters involving Council staff will be referred for possible action in accordance with Council's Code of Conduct and disciplinary policies. Council will take action to recover any losses due to fraud when it is assessed appropriate to do so.
- 2.9 Council will maintain insurance aligned to its fraud risk profile, cover available and its overall policy with regard to insurance cover.
- 2.10 In developing and maintaining its fraud control framework, Council will apply requirements and guidance detailed in Australian Standard AS 8001 - 2008 'Fraud and Corruption Control' and the 'Fraud Control Improvement Kit' issued by the Audit Office of New South Wales.

### 3. SCOPE OF THE POLICY:

- 3.1 This policy applies to all Councillors, Council staff and activities of Council.

### 4. DEFINITIONS:

**'Fraud'** is as an act on behalf of a person that is deceptive or deceitful in some way in that it causes them to receive a benefit that they are not entitled to, causing some other person or organisation to suffer some disadvantage. Fraudulent acts include, but are not limited to: acts of omission, theft, the making of false statements, evasion, and manipulation of information.

**'Corrupt conduct'**, which includes fraud, is defined in section 8 of the Independent Commission Against Corruption Act 1988, as:

“(1)

- (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.

## Fraud Control

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- (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.”

# Fraud Control

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Definitions in the Independent Commission Against Corruption Act 1988 are:

**“public official”** means an individual having public official functions or acting in a public official capacity, and includes any of the following:

- (a) an individual who constitutes or is a member of a public authority,
- (b) a person in the service of the Crown or of a public authority,”

**“public authority”** includes the following:

- (a) a local government authority”

## 5. LEGISLATIVE OBLIGATIONS AND/OR RELEVANT STANDARDS:

5.1 Council is required to comply with the following legislative and mandatory directives, audit and regulatory requirements and best practice guidelines impacting on local government operations:

- Local Government Act 1993
- Office of Local Government circulars in relation to fraud control
- Independent Commission Against Corruption Act 1988
- NSW Crimes Act 1900
- Internal Audit Guidelines issued by the Office of Local Government
- Public Interest Disclosures Act 1994
- Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW.

5.2 This policy is to be read in conjunction with relevant Council policies including:

- Code of Conduct
- Code of Meeting Practice
- Complaint Handling Policy
- Fraud and Corruption Management Plan
- Gifts and Benefits Policy
- Public Interest Disclosure Act – Internal Reporting Policy
- Procurement Policy
- Reporting Legal Matters Policy
- Statement of Business Ethics.

# Fraud Control

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## 6. CONTENT:

### 6.1 Council's attitude to fraud

- 6.1.1 Council has zero tolerance for fraud, and will implement all reasonable measures needed to eliminate the opportunity for fraudulent acts to be committed, ensure any fraudulent or potentially fraudulent acts are detected, reported to appropriate Council staff and suitably investigated, and that appropriate disciplinary or recovery action is undertaken.
- 6.1.2 When appropriate or required by law, Council will refer matters to the New South Wales Police Service, or the Independent Commission Against Corruption.

### 6.2 Council's ethics framework

- 6.2.1 Councillors, administrators, members of staff of Council, independent conduct reviewers, members of Council committees and delegates of Council must comply with 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.
- 6.2.2 Council's Code of Meeting Practice details requirements for the conduct of meetings of Council and Council committees.
- 6.2.3 Council's Gifts and Benefits Policy applies to Councillors and staff in respect of the receipt of gifts and or benefits they may receive while in the course of performing their duties.
- 6.2.4 Council's Statement of Business Ethics details its commitment to serving the community with integrity, efficiency, fairness and impartiality, and articulates the expectations members of the community should have when interacting with Council.

