

**ITEM NO: 1****SUBJECT: SCHEDULE OF INVESTED MONIES****FILE NO: F03848**

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**Recommendation:**

*That the Schedule of Invested Monies for December 2008 be received.*

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**Report by Group Manager, Community & Corporate:**

This report is submitted for the purpose of financial accountability and in satisfaction of the investment reporting requirements of the Local Government (General) Regulation 2005 (REG 212) and the Local Government Act, 1993 (Section 625). The report also certifies that the Council investments comply with the forms of investment made by order of the Minister under section 625(2) of the Local Government Act 1993. The current Ministerial Order was issued under the Council Circular 08-48 on 18 August 2008.

The Schedule of the Council Invested Monies for December 2008 is attached for information (refer Table 1).

The increased returns, above budget as at December 2008, on the Council investments are due to a greater than anticipated cash position for the financial year (refer Table 6).

Oakvale Capital, the Council independent investment advisor were instructed on 4 November 2008, after a Councillor Investment Briefing, to research alternative means of investment valuations. Current valuations were requested since valuations were not being provided by Lehman Brothers Australia Ltd due to their administration proceedings (i.e. latest valuations were to 31 August 2008 in the previous Council report). Valuations and credit ratings have now been calculated and updated to 31 December 2008 for all the Council investments (with the exception of CBA – Palladin Portfolio note valued as at 31 October 2008). Therefore the reporting period of December 2008 has a catch-up in valuations from 31 August 2008 and shows the Council investment's fair value market valuation reducing by \$2,383,646 (refer Table 2).

The financial impact on the Council's investment portfolio is that the mark to market valuation of the Council investment securities, classified as fair value through the profit and loss statement, has now been reduced by a total of \$6.6m indicatively between 1 July 2007 and 31 December 2008. If the Council were forced to sell these securities for liquidity reasons it could potentially realise a loss based on current market conditions. However, based on current cash flow projections, there is no short-term requirement to liquidate the long-dated investments for cash flow needs.

**Global and domestic issues**

There was limited optimism in the financial markets to end the 2008 year.

The Australian share market declined by approximately 40% and global shares were down between 30%-50% over the 2008 calendar year. The success of government arranged stimulus plans holds the key to how well the market performs in the 2009 calendar year.

Since the economic cycle will take its own course and time is needed to work out of the recessionary conditions the skeptics forecast that there will not be a sustained economic recovery until 2010.

There has been little sign of liquidity in the credit markets despite monumental bailouts by governments around the world. Corporate default rates are expected to rise in 2009, which will likely have detrimental effects on credit and share markets.

During December 2008 the following occurred (not an exhaustive list):

- Australia's official cash rate was cut to its lowest level since 2001. Further cuts from the 4.25% level are expected in February and March to take the cash rate into the low 3% area;
- The US Federal Reserve cut its official cash rate to essentially zero by establishing, for the first time ever, a target range of 0%-0.25%;
- Unemployment data in the US shows that the world's leading economy is facing a long and deep recession;
- US President-elect Obama was drumming up support for a massive \$775+bn stimulus plan to help kick start the US economy while revamping the financial regulatory system and stemming home foreclosures;
- Automakers around the world recorded sales figures down over 30% for December;
- The Australian economy is now widely expected to go into recession in 2009 as exports are expected to slow down considerably; and
- The resource sector is expected to struggle during the upcoming year leaving a major component of Australia's economy weakened.

### **The Council Investment Position**

The credit market opportunities, corporate default rates, the Lehman Brothers Holding Inc. bankruptcy and the Lehman Brothers Australia Ltd administration continue to be reviewed by the Council independent investment advisor Oakvale Capital, in conjunction with advice from the Council legal advisor, Piper Alderman.

