

ITEM NO: 1

SUBJECT: DRAFT PRIVACY MANAGEMENT PLAN

FILE NO: F02540

Recommendations:

- 1. That the Council adopts the Draft Blue Mountains City Council Privacy Management Plan 2009 for the purpose of public exhibition.*
 - 2. That the exhibition of the Draft Plan be for a period of 28 days and be advertised and promoted with submissions being receipted for 42 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

Reason for report

The purpose of this report is to respond to the requirement for a Blue Mountains City Council Privacy Management Plan that supports the *Privacy and Personal Information Protection Act 1998* (PPIPA).

Background

The Department of Local Government prepared and released a Model Privacy Management Plan on 28 June 2000. This Plan has been developed to align to the Model Privacy Management Plan and in accordance with Section 33 of the *Privacy and Personal Information Protection Act 1998*.

Contents of the Privacy Management Plan

The purpose of the Privacy Management Plan is to:

- Comply with the Privacy and Personal Information Protection Act 1998 (PPIP Act);
- Comply with the Public Register Provisions in the Privacy and Personal Information Protection Act 1998;
- Comply with the health privacy principles under the Health Records and Information Privacy Act 2002 (HRIP Act);
- Provide a clear privacy framework for internal and external stakeholders; and
- To ensure Council respects the privacy of individuals through the management and protection of their personal information held by Council.

In addition, the Plan includes practical advice on how Council will manage personal information, how the public can access public registers, how breaches of privacy will be managed as well as mechanisms for training Council Officers.

Process for adoption

The Council is requested to place the Draft Blue Mountains City Council Privacy Management Plan 2009 on Public Exhibition for a period of 28 days with receipt of submissions for a minimum of 42 days:

- To inform the public of the Privacy Management requirements; and
- Provide the public with an opportunity to raise any issues with the Council relative to the Plan.

The exhibition period would be from 13 May 2009 to 9 June 2009 with a further two weeks, until 23 June 2009, to receipt submissions. A report would be provided to Council on the Public Exhibition findings

The public exhibition process would be advertised in the Blue Mountains Gazette and on the Council Website.

Sustainability Assessment

Effects	Positive	Negative
Environmental	NIL	NIL
Social	Provides a clear understanding of how personal information is managed by Council.	
Economic	NIL	NIL

Financial implications for the Council

There are no financial implications associated with putting the Plan on exhibition.

Legal and risk management issues for the Council

Adoption of the Draft Privacy Management Plan will assist the Council to manage legal risk by:

- Raising awareness of how personal information is managed; and
- Providing clear guidelines relating to the circumstances in which information is accessed.

Conclusion

Following the requirements of the *Privacy and Personal Information Protection Act 1998*, Blue Mountains City Council’s Privacy Management Plan 2009 has been prepared for public exhibition.

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Enclosure

ITEM NO: 2**SUBJECT: ADOPTION OF CODE OF MEETING PRACTICE, 2009****FILE NO: F02471**

Recommendation:

That the Council adopt the Code of Meeting Practice 2009.

Report by General Manager**Reason for report**

At the Council Meeting of 27 January 2009 the Council endorsed the revised Code of Meeting Practice 2009 for the purpose of public exhibition for a period of 28 days (Minute No. 8). The public exhibition period ended on Monday 2 March 2009. This report presents a summary of the submissions received, those submissions that have been incorporated into the Code, a rationale for those submissions that have not been included and recommends adoption of the revised Code.

Background

In accordance with Section 360 of the Local Government Act 1993, a Code of Meeting Practice was adopted by Blue Mountains City Council in 2000. Changes made since 2000 include:

- Council meetings were moved to a three-weekly meeting cycle as recommended in the review of 20 November 2001;
- An amendment to deal with matters En Globo was incorporated into the amended Code as part of the 2001 review;
- The Business Paper timeframe was changed to enable publishing of the Council Business Paper five working days prior to the Council Meeting. The closing date for Councillors to submit items of business was moved to Monday, i.e. eight working days prior to the Council Meeting;
- The review of the Code on 5 September 2006 precluded the use of mobile phones in the Council Chambers, for both Councillors and the public; and
- In October 2007 sections on Pecuniary and Non-Pecuniary Interest and Access to Information were added.

