

**ITEM NO: 3****SUBJECT: COUNCIL CARETAKER GOVERNMENT ROLE****FILE NO: F03818**

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**Recommendations:**

1. *That this report be noted by the Council.*
  2. *That the Council form the view that the business of this meeting should be conducted as usual as relevant business items were before Council and the community prior to the caretaker period.*
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**Report by the General Manager:****Introduction**

On 19 June 2008 the Department of Local Government provided a Circular 08-37 on council decision making prior to the election. In this Circular, advice was provided that Councils should operate like Commonwealth and State Governments in the lead up to the Election following the Close of Rolls on 4 August 2008 and ending on the day the election is declared. This Circular was previously advised to all Councillors via an email and the Councillor Bulletin.

**Circular advice**

In this Circular it was outlined that during caretaker periods, councils should exercise due caution in making major policy decisions that would bind an incoming council.

In summary, during the caretaker period councils are to avoid:

- Determining controversial or significant development applications;
- New or potentially controversial permanent appointments of General Managers;
- Entering major contracts or undertakings; and
- Avoid active distribution of materials if it promotes the current elected Council's policies or emphasises the achievements of an elected member or group.

Routine business of the Council should proceed as normal and decisions should be made in the public interest with regard to all of the circumstance including the urgency of the issue and whether there may be financial or legal repercussions if the matter is deferred.

The definition of day to day operations has been questioned by the Local Government Shires Association and the advice from the DLG was that this information is "not intended to impede councils in conducting their day-to-day business or expose them to the risk of litigation through delayed decision-making where a legislative requirement exists."

The warning is given that issues identified during this period eg consents, approvals or actions being fast tracked to avoid election deadlines may, in appropriate cases be referred to the Independent Commission Against Corruption for investigation.

**Position within BMCC for this Council Meeting**

The business of Council being placed before the 5 August 2008 Council Meeting has been in planning by Council Officers, as follows:

- Councillor Briefing and Working Party sessions on significant items contained within the Business Paper occurred between 16 July and 29 July 2008;
- The Draft Business Paper was considered by the Executive Management Team on 22 July; and
- The Business Paper for this Council Meeting was published on Tuesday 29 July 2008.

It is therefore considered appropriate that the business identified in this paper be conducted as usual as all business items were before Council and the community prior to the caretaker period. Matters coming before the Council are often in the formulation stage for a considerable length of time eg in either of the Council adopted 2004-08 Management Plan or the 2008-12 Management Plan, before being actually dealt with at a formal Council meeting. To stifle the machinery of government for such matters, after having taken into account the criteria circulated by the Department of Local Government, is not considered to be good governance.

However, if the Councillors consider that an item of business is outside of the criteria mentioned above then it is their prerogative to call that item into question and defer to a subsequent decision by the new Council.

It should also be noted that Council Meetings scheduled on 26 August and 9 September 2008 will be subject to the caretaker convention.

**Sustainability Assessment**

<b>Criteria</b>	<b>Positive</b>	<b>Negative</b>
Social	Meets the expectations of the community in terms of good governance and prevents potential costly investigations which could utilise Council resources.	Nil
Environmental	Nil	Nil
Economic	Nil	Nil

**Financial Implications**

Nil.

**Legal and Risk Impacts**

Minimal - business papers are relevant to activities incorporated in the Management Plan for 2008-12 which was adopted on 24 June 2008.

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**ITEM NO: 4**

**SUBJECT: MODEL CODE OF CONDUCT**

**FILE NO: F04413**

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**Recommendations:**

*That the Council adopt the Department of Local Government revised Code of Conduct that was gazetted on 27 June 2008 under S440 of the Local Government Act.*

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**Report by General Manager**

**Background**

The Model Code of Conduct for Local Councils in NSW first came into effect on 1 January 2005 and applies to general purpose councils and county councils.

Under Section 440 of the Local Government Act, councils must adopt a Code of Conduct that incorporates provisions that are consistent with the Model Code of Conduct – June 2008 (Code).

The Department of Local Government completed a review of the Model Code of Conduct that included a Reference Group which surveyed Councils for feedback in relation to the Code and its implementation. Their work has resulted in the revised Code prescribed under the *Local Government (General) Regulation 2005* (see enclosed).