Developments in the month of December 2008 included:

- Advice that the CBA – Callable CPI Linked Note (\$1,000,000) will be redeemed for 100% of the securities original face value. \$1.0m was subsequently received into the Council bank account on 5 January 2009 (refer Table 1);
- The ANZ Yield Curve Note (\$100,000) was redeemed on 20 November 2008 for 100% of the securities original face value.
- As reported in October 2008, the CBA – Palladin Portfolio Note (\$500,000) that was affected by the bankruptcy of Sigma Finance Corporation who is the collateral Issuer for this security has terminated the issuer agreement. The affect of this termination is being assessed by the Council investment and legal advisors but we are advised that we should expect a nil recovery level on this security and we have therefore valued the security at \$0 (refer Table 1);

- As advised in October 2008, the Council has lodged a proof of debt claim as a creditor on the Lehman CPPI principal protected property note where Lehman Brothers Holdings Inc. was the guarantor. Since Lehman Brothers Holding Inc. has filed a Chapter 11 bankruptcy notice we are waiting on advice as to the recovery on this investment. Final distribution to the Council on this holding is impossible to estimate at this stage but we are advised that recovery should be regarded as very low and so we have valued the security at \$0 in December 2008 (refer Table 1); and
- Lehman Brothers Holdings Inc (LBHI) continues proceedings in the United States Bankruptcy Court. In the meantime, we have been investigating with our legal advisors the process of early termination of the securities for which LBHI is a swap counterparty (i.e. Zircon and Beryl securities). There have been estimates of recovery rates of 70-95% but these are very preliminary and we have chosen instead to value these securities much more conservatively until the position is more certain (refer Table 1).

\* \* \* \* \*

## Attachment

SCHEDULE OF INVESTED MONEY - December 2008 (Table 1)							
Institution & Fund	Original Rating	Current Rating	Return for month	Face Value	Investment Valuation (Net)	Investment Valuation (Net) Previous Month	Comment on movements and valuation
CBA Bank Bill (maturity 15/12/2008)	A1/AA-	A1/AA-	7.45%	0	0	2,300,000	\$2m re-invested HAB & ANZ
CBA Bank Bill (maturity 12/1/2009)	A1/AA-	A1/AA-	5.18%	2,000,000	2,000,000	2,000,000	No movement
HAB Professional Funds A/C (at call)	n/a	n/a	4.25%	4,399,912	4,399,912	2,158,492	cashflow investment
HAB Term Deposit (maturity 21/1/2009)	A-1+	A-1+	4.50%	1,000,000	1,000,000	0	cashflow investment
ANZ Term Deposit (maturity 28/1/2009)	A-1+	A-1+	4.50%	1,000,000	1,000,000	0	cashflow investment
Bendigo Bank FRN	BBB	BBB	8.57%	1,000,000	834,718	849,981	Valuation 31/12/08
CBA – Palladin Portfolio Note	AA	BBB-	0.00%	500,000	0	97,500	Valuation as at 31 October 2008
Generator Income Notes (administered by Rim Securities Ltd)	AAA	AAA	1.94%	1,000,000	200,000	358,281	Valuation 31/12/08
Macquarie Cash Management	AAA	AAA	4.25%	150,156	150,156	144,138	Coupons received for the month held in cash mgt.
Averon Series AF7 Floating Rate Note (administered by ANZ Bank)	AAA	AAA	0.00%	500,000	355,185	399,800	Valuation 31/12/08
CBA – Equity Linked Note	AA	AA	3.00%	1,000,000	995,900	953,750	Valuation 31/12/08
CBA – Callable CPI Linked Note	AA	AA	0.00%	1,000,000	1,000,000	951,800	Valuation 31/12/08. Redeemed at face value on 5/1/09
Athena Series 1 Camelot Notes (administered by ICAP)	AA-	AA-	8.32%	500,000	451,838	426,885	Valuation 31/12/08
Aphex Pacific Capital Phoenix Notes (administered by ABII-AMRO Morgans)	AA1	AAA	6.30%	500,000	426,445	426,900	Valuation 31/12/08
Investments arranged by Lehman Brothers:-							
Adelaide Bank FR Sub Debt	BBB+	BBB+	5.50%	750,000	757,121	738,525	Valuation 31/12/08
Adelaide Bank FR Sub Debt	BBB+	BBB+	4.70%	1,500,000	1,518,755	1,459,350	Valuation 31/12/08
Aphex (Glenelg)	AA-	BB+	5.85%	280,000	25,617	163,912	Valuation 31/12/08
ANZ Yeild Curve Note	AA	AA	0.00%	0	0	87,200	Redeemed 20/11/08 at full face value.
BELO (Kalgoorlie)	AA+	AA+	6.02%	600,000	499,207	502,500	Valuation 31/12/08
Bendigo Bank FR Sub Debt	BBB+	BBB+	4.49%	500,000	500,018	484,050	Valuation 31/12/08
Bendigo Bank FR Sub Debt	BBB+	BBB+	4.81%	500,000	504,724	457,250	Valuation 31/12/08
Corsair (Torquay)	AA	CCC+	5.45%	300,000	4,244	154,500	Valuation 31/12/08
Corsair (Kakadu)	AA-	B+	5.25%	300,000	20,511	125,580	Valuation 31/12/08
Deutsche Bank Yeild Curve Note	AA-	AA-	8.25%	250,000	246,570	210,250	Valuation 31/12/08
Elders Rural Bank Sub Debt	BBB-	BBB-	6.89%	500,000	461,445	473,900	Valuation 31/12/08
Beryl (AAA Global Bank Note)	AAA	CCC-	4.75%	350,000	3,592	273,280	Valuation 31/12/08
Helium (Esperance)	A+	BB-	5.95%	450,000	34,359	253,035	Valuation 31/12/08
Helium(Scarborough)	AA	CCC	5.44%	1,100,000	12,692	600,380	Valuation 31/12/08
Herald Limited (Quartz AA)	AA	AA	5.75%	250,000	206,738	176,625	Valuation 31/12/08
HSBC FRN	AA-	AA-	4.53%	1,000,000	860,738	908,000	Valuation 31/12/08
Lehman CPPI	AA-	D	0.00%	250,000	0	222,500	Valuation 31/12/08
Magnolia (Flinders)	AA	AA	5.75%	550,000	377,730	412,500	Valuation 31/12/08
MAS6-7(Parkes)	AAA	BB	5.25%	250,000	15,305	85,250	Valuation 31/12/08
Start (Blue Gum) (Jun 13)	AA-	CCC	5.65%	300,000	2,406	152,220	Valuation 31/12/08
Zircon (Miami) (Mar 17)	AA	C	6.40%	95,000	592	38,019	Valuation 31/12/08
Zircon(Merimbula) (Jun 13)	AA	C	5.20%	400,000	2,277	117,800	Valuation 31/12/08
Zircon (Coolangatta) (Sept 14)	C	B+	5.85%	450,000	2,700	143,550	Valuation 31/12/08
<b>Total</b>				<b>25,475,068</b>	<b>18,871,495</b>	<b>19,307,703</b>	