Proposed changes to the Code of Meeting Practice for 2009

Several changes to the Code of Meeting Practice were proposed prior to the public exhibition period in February 2009. These were highlighted as tracked changes in the publicly exhibited document:

- Change to Index for additional item at 1.8.1;
- Changes to Clause 1.6, Participation in the Council Meetings regarding earlier registration times for public speakers and closure of registrations prior to commencement of the meeting and the process for late registrations to assist with meeting management by the Chair;
- Clause 1.7: inclusion of notebooks as electronic devices capable of recording speech;

- Sub-clause 1.8.1 added outlining the right of members of the public to make representations to the Council in regard to a Confidential Session;
- Addition of sub-clause 2.2.1 relating to types of business submitted by Councillors to include: Councillor Reports, requests for correspondence as an acceptable form of Notice of Motion, and details on the process for lodging a rescission motion to include initial email acceptance;
- Additional information on the Chairperson’s casting vote in sub-clause 3.1.4;
- Addition of Clause 3.3.2 dealing with Recommittal of Items being an issue that needs to be considered in terms of the requirements for a Rescission Motion;
- Additional information in Subclause 3.9.1 regarding standing to address the Council;
- Additional information in Clause 4.1 and 4.2 relating to Rescission Motions; and
- The addition of an Index to assist with searching for an item.

Public exhibition process

The Council resolved to place the Draft Code of Meeting Practice on Public Exhibition at the Council Meeting of 27 January 2008, Minute No. 8, in accordance with the requirements of the Local Government Act Section 160 (2) and (3).

The draft policy document was exhibited between Monday, 2 February 2009 and Monday, 1 March 2009 with receipt of submissions closing on Monday 6 October 2008.

The Public Exhibition process was advertised in the Blue Mountains Gazette and on the Council Website. The Public Exhibition process now sees the policy returned post-exhibition to be adopted by the Council.

Two submissions were received. The following table outlines the issues raised in these submissions and the recommended Council response:

Item No	Summary of Submission	Council Comment	Recommended Action
1	RE the proposed change to Part 1.7 of the Code I would like to suggest that the words " will be permitted " be changed to " may be used ". The reference to ‘notebooks’ should read <u>notebook computers</u> . These changes would allow notebook computers to be brought to Council meetings , as long as they aren't used to record the proceedings.	Agreed	Included
2	Members of the public should be permitted to address the Council on any items of business in the Business Paper including Minutes by the Mayor, responses to Questions without Notice, Notices of Motion including Rescission Motions, the Precis of Correspondence and Matters of Urgency. This will allow the Councillors to make more informed decisions.	The Public may address Notices of Motion when the report comes back to the Council. Questions With and Without Notice are for information only and are not in the form of a report with recommendations.	Not included

Item No	Summary of Submission	Council Comment	Recommended Action
3	Members of the public should not have to remain behind the roped barrier located in front of the Councillors seating prior to and after the meeting when speaking to Councillors. Members of the public have a legitimate right of access to their elected representatives.	Councillors may mingle with the public prior to, and after a meeting outside of the roped area. The roped area is out of bounds due to confidential documentation often being placed at the Councillors' seat . This has also been a request of Councillors for when the Council is in session.	No change
4	Members of the public should be permitted to address the Council on any items of business if that item of business has not yet commenced. Registration should not be required prior to the commencement of the meeting. This recent change by Council staff is contrary to current meeting practice. Notwithstanding my opposition to this change, all Councillors should decide whether a member of the public who has not registered prior to the meeting, is permitted to address the Council.	Part 1.6.1 of the Code is recommending that the Chair can register a speaker if, due to exceptional circumstances, they were unable to complete a registration form prior to the commencement of the meeting. Other Councils require speakers to Register 24 hours prior to the meeting and provide their speaking points. The Chair, on receipt of the registration, then decides whether the speaker is allowed. The LGA 1993 provides guidelines on the role of the Mayor as Chair of the Council Meeting.	Included in draft on public exhibition.
5	Where there are more than 3 public speakers who wish to address the Council, all Councillors, not the Mayor alone, should decide whether to increase the number of speakers.	The Chair of the meeting is the Mayor as per the LGA (1993). The Chair considers <ul style="list-style-type: none"> o Items on the BP; o Complexity of issues; and o Equity. A decision is then taken by the chair on due process. 	Not included
6	Public speakers should be permitted to address the Council for 5 minutes. Extensions of time should also be granted by a decision of all Councillors where the item of business is large and/or significant and/or complex.	The current time limit has been effectively in place prior to 2000. With only one known objection. The Chair has the authority to extend the timeframe. This practice is used by other Councils.	Not included
7	Following a resolution of the Council to close the meeting to the public, the Chairperson MUST call for members of the public to make representations as to why the meeting should not be closed.	This is a recommended inclusion at sub-clause 1.8.2 for the 2009 Code.	Included in draft for public exhibition
8	Following a resolution of the Council to close the meeting to the public, public speakers should be permitted to address the Council for 5 minutes. Extensions of time should also be granted by a decision of all Councillors where the item of business is large and/or significant and/or complex.	Section 1.8.2 of the draft Code sets a limit of 3 minutes for speakers to make a representation to the Council. This is considered adequate for reports highlighting confidential items.	Included in draft for public exhibition