**Changes to the Code**

The key changes to the Code, include:

- Redeveloped into three sections: Context, Standards, Conduct and Processes;
- Changes to how complaints against the Mayor, Councillors and GM are managed by an independent panel/reviewer. The General Manager and Mayor will no longer be on the Code of Conduct Committee which is now called the Conduct Review Committee;
- Councils can now have conduct review committees or individual reviewers undertake enquiries into alleged breaches – members of these committees or the sole reviewers will be independent of the Council and can act in the role for more than one Council
- A complaint management section relative to above two points has been added;
- Guidance in relation to political donations for Councillors; and
- Guidance on Councillor access to information and operational areas of the Council.

In terms of BMCC's current adopted Code of Conduct 2005, the only deletion has been the Miscellaneous Section of one page which had items such as Drug and Alcohol usage. This item has been forwarded to HR for a protocol to be established for staff management.

**Process for adoption**

It is not considered that the Code requires Public Exhibition as it is enshrined in State Legislation.

**Sustainability Assessment**

<b>Criteria</b>	<b>Positive</b>	<b>Negative</b>
Social	Provides positive guidance to all identified parties and the community on acceptable standards of behaviour of Council officials and in identifying, resolving and managing alleged breaches of the Code of Conduct.	Nil
Environmental	Nil	Nil
Economic	Nil	Nil

**Financial Implications**

Nil

**Legal and Risk Impacts**

Adoption of the Model Code of Conduct June 2008 will assist the Council in:

- Raising awareness of the behavioural standards for all identified parties;
- Reducing the exposure of Council when an alleged breach is identified; and
- Providing clear guidance on how to manage an alleged breach.

**Conclusion**

Following the recommendation of the Department of Local Government the Model Code of Conduct June 2008 is being placed before the Council for adoption.

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**ITEM NO: 5**

**SUBJECT: POLICY FOR THE MANAGEMENT OF UNREASONABLE  
COMPLAINANT CONDUCT**

**FILE NO: F00296**

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**Recommendations:**

1. *That the Council adopts the Draft Unreasonable Complainant Policy for the purpose of public exhibition.*
  2. *That the exhibition of the Draft Policy be for a period of 35 days and be widely advertised and promoted with submissions being receipted for 49 days.*
  3. *That a report comes back to the Council following the public exhibition period and consolidation of submissions.*
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**Report by General Manager:**

**Introduction**

The purpose of this report is to acknowledge the requirement for an Unreasonable Complainant Conduct Policy that supports the Code of Conduct 2008 and incorporates into BMCC the guidelines from the NSW Ombudsman on unreasonable conduct management. The NSW Ombudsman promotes the active management of

- general complainants, who during their encounter/s, are identified as having the potential to become unreasonable complainants; and
- those persons whose behaviour commences at Council in an unreasonable manner.

**Background**

The Council is in the process of developing a formalised Complaint Management System. Currently, and to guide Complaint Management with BMCC, the Council is using the following resources;

- Model Code of Conduct 2008;
- Serious and Substantial Complaints Managements 2008; and
- The General Complaints Management available on the Council intranet at:

<http://www.bmcc.nsw.gov.au/contactus/makingacomplaint/>

The Model Code of Conduct and the Serious and Substantial Complaints Policy deal with breaches of the Code of Conduct by either Councillors or Council Officers. General Complaints is available to the general public to make all other forms of complaints eg service issues, service requirements or other related issues that requirement management.

**Unreasonable complainant conduct**

The Council, due to the nature of many of our activities, is at the receiving end of unreasonable complainant conduct. In order to facilitate management of such issues the Australian Ombudsman developed an interim practice manual *Unreasonable complainant conduct: interim practice manual 2007*.

This guideline facilitates the recognition, escalation and ongoing management of unreasonable complainants to assist the public, Councillors and Council Officers in their management practices. The BMCC in developing the Unreasonable Complainant Conduct Policy, in response to this guideline, has also taken account of other related external and internal documents, legislation and policy positions.

This Unreasonable Complainant Conduct Policy will form the part of the developing Complaints management System that supports:

- Unreasonable complainant handling procedures;
- Effective allocation of resources across the ratepayer base;
- Assists in preventing escalation of issues to the NSW Ombudsman;
- When issues are escalated to the NSW Ombudsman that BMCC is seen to have effectively managed the complaint from the outset.

Most importantly such a policy provides support, under the Council duty of care, to our personnel.