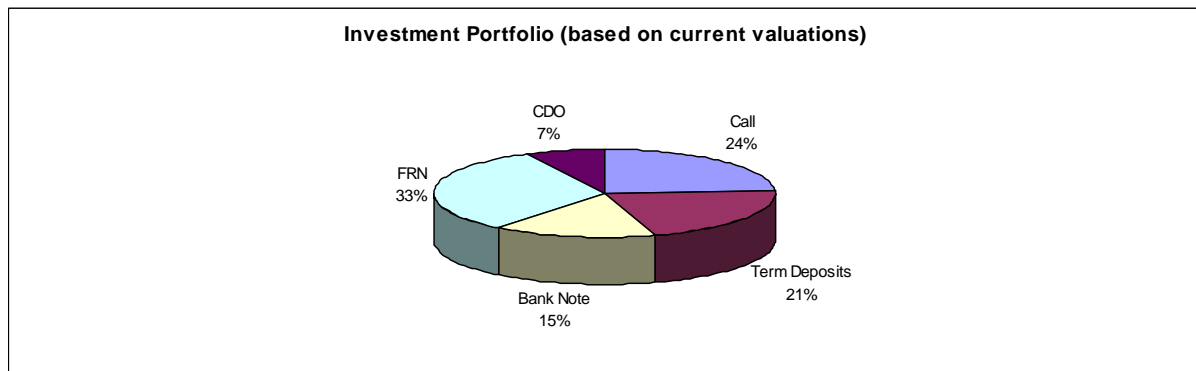
(Table 2)

Balance of investments November 2008 (Market Value)	19,307,703
Funds invested during month (Gross)	4,200,000
Funds withdrawn during month (Gross)	(2,300,000)
Interest re-invested during month	47,438
Revaluation of investments during month. Favourable/(Unfavourable)	(2,383,646)
Balance of investments December 2008 (Market Value)	18,871,495