Item No	Summary of Submission	Council Comment	Recommended Action
9	References in an appendix should be made to all the relevant sections of the Local Government Act and Regulation and the Department of Local Government's guidelines with regards to the Code of Meeting Practice.	Currently references to the relevant sections of the LGA and Regulations are in the Contents Page of the Code.	Included in draft for public exhibition
10	Items not listed in the business paper should be disclosed at the start of meetings with copies of the business items available to members of the public. Members of the public should also be given the opportunity to address these business items. The Council's web site should also include the additional items.	The current practice is to post Supplementary items and Mayoral Minutes to the internet as soon as practicable after they are available. There are three copies made available at the meeting for members of the public.	Not included
11	Both the questions and the responses to Questions with or without Notice should be included in the meeting minutes as they occur.	Current practice has Questions without Notice appearing in the Minutes. Report titles refer to their being Questions with Notice and therefore are a public record. Responses to Questions with and Without Notice are printed in the Business Paper and as such are a public record..	Not included
12	5 days minimum notice should be given for extra-ordinary meetings. Notices of extra-ordinary meetings should be displayed in Council offices, libraries and web site. Newspaper notices should also be provided where possible.	Section 367 of the LGA specifies 3 days notice for ordinary and extraordinary meetings. Less notice may be given for extraordinary meetings dealing with an urgent matter. Section 367 outlines that a notice of meeting must be published on the Public Notice Board. BMCC currently do this as well as post the meeting to the Council website as soon as practical after announcement. In 2007 there were two extraordinary meetings and in 2008 there was one extraordinary meeting.	Not included
13	Council working party and committee meeting minutes should be made available on the Council's web site. These meetings should be open to members of the public.	The Code outlines that Committees of Council fall under this policy. Working Parties were not a Committee of Council.	Not included
14	The Precis of Correspondence should include both complaints and commendations.	This was debated by the Council in 2006 and 2007 and foregone due to size and cost of Business Paper publication. Council has a Customer Request System for recording such items.	Not included

Item No	Summary of Submission	Council Comment	Recommended Action
15	Court matters, progress and outcomes should be reported at Council meetings.	This is a Code of Meeting Practice for conduct of meetings. Legal issues are contained within the Annual Report. Due to litigation matters and the confidentiality of such matters it is considered detrimental to Council's legal position to publish the Council position relative to progress and status. Outcomes of cases are published on the relevant Court website.	Not included
16	Business Paper reports should include greater detail and accurate information (i.e. for development applications, environmental matters and public submissions including legible photographs, maps and drawings). Environmental maps should be included in development application reports considered by the Council.	Detail and accuracy is always considered in presentation of reports.	Noted but not included
17	The Code of Meeting Practice should be revised every two years instead of once every four years.	Currently reviewed as per LGA 1993 and in line with election of new council every four years.	Not included
18	Question with Notice explanation	An explanation outlining the intended use of a Question with Notice by Councillors is included in Section 2.2 of the Draft Code.	Included
19	Some consistent application of wording in Clauses 3.1.4 and 4.3	Clauses used words not passed when it should state 'not carried' for motions where the voting is equal	Included

Sustainability assessment

Type	Positive	Negative
Economic	Prevents legal disputes	Nil
Social	Provides clear guidelines for members of the public on Council Meeting Practices.	Nil
Environmental	Nil	Nil

Financial Implications

The recommendation to approve the attached policy has taken consideration of Business Paper production and Council Meeting requirements. The current proposal does not require an increase in Council expenditure.