### 6.3 Responsibilities for fraud control

- 6.3.1 The Chief Executive Officer is responsible for ensuring Council maintains a fraud control framework that effectively addresses fraud risks inherent to Council's activities and supports the ethical conduct of Council's activities. The framework will be developed and maintained with regard to contemporary standards and practices for the management of fraud, Council's obligations under the Local Government Act 1993 and other legislation, and any relevant guidance issued by the NSW government including the Office of Local Government.
- 6.3.2 Portfolio General Managers and Service Managers are accountable for ensuring the framework is implemented within their area of responsibility and authority.
- 6.3.3 Councillors and Council staff are to report all instances of fraud, or suspected fraud, in accordance with practices detailed in this policy.
- 6.3.4 Council's Audit, Risk and Improvement Committee is responsible for providing independent advice to Council and the Chief Executive Officer in relation to fraud control, Council's fraud control framework and any specific instances of fraud. In determining the annual Internal Audit program the Committee will have regard to Council's fraud risk profile and fraud control framework.

# Fraud Control

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## 6.4 Fraud prevention systems

- 6.4.1 Council will develop a Fraud and Corruption Control Plan that details specific actions to be taken to manage Council's fraud risks. This plan will be updated at least every two years to ensure its currency and relevance, and following any significant changes to Council's operations, structure, systems and practices, or operating environment.
- 6.4.2 A program of fraud risk assessments and fraud control health checks will be undertaken to inform development and update of the Plan. A fraud risk assessment will be conducted every two years or following any significant changes to systems, operations or procedures, to identify:
- frauds risks, whether their sources are internal or external to Council or from the collaboration of internal and external parties
  - controls in place to prevent or detect fraud
  - the severity of fraud risks
  - additional controls that are required to reduce fraud risks to tolerable levels.
- 6.4.3 Fraud risk assessments will be conducted in accordance with Council's Risk Management framework.
- 6.4.3 A fraud risk assessment will be conducted to inform the implementation of any new, or significantly revised Council system, and update the Fraud and Corruption Control Plan. Appropriate controls to support the prevention, detection and analysis of fraudulent transactions or acts are to be specified and implemented in all Council's systems and practices whether developed internally, procured from external suppliers, or procured externally and configured by Council staff.
- 6.4.3 Fraud health checks will be periodically undertaken to assess the level of staff awareness and understanding of Council's fraud control framework, including employee responsibilities in relation to identified or suspected fraud. The Fraud Control Plan will be updated as needed to address issues identified.
- 6.4.3 Council's Purchasing Policy will contain clauses that indicate to contractors and suppliers that Council does not condone fraudulent activity by them and encourage contractors and suppliers to report any suspected corrupt and fraudulent activity by Council, Councillors or Council staff.

## 6.5 Managing third parties

- 6.5.1 Council will perform pre-employment police checks when recruiting new employees, or where current employees are being engaged in a new position that presents a high risk of exposure to fraud risks, for the purpose of ensuring they are suitable for employment in the position. The pre-employment checks will also include any other checks considered necessary in relation to the activities the employee will be engaged in.
- 6.5.2 Council will take all reasonable steps to ensure the bona fides of suppliers and customers. This includes periodically reviewing and confirming the bona fides of continuing suppliers and customers. The nature and extent of checks undertaken will be commensurate with the risk posed to Council.
- 6.5.3 If a heightened risk of fraud or corruption in continuing to deal with a supplier or customer is detected, the ongoing relationship with that entity is to be reviewed to determine the best course of action to protect Council's interests and reputation.

# Fraud Control

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## 6.6 Fraud Awareness

- 6.6.1 All new Councillors and staff will be informed of their obligations under Council's Fraud Control Policy, Code of Conduct and Gifts and Benefits Policy as part of the initial induction program.
- 6.6.2 Fraud is often uncovered as a result of information provided or complaints lodged by customers, members of the public or entities providing goods or services to Council. In order to increase awareness and encourage the reporting of fraudulent or suspected fraudulent conduct, Council will:
- publish Council's Fraud Management Policy, Code of Conduct and Statement of Business Ethics on its website
  - take reasonable steps to ensure providers of goods or services are aware of Council's fraud control policy, including mechanisms for reporting suspected fraud
  - make available plain English material explaining how complaints may be lodged
  - provide feedback to all persons who report suspected corrupt conduct on the action that has been taken.