**BBSW 30 Days 4.15%**  
**Average Rate of Return for Month 4.68%**

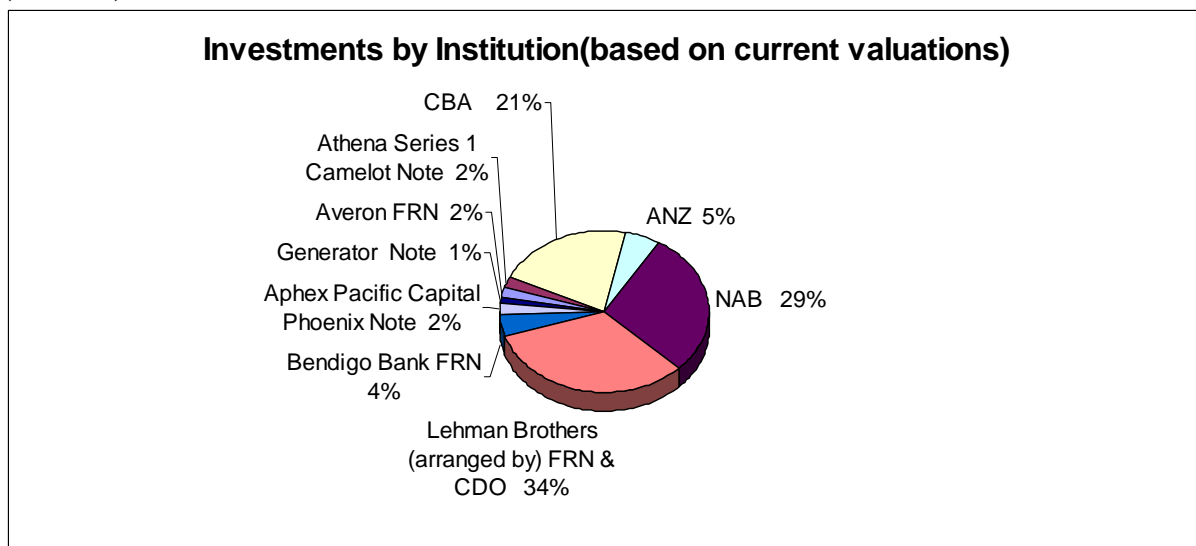
Current market valuations of all investments are as at 31 December 2008 with the exception of CBA – Palladin Portfolio note which is valued as at 31 October 2008 as advised in the comments column in Table 1. It is also important to note that valuations are indicative only with no assurance that trades could be completed at such values.

(Table 3)

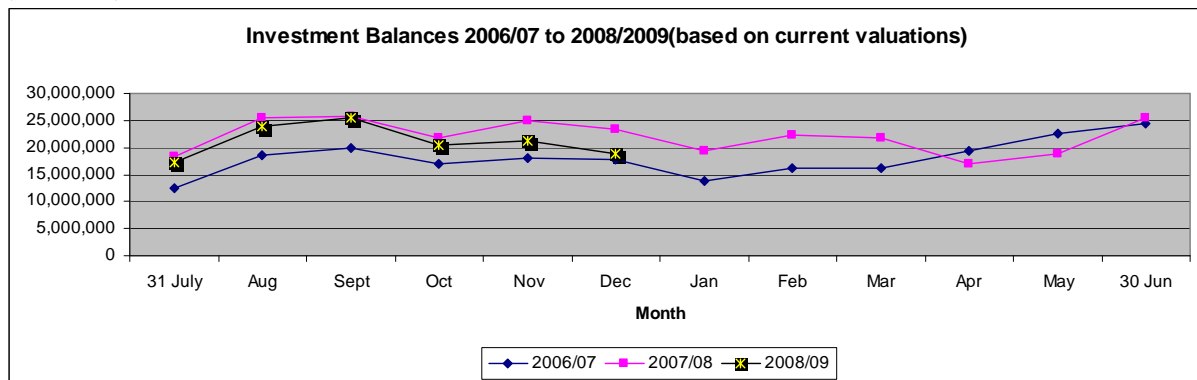


- Call – Cash at Call
- Term Deposits – Deposits for Fixed Term
- Bank Note – Structured Notes
- FRN – Floating Rate Note
- CDO – Collateralised Debt Obligation

(Table 4)



(Table 5)



(Table 6)

**Interest Income (Accrued +Received YTD) - Budget vs. Actual**

	Actual	Budget
Income to 30 November 2008	707,207	547,605
Income for month December 2008	106,604	109,521
Total Accrued Income to date	813,811	657,126
Less restricted income for RTA contribution – Lawson Town Centre and Property Investment Fund	(111,809)	
	702,002	657,126
Estimated for remainder of year	612,248	657,124
Estimated total 2008/2009	1,314,250	1,314,250

I certify and report that the Schedule of Invested Monies listed above describes all the Council funds invested by virtue of Section 625 of the Local Government Act, 1993. The monies referred to in this Schedule are invested in accordance with the Local Government Act, 1993 (Section 625 and Order of the Minister dated 18/08/2008), and Local Government Regulation 1999 (Clause 16).