Legal and Risk Management Issues

The Council maintains and updates a Code of Meeting Practice in accordance with Section 360 of the Local Government Act. By enhancing clarity and certainty on aspects of Meeting Practice not covered by the Local Government Act 1993 and the Local Government (General) Regulation 2005 the Code of Meeting Practice provides clear guidelines for both the public and the Council.

Conclusion

The draft Code of Meeting Practice is presented for adoption with suggested changes marked in the enclosed document.

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Enclosure

ITEM NO: 3**SUBJECT: TENDER FOR THE PROVISION OF LEGAL SERVICES – RFT NO. 2008-NCW009****FILE NO: F05057**

Recommendations:

1. That the Council accept the tenders submitted by McPhee Kelshaw, Marsdens Law Group, Maddocks, Deacons and Pikes Lawyers to comprise the Council's Legal Services Panel for the period commencing 1 July 2009 and ending 30 June 2012 with an option to extend for a further two individual 12 month options. Council will determine extensions after a review of services.

2. That the Council acknowledge the service given by Houston Dearn O'Connor, Marsdens Law Group, McPhee Kelshaw and Pike Lawyers over the past 4 years of the current Council Legal Services Panel.

Report by General Manager**Reason for Report**

The Local Government Act 1993 Section 55 requires Council to invite tenders before entering into a contract for the provision of services to the Council. The Council's current legal service providers, Houston Dearn O'Connor, Marsdens Law Group, McPhee Kelshaw and Pike Lawyers, have completed their contract period. Therefore Council, following an internal User Survey, which demonstrated the advantages of a panel of Legal Service Providers went to the market.

The Council requires a panel of legal service providers to assist Council in the areas of:

- Local government prosecutions – for example Companion Animals Act breaches of regulations as enforceable by Council;
- Planning – including advice on local planning instruments, environmental impact statements, rezoning and development consents, conditions of consent and non-compliance with planning permission, representation in the Land & Environment Court;
- Employment and industrial relations (excluding workers compensation);
- Administrative law – Freedom of Information, Privacy, Administrative Decisions Tribunal, probity and protected disclosure issues, Council meetings and compliance with elements of the Local Government Act including the election of Councillors;
- Insurance – smaller public liability claims, property damage and personal injury. Note: Legal services supporting larger public liability claims are managed by a panel of providers contracted by the Council's public liability insurance provider;
- Commercial services – conveyances, lease agreements, contracts and tendering;
- Environmental law including climate and natural resource management;
- Major project experience including town redevelopment and large scale community facilities; and
- Financial, investment and taxation laws.

Background

Council appointed the current legal service providers, Houston Dearn O'Connor, Marsdens Law Group, McPhee Kelshaw and Pike Lawyers on 31 May 2005. This contract was for an initial 3 years with a further 1 year option.

During the period of this panel contract several benefits to Council have accrued through the use of a panel of Legal Service Providers, some of those key benefits being a:

- Range of different legal skill sets across the panel to service Council's legal requirements;
- Reduction in the cost of legal services to the Council; and
- Increased level of satisfaction from Council in terms of legal service provision.

The Tender

Open tenders were called in accordance with the Council Tendering Guidelines. The tender was advertised in the Sydney Morning Herald on 24 February and 3 March 2009 and in the Blue Mountains Gazette on 25 February 2009 and 4 March 2009.

The tender called for a panel of legal service providers for an initial period of 3 years with two one year options that are at the discretion of the Council following a review of services in the initial 3 year period.

Tenders closed at 2.00pm on Friday, 20 March 2009. During the course of the tender period one addendum was issued regarding the uploading of attachments.

The following tenders were received and are listed in alphabetical order:

- Clark McNamara
- Deacons
- DLA Phillips Fox
- Holding Redlich
- Houston Dearn O'Connor
- Maddocks
- Marsdens Law Group
- McPhee Kelshaw
- Pike Lawyers
- Stacks Law Group
- Storey and Gough
- Wilshire Webb Beattie Staunton

Tender Evaluation

A Tender Evaluation Panel (TEP) was established to evaluate the submissions in accordance with the assessment criteria and processes specified within the Request for Tender (RFT) documents. The TEP is required to establish which tender offers the most benefit to the Council. The TEP was made up of three Council staff with relevant experience in the use of the Legal Services Panel.