**Specific issues addressed in the draft policy**

The development of an Unreasonable Complainant Conduct Policy addresses issues such as:

- Outlining the various roles and responsibilities of those involved in the process;
- How to manage a general complaint in order to prevent escalation of the issues;
- Identifying and escalating unreasonable complainant conduct;
- Developing and managing a plan for chronic unreasonable complainants;
- Review of the unreasonable complainant plan;
- Recording such complainants; and
- Managing serious aggression or threat.

These types of issues and the management process is dealt with in the Workflow available at Attachment 1 to the Policy.

**Public exhibition process**

In accordance with the requirements of the Local Government Act Section 160 (2) and (3) the public exhibition period would be 35 days minimum with receipt of submissions for a minimum of 49 days.

The Public Exhibition process would be advertised in the Blue Mountains Gazette and on the Council Website. The Public Exhibition process will see the policy returned post-exhibition to be considered by the newly election Council on 30 September 2008.

**Sustainability assessment**

<b>Type</b>	<b>Positive</b>	<b>Negative</b>
Economic	Nil	Nil
Social	Enables members of the public to understand the process under which Councillors and Council Officers manage complainant conduct that is deemed unreasonable	Nil
Environmental	Nil	Nil

**Financial Implications**

The recommendation to approve the attached policy does not require any increase in expenditure.

**Legal and Risk Management Issues**

Improves the risk management of the Council in terms of an explicit understanding of the management of unreasonable complainants.

**External Consultation**

The Draft Policy is recommended for Public Exhibition.

**Conclusion**

The draft Unreasonable Complainant Conduct Policy is presented for endorsement for the purpose of public exhibition. The 49 day total period of public exhibition will allow adequate opportunity for community members to provide input on the draft Policy. All submissions will be reported back to the Council for consideration when determining the adoption of the final Unreasonable Complainant Conduct Policy.

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Attachment

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**POLICY: UNREASONABLE COMPLAINANT CONDUCT MANAGEMENT SYSTEM**

STATUS: DRAFT – June 2008  
COUNCIL MEETING DATE: x  
MEETING MINUTE: x  
LIFESPAN: 2 years  
TRIM REF.: F02139  
ISSUED BY: Executive Services  
INQUIRIES: Executive Officer

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**OBJECTIVES**

Blue Mountains City Council (BMCC) is committed to ensuring that unreasonable complainants are managed in a manner that is appropriate to the requirement of the complainant while providing a safe workplace for its staff and effective management of Council resources. Council aims to promote itself as an ethical and customer service oriented organisation with accountable methods for dealing with unreasonable complainants.

This policy and the accompanying procedures is based on the '*Unreasonable complainant conduct: interim practice manual*' published in August 2008 through a joint project of the Australian Parliamentary Ombudsman.

In accord with that manual (pp2) it is recognised that:

- Dealing with difficult complainants is core business;
- This work requires proper priority and adequate resources;
- Support is required for front line and complaint handling staff in the form of support, encouragement, guidance, training and direction to minimise avoidance of complainants;
- Unreasonable complainant conduct should be managed by responding appropriately to observable conduct not perceptions of motives or psychological states;
- There are a range of reasonable and appropriate management strategies available to manage different types of observable unreasonable conduct;
- This is management of the 'complaints about issues' not the original management of the issue.

The BMCC Policy framework, through the provision of unreasonable complaints management processes, aims to minimise:

- The adverse impacts of unreasonable complainant conduct on resources, processes and performance of complaint handlers;
- Staff stress;
- The possible detriment to the complainants whose conduct is unreasonable but who may have a valid issue; and
- Significant inconsistency in complaint handling procedures.

## BACKGROUND

BMCC is committed to providing a quality service to the public and all customers, irrespective of nature or method, should be serviced as follows:

- Treat individuals courteously, attentively and sensitively;
- Give information and advice clearly and with a level of complexity appropriate to the situation;
- Allow customers a voice and listen to their views;
- Ensure members of the public receive their full entitlements;
- Follow fair procedures;
- Act impartially;
- Make decisions based on merit;
- Maintain confidentiality and privacy of personal information; and
- Use resources efficiently and effectively.

The Council has endorsed these standards as it can often be difficult for customers to properly communicate their concerns, problems or needs as they are unaware of the:

- Council role in the community;
- The issues management process of the Council;
- How long an issue takes to resolve;
- What is it we expect of the resident raising the issue; and
- What the responsibilities of the Council are in relation to issues management.