Neil Farquharson  
Responsible Accounting Officer

**ITEM NO: 2****SUBJECT: DEPARTMENT OF LOCAL GOVERNMENT - COUNCILLOR INFORMATION SEMINARS****FILE NO: F2014**

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**Recommendation:**

*That the Council note the attendance status of the Councillors at the Department of Local Government Councillor Information Seminars provided following the Local Government Election 2008.*

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**Report by General Manager:****Background**

After the conclusion of the 2008 Local Government Election, the Department of Local Government (DLG) developed a Councillor Information Seminar (Circular 08/55). The Blue Mountains City Council, due to the comprehensive internal online and face to face Councillor Induction Program, contributed to the Department of Local Government in the development of their Councillor Induction session.

The DLG Councillor Information Seminar focussed on three broad topic areas: roles, responsibilities and relationships; the code of conduct and ethical decision making; and meetings practice. Seminars were delivered as an interactive session to facilitate participation and a clear understanding of key information.

DLG Circular 08/55 further outlined that all Councillors, both newly elected and returning, were to attend a Councillor Information Seminar facilitated by the Department. This report is in accord with that Circular where it was directed that the General Manager should, through a Business Paper, report Councillors attendance status at the Department of Local Government Councillor Information Seminars.

**Attendance**

DLG Councillor Information Seminars were held in various locations at various times over a period of several weeks to allow Councillors to attend. Sessions most appropriate for BMCC Councillors were held in Penrith, Parramatta, Sydney and Bathurst.

An extra session at Rockdale was scheduled to allow those Councillors experiencing difficulties to potentially attend. The following table outlines the attendance of BMCC Councillors and the General Manager at the Department of Local Government Councillor Induction Program:

<b>Councillor</b>	<b>Session Date</b>	<b>Session Location</b>
Cr Gibbs	13 November	Parramatta
Cr Hamilton	5 November	Bathurst
Cr Mays	27 November	Penrith
Cr Clark	27 November	Penrith

<b>Councillor</b>	<b>Session Date</b>	<b>Session Location</b>
Cr Luchetti	27 November	Penrith
Cr Myles	27 November	Penrith
Cr McLaren	8 October	Campbelltown
Cr Greenhill	27 November	Penrith
Cr McCallum	13 November	Parramatta
Mr Pinyon (General Manager)	17 November	Sydney

Councillors Searle, Creed and Van der Kley were unable to attend an information session due to both civic and work commitments. The Councillors communicated directly with the Department of Local Government outlining their difficulties with attendance at the nominated sessions.

It should be noted that Blue Mountains City Council designed and implemented its own comprehensive induction program from September to December 2008.

**Sustainability Assessment**

<b>Sustainability Area</b>	<b>Positive</b>	<b>Negative</b>
Social	Facilitated understanding of Councillors about role and decision-making within a sustainable and legal framework for local government issues	
Environmental		
Economic		

**Financial Implications**

Nil

**Legal and Risk Management Issues**

Nil

**Conclusion**

This report has been prepared to comply with the direction of the Department of Local Government and documents the attendance status of Councillors with respect to the DLG Councillor Information Seminars.

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**ITEM NO: 3**

**SUBJECT: BLUE MOUNTAINS CULTURAL CENTRE & KATOOMBA LIBRARY  
ADVISORY COMMITTEE**

**FILE NO: F04889 – 08/335640**

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**Recommendation:**

*That the Council endorse the term extension for the Blue Mountains Cultural Centre and Katoomba Library Advisory Committee until the establishment of the Blue Mountains Cultural Centre Board.*

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**Report by Group Manager, Community and Corporate:**

**Report Summary**

The Blue Mountains Cultural Centre and Katoomba Library Advisory Committee was formed in 2007 to assist the development of the Blue Mountains Cultural Centre and Katoomba Library as a vital, sustainable regional cultural facility of local, state and national significance.