## 6.7 Systems for notifying fraudulent or potentially fraudulent activity

### 6.7.1 Reporting

- 6.7.1.1 Suspected fraud should be reported to the Chief Executive Officer, preferably in writing. The Chief Executive Officer as soon as practicable shall provide the substance of the complaint to the Mayor.
- 6.7.1.2 Councillors should report instances of suspected fraud to the Chief Executive Officer, preferably in writing, in the first instance and refrain from making allegations at Council meetings. The Chief Executive Officer will report the matter.
- 6.7.1.3 If the matter involves the Chief Executive Officer, it should be reported to the Mayor, preferably in writing. If the matter involves both the Chief Executive Officer and Mayor the matter should be reported direct to the Independent Commission Against Corruption (ICAC) for referral to the NSW Police.
- 6.7.1.4 The Chief Executive Officer:
- where considered appropriate, will make enquiries, or cause enquiries to be made, into the allegations of suspected fraud regarding members of staff of Council and others engaged by the Council and will determine the matter.
  - where it has been determined not to enquire into a matter, will provide the person making the allegation with the reasons in writing.
- 6.7.1.5 This clause does not prevent a staff member from referring an allegation of suspected fraud directly to the ICAC or to the NSW Police.



# Fraud Control

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## 6.7.2 Information from anonymous sources

- 6.7.2.1 Information from anonymous sources will be investigated if the Chief Executive Officer considers sufficient information is available or can be located elsewhere.
- 6.7.2.1 Council will maintain mechanisms to enable the anonymous reporting of fraud and suspected fraud, and ensure staff, Councillors, contracted service providers and the public are made aware of them.

## 6.7.3 Crimes Act

- 6.7.3.1 Under Section 316 of the NSW Crimes Act 1900 it is an offence for any person that knows or believes fraud has been committed and has information that might assist an investigation to fail to bring that information to the attention of Council, the police or other appropriate authority, unless they have a reasonable cause for not doing so. A person need not possess or be aware of proof beyond reasonable doubt before notifying the appropriate authority.

## 6.8 Detecting fraud

- 6.8.1 It is unlikely that controls implemented within Council's systems and practices will be effective in preventing all potential instances of fraud. Accordingly, fraud risk assessments are to be used to identify the need and opportunity for specific controls to be implemented to detect any cases of fraud or potential fraud against Council.
- 6.8.2 All Council systems and processes are to incorporate audit trails and transaction reporting and analysis functionality that will enable fraudulent or potentially fraudulent transactions or acts to be identified, reviewed and referred to an appropriate authority for investigation.
- 6.8.3 Portfolio General Managers and managers are to ensure that controls implemented within systems and practices for the prevention and detection of fraud and possible fraud are operating effectively through ensuring:
- responsibility for the control is assigned and understood
  - all detected instances of fraud or possible fraud are referred for investigation in accordance with this policy.
- 6.8.4 Council's Complaints Handling Policy will contain clauses that:
- encourage members of the public, customers, contractors and suppliers to complain in relation to any instances of suspected corrupt or fraudulent activity by Council, Councillors and Council staff
  - encourage members of the public, customers, contractors and suppliers to complain when a transaction has not been properly conducted to ensure such failure was not attributable to fraudulent activity.

# Fraud Control

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## 6.9 Investigating and responding to fraud

### 6.9.1 Chief Executive Officer

6.9.1.1 The Chief Executive Officer is under a duty to report to the ICAC any matter that the Chief Executive Officer suspects on reasonable grounds concerns or may concern corrupt conduct, including fraud.

6.9.1.2 The Chief Executive Officer is responsible for making enquiries into allegations of suspected fraud and must, in accordance with Council's Code of Conduct, and Procedures for the Administration of the Model Code of Conduct either:

- determine not to make enquiries into the allegation of suspected fraud and give the reason/s in writing
- make enquiries into the allegation of suspected fraud to determine the particular factual matters, or
- engage an independent person to make enquiries into the allegation of suspected fraud to determine the particular factual matters.