In some cases it may simply be that a customer finds it difficult to complain.

The consequence of this lack of knowledge, understanding or poor conflict management style can be that staff in turn may find it hard to understand customer's concerns, problems, needs and preferred communication style. Sometimes these difficulties are manifested in unreasonable demands on the Council in the form of persistent, habitual, angry, aggressive or harassing behaviour towards staff.

## POLICY STATEMENT

This Policy and the associated procedures is adapted from the '*Unreasonable complainant conduct: interim practice manual*' published in August 2008 through a joint project of the Australian Parliamentary Ombudsman to provide BMCC staff with guidance on how to effectively manage difficult complainants within this Council.

The Policy and associated procedures outlines An Unreasonable Complaint Management System for BMCC.

## UNREASONABLE COMPLAINT MANAGEMENT SYSTEM

The unreasonable complaint management system is a set of processes to manage the Council responsibility in mediating and delivering outcomes for unreasonable complainants.

### Understanding roles and responsibilities

The Council's specific responsibilities include:

- Dealing with complaints professionally, efficiently and impartially;
- Keep complainants informed of the progress and outcome of enquiries;
- Provide clear reasons for it's decisions; and
- Treat complainants with courtesy and respect.

The Complainants responsibilities are to:

- Clearly identify the issues of complaint, or ask for help from the Council staff to do this;
- Give the Council all of the available information in support of the complaint in an organised format at the time of making the complaint;
- Co-operate with the Council enquiries or investigations; and
- Treat the Council staff with courtesy and respect.

Complaint handler's responsibilities are to operate within this policy framework at all times throughout the unreasonable complaint management system. Key responsibilities include:

- Ensuring equity and fairness;
- Recognising the obligations of the Council;
- Adopting appropriate role;
- Exercising ownership and control;
- Managing expectations;
- Focusing on observable conduct eg unreasonable persistence, demands, lack of co-operation, arguments and behaviour;
- Responding consistently;
- Maintaining Council commitment;
- Recognising when appropriate to escalate the unreasonable complainant through the organisation; and
- Recording relevant information to the TRIM file and Pathway production system.

#### Identifying Unreasonable Complainants

Most public sector agencies will, at some time, deal with a small number of customers who are unreasonable. Unreasonable complainants are those who either:

- Will not accept the outcomes of a review of their general complaint outcomes and request further resource in the hope of achieving their outcome;
- Those who display aggressive, rude or harassing behaviour towards staff; or
- Those who by virtue of the number of information or service requests to the organisation are creating an unreasonable burden on the organisation.

The three broad categories of unreasonable complainants are in accord with the '*Unreasonable complainant conduct: interim practice manual*' (pp2) where 'unreasonableness' refers to 'conduct that goes beyond the norm of situational stress that many complainants experience' (pp2).

#### Managing general complaints well from the outset

Specific strategies may include:

- Decline complaints that contain unreasonable arguments;
- Decline 'trivial' complaints on the basis of limited resources, no value being added;
- Send an acknowledgement letter of the unreasonable complaint outlining process for managing;
- Where possible and appropriate ring the complainants to ascertain understanding of the issues of their complaint and maintain telephone contact where appropriate and possible;
- Reality test the complainants expectations or outcome requirements;
- Clarify the Council process for complaints management;
- Keep complainant informed throughout process;
- It is unlikely the complainant will appreciate the outcome so ring and discuss, if appropriate, before sending the final letter;
- Demonstrate empathy; and

- When an initial complaint is received identify that the complainant has the potential to become an unreasonable complainant.

#### Managing complaints as soon as unreasonable conduct manifests

Specific strategies may include:

- Escalate and discuss with the person responsible for supervising unreasonable complainants;
- Make a plan to manage the complaint and the complainant's interaction with our agency;
- Inform the complainant of the process and adhere to the process;
- Ensure the complainant has the opportunity to clarify the complaint where it is not clear;
- Test and reframe the complainant's expectations where possible by telephone;
- Redefine/reassert key issues and stick to them;
- Ensure that the complainant understands the Council follows policy and process in terms of complaint handling;
- Avoid sympathy for experience unrelated to the complaint, premature opinions or comments on past matters;
- If empathy is appropriate empathise;
- Avoid hypothesising or taking actions that would not normally be undertaken;
- Return to the complainant correspondence containing personal abuse, inflammatory statements or material intended to intimidate (unless there is evidence of a criminal offence\*). Ask for the material to be reframed before the complaint can proceed;
- End phone calls that are unproductive, abusive or confronting;
- Require complainants to organise or summarise large quantities of disorganised information before action is taken;
- Where issue are too general or vague request clarification and detail; and
- Where information is being provided in dribs and drabs require all information to be supplied prior to commencing due process.