The TEP evaluated tender responses and rated those responses to get an effectiveness comparison.

Evaluation Criteria

The following table sets out the evaluation criteria for evaluating and rating the effectiveness represented by each tenderer. The criteria are those notified to tenderers in the RFT and included:

Part	Description	Weighting
A	Vendor Profile	6.85%
B	Response to Statement of Requirement	77.66%
C	Compliance Pricing Declaration	15.49%

Evaluation of Effectiveness

The various individual components of the vendor profile and response to the statement of requirement were assessed by the TEP for each tenderer. A cost analysis is conducted in conjunction with the effectiveness analysis. This cost assessment takes into account:

- Cost represented by the assessment of price;
- Value represented by the technical assessment; and
- An assessment of risk in the context of the risk profile presented by the tenderer.

The result is represented in the following table by rank:

Vendor	Effectiveness
McPhee Kelshaw	77%
Marsdens Law Group	76%
Maddocks	74%
Deacons	69%
Pikes Lawyers	65%

The remaining firms, Clark McNamara, DLA Phillips Fox, Holding Redlich, Houston Dearn O’Connor, Stacks Law Group, Storey and Gough and Wilshire Webb Beattie Staunton, scored below 65% in the assessment.

Evaluation Outcome

Based on the assessment of all evaluation criteria to determine effectiveness and value for money, the TEP recommends that the legal service panel for the Council be comprised of the following firms:

- McPhee Kelshaw
- Marsdens Law Group
- Maddocks
- Deacons
- Pikes Lawyers.

A comprehensive confidential tender evaluation report is available on file for Councillors’ reference.

Sustainability Assessment

Effects	Positive	Negative
Environmental	Ability of each firm to assist with environmental, natural and climate risk issues.	Nil
Social	Ability of firms to contribute to the Blue Mountains community.	
Economic	The majority of firms were able to demonstrate an economic development or economic benefit to the LGA.	

Financial Implications

The costs associated with the provision of legal services are maintained within the budgets of the Groups of Council. Establishing a further panel of Legal Services Providers is a proven method of cost containment in legal costs for the Council.

Legal and Risk Management Issues

The tender process has been conducted in accordance with the Council Procurement Policies. The Tender Review Committee (TRC) has reviewed the tender procedures and is satisfied as to the fairness of the process, and that the process has complied with policies. There are no identified legal or risk management issues related to this matter.

External consultation

No external stakeholder consultation was undertaken.

Conclusion

Based on the assessment of the tenders received, it is recommended that the Council accept the tenders submitted by the legal firms McPhee Kelshaw, Marsdens Law Group, Maddocks, Deacons and Pikes Lawyers to comprise the Council’s Legal Services Panel for the period commencing 1 July 2009 and ending 30 June 2012 with an option to extend for a further two individual 12 month options to 30 June 2014. Council will determine extensions after a review of services during the initial period.

It is recommended that the Council acknowledge the service given by Houston Dearn O’Connor, Marsdens Law Group, McPhee Kelshaw and Pike Lawyers during the previous 4 year period.

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ITEM NO: 4

**SUBJECT: COMMUNITY ASSISTANCE / DONATIONS – RECOMMENDATIONS
BY COUNCILLORS**

FILE NO: F02560

Recommendation:

That the council approve the following donations from the Councillors’ Minor Local Projects vote:

<i>Organisation</i>	<i>Amount</i>
<i>Springwood Neighbourhood Centre</i>	<i>300.00</i>
<i>Blackheath Art Society</i>	<i>500.00</i>

Report by General Manager:

On 11 July 2000 the Council adopted a revised Policy for Councillors’ Minor Local Projects allocations for the provision of community assistance/donations. The following recommendations for donation, which appear to fall within the ambit of the Policy, have been received and are submitted for approval.

Minor Local Projects

Recommending Councillor	Organisation	Purpose	Amount
Clr McLaren	Springwood Neighbourhood Centre	Kinship Care Regional Project	\$300.00

Mayoral Contingency Fund

Clr Searle	Blackheath Art Society	To increase the Art Prize from \$500 to \$1,000 for 2009.	\$500.00
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