6.9.1.3 Inquiries made by the Chief Executive Officer, or an independent person, will follow the rules of procedural fairness. The inquirer must:

- inform the person/s against whose interests a decision may be made of any allegations of suspected fraud against them and the substance of any adverse comment in respect of them
- provide the person/s with a reasonable opportunity to put their case
- provide the person/s with union or association representation if requested
- hear all parties to a matter and consider submissions
- make reasonable enquiries before making a recommendation
- ensure that no person is involved in inquiries in which they have a direct interest
- act fairly and without bias
- conduct the inquiries without undue delay.

6.9.1.4 An inquiry will not be undertaken by a staff member without a written delegation from the Chief Executive Officer outlining the extent of the powers granted to the staff member in terms of the inquiry.

6.9.1.5 Where the Chief Executive Officer reasonably believes that a criminal offence has been committed, ICAC will be notified and the matter reported to the NSW Police. In such a case Council investigators will only investigate sufficiently to form this view leaving further investigation to the police.

# Fraud Control

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- 6.9.1.6 Investigations will be characterised by objectivity and impartiality and evidence that an investigator needs, will be properly collected, secured and protected. Staff involved in investigations of alleged fraud will be provided with the necessary initial training and follow up training.
- 6.9.1.7 Only the Chief Executive Officer, or Mayor if the matter involves the Chief Executive Officer, may determine that no further action on any fraud investigation, including non-referral to the police, is required. The reasons will be formally documented in such cases.
- 6.9.1.8 If fraud is confirmed, but no perpetrator is identified, all possible steps will be taken to establish the identity of the party involved.

## **6.9.2 Conduct and Disciplinary Systems**

### **6.9.2.1 Council Staff**

- 6.9.2.2 In addition to any criminal prosecution, disciplinary action will be taken by Council where practicable in accordance with the Local Government (State) Award and relevant legislation.
- 6.9.2.3 Sanctions for staff will depend on the severity, scale and importance of the breach and will be in accordance with any staff agreements, awards, industrial agreements and contracts. Sanctions may include counselling the staff member, instituting disciplinary proceedings or dismissal.
- 6.9.2.4 If the fact finding inquiry reveals the nature of the information relates to differences between employees they will be offered recourse to the provisions of the Local Government (State) Award and Council's Grievance and Dispute Handling Procedure.

### **6.9.2.5 Councillors**

- 6.9.2.6 Where the Council finds that a Councillor has breached the Code of Conduct, in terms of fraudulent activity, it may declare by resolution to:
- censure the Councillor for misbehaviour in accordance with section 440G of the Local Government Act 1993
  - require the Councillor to apologise to any person adversely affected by the breach
  - counsel the Councillor
  - make public findings of inappropriate conduct
  - refer the matter to an appropriate investigative body if the matter is serious, for example, the Office of Local Government, the ICAC, the NSW Ombudsman or the NSW Police
  - prosecute for any breach of law.
- 6.9.2.7 Council cannot request suspension on this ground unless the Councillor has been:
- formally censured for the incident of misbehaviour concerned, or
  - expelled from a meeting of the Council or a committee of the Council for the incident of misbehaviour concerned.

# Fraud Control

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6.9.2.8 Under section 440H of the Local Government Act 1993, the process for the suspension of, or imposition of disciplinary action against a Councillor, can also be initiated by the Office of Local Government, the ICAC or the NSW Ombudsman.

## 6.9.3 Recovery of losses due to fraud

6.9.3.1 Council will take action to recover all losses resulting from fraud if it is likely that the benefits of the recovery action will outweigh the associated costs, including investment of staff time and other resources needed.

6.9.3.2 Council will maintain fidelity guarantee insurance, and insurance cover in relation to the loss of assets resulting from fraud by external parties. The amount of cover and applicable deductibles will be determined following review of Council's:

- identified fraud risk profile
- fraud experience
- overarching insurance strategy.

## 7. REVIEW

7.1 This policy is a local policy and accordingly will be **reviewed or confirmed within the first 12 months** after the declaration of the poll for the next NSW general local government election, unless revoked sooner by Council. **[Note:** automatic revocation of this policy is provided for under s.165(4) of the *Local Government Act 1993*. The next general local government election is scheduled to be held in September 2020].

7.2 This policy may be reviewed and updated as necessary if:

- (a) legislation requires it, or
- (b) Council's functions, structure or activities change.