\* Note: In the case of a criminal offence refer to Serious and Substantial Complaints Policy, June 2008

#### Managing chronic ongoing difficult conduct

Specific strategies may include those above and in particular:

- Escalate and discuss with your Manager;
- Involve the Executive Officer in supervising unreasonable complainants;
- Undertake a data analysis of last three months to support any future management plan eg how many requests, type of requests, manner of requests, resources applied to requests;
- Implement, where appropriate, the Communications Management Plan (CMP) for the complainant and their ongoing information and service provision requests;
- The CMP can include:
  - Centralising contact with an objective third party within the organisation
  - All contact in writing and only respond to written requests
  - A prioritisation plan for requests;
- Inform the complainant of the CMP in writing and ask for them to raise any issues with the plan in a suitable timeframe;
- Place the CMP and letter on file;
- Inform the organisation of the CMP particularly Customer Service;
- End the Council involvement where wilful, misleading or untruthful conduct is discovered;

- As a last resort, enforce some form of limited exclusion from contact with the Council; and
- Whenever writing to inform the complainant of the outcome, be precise about the reasons for the decision.

In these instances, you should note:

- The complainant may not be the only audience for your written plan; and
- The complainant must be provided with a right of reply period to review any plan.

#### Right to a review of the plan

Where a CMP is implemented specific review strategies may include:

- Provide for only one review unless a substantive new issue is raised;
- A pre-condition for review is the complainant providing details of how the Council has erred in their judgement as well as providing new information which supports that view;
- Attempt to give review decisions by telephone where appropriate in order to avoid further correspondence (make a file note); and
- If the decision is required in writing then have the Executive Officer sign the correspondence.

During the review you should be alert to:

- Instances where there is merely a reframing of the original complaint; and
- Informing the complainant at all times that Council process is being followed.

#### Recording of complaints

Key activities include:

- From the outset ensure that all correspondence is logged to the residential TRIM file for that complainant;
- Once the complaint is deemed unreasonable complainant behaviour escalate the issue and ensure that the correspondence is not only on the residential TRIM file but saved into the Unreasonable Complainant [Year] TRIM file; and
- Escalate in writing to the Executive Officer for management, preferably in writing – this should also be placed on file.

#### Managing serious aggression, anger, threats and harm

Front Counter staff, if feeling threatened by events, need to:

- If unable to diffuse the situation, cease the contact;
- Ring the duress alarm;
- Ensure safety of members of the public;
- Retreat to the safe area;
- Call the police;
- Escalate to the Executive Officer; and
- Managers need to provide debriefing, counselling and follow-up to any issues that arose during the course of events and provide a file note.

Field staff, if feeling threatened by events, need to:

- If unable to diffuse the situation, cease the contact and retreat to lockable vehicles;
- Ring the police (if required) and escalate to their Manager;
- Manager needs to escalate to Executive Officer; and
- Managers need to provide debriefing, counselling and follow-up to any issues that arose during the course of events and provide a file note.

**RELEVANT LEGISLATION AND GUIDELINES**

Council will manage unreasonable complainants within the requirements of:

- Unreasonable complainant conduct: interim practice manual 2007;
- Apologies, a practical guide – NSW Ombudsman 2007;
- The Complaint Handler’s Toolkit - NSW Ombudsman 2004;
- Occupational Health and Safety Act 2000;
- Privacy and Personal Information Protection Act 1998;
- Local Government Act 1993; and
- Anti-Discrimination Act 1977.

**RELEVANT COUNCIL DOCUMENTS**

- Serious and Substantial Complaints Policy 2008
- Grievance Policy/Protocol 2008
- Delegations of Authority 2008
- Access to Information Policy 2007
- Customer First Service Charter 2006
- Code of Conduct 2004

**ATTACHMENT 1 - Unreasonable Complainant Management System Workflow**