Since this time the committee has worked strongly to support the Council in its development of the Centre. Initial focus has been on engaging with the local community, fact finding and business development. The committee meets formally five times per year and informally four times per year for specific cultural and arts centre business analysis. The initial term for the committee was for two years and it is recommended that this term be extended for the duration of the developmental phase and to cease upon the establishment of the proposed Blue Mountains Cultural Centre Board.

**Background**

The Council Report of 23 November 2004 outlined the proposed governance structure for the Blue Mountains Cultural Centre and the Katoomba Library, which proposed an Advisory Committee for the design and construction phase leading to the development of a Board for the operational phase. On 5 September 2006 the Council appointed Joan Domicelj AM as Chair and adopted the Terms of Reference for the Blue Mountains Cultural Centre and Katoomba Library Advisory Committee and adopted a staged approach to appoint regional representatives and community members.

The Blue Mountains Cultural Centre Branch in conjunction with the Chair, the General Manager and the Mayor initiated a search for appropriate regional organisation members and called for expressions of interest from community members in early 2007. The Council appointed the members in April 2007 as below. (Minute No 73, 3/4/07)

Community Members:

- John Marsh;
- Dr Peter Shepherd;
- Martin Thomas;
- Cheryl Yin-Lo; and

- Mark Jarvis (appointed by Council 5 August 2008 – resigned on 1 September, prior to taking the position. Mr Jarvis was a nominated candidate for the Blue Mountains City Council local government elections held in September 2008).

Regional Organisation Members:

- Jason Ardler, Director, Cultural Heritage Division, Department Environment and Conservation;
- Wendy Carlson, Convenor, Central West Heritage Network;
- Deborah Ely, CEO Bundanon Trust (Deputy Chair);
- John Kirkman, CEO Penrith Joan Sutherland Performing Arts Centre, Lewers Bequest & Penrith Regional Gallery; and
- Tony Nesbitt, Manager, Arts Programming, Sydney Olympic Park Authority

Council Staff Members:

- Peter Adams, representing the General Manager; and
- Simon Ambrose, Blue Mountains Cultural Centre Director

The Terms of Reference for the Committee are included as Attachment 1.

**Sustainability Assessment (Triple Bottom Line Reporting):**

<b>Effects</b>	<b>Positive</b>	<b>Negative</b>
Environmental	Nil	Nil
Social	Involvement and advice of the Committee will enhance social capital in the local government area.	Nil
Economic	Involvement and advice of the Committee will enhance the economic benefits of the facility when operational.	Nil

**Financial implications for the Council**

There is no budget allocated for the committee. Expenses are met by the current budget within the Blue Mountains Cultural Centre Branch operational budget.

**Legal and risk management issues for the Council**

The ongoing operation of the Blue Mountains Cultural Centre and Katoomba Library Advisory Committee has been subject to probity audit as part of the overall project probity planning and audit.

**Conclusion**

The Blue Mountains Cultural Centre and Katoomba Library Advisory Committee has sound stakeholder representation and will ensure that the development of the Blue Mountains Cultural Centre and new Katoomba Library will achieve the outcomes that best cater for the diverse needs of the community. The Committee will continue to provide advice to Council and to support the Cultural Centre Director in the ongoing development phase of the cultural facilities.

\* \* \* \* \*

Attachment

**Terms of Reference (Minute No. 698, 5/9/06)**

Objective

To assist the development of the Blue Mountains Cultural Centre and Katoomba Library as a vital, sustainable regional cultural facility of local, state and national significance.

Reporting Structure

The Committee operates in a project advisory capacity. Advice is given to the Council and where appropriate to the Project Control Group and the Design Review Panel through the Cultural Centre Director.

Purpose/Role

1. To act as a forum for members with experience and expertise in the arts, culture and business to provide advice to Council and to support the Centre Director in the development phase of the Blue Mountains Cultural Centre & Library Project
2. To engage in information seeking and consultation to add value to the project through engagement of local and regional communities.
3. To assist in the establishment of networks within the Blue Mountains cultural communities and to engage the broader community in support for the Centre's development.
4. To provide advice and assist the Centre Director in shaping agreements with other relevant parties including the owner of the retail level.
5. To provide advice to the Design Review Panel for the project.
6. To establish and participate in specialist subcommittees as required.
7. To carry out any other matters required for the Cultural Centre and Katoomba Library.

Term

The term is initially for two years. It is anticipated that the Committee would meet on a six weekly basis until established and then move to a bi-monthly or quarterly schedule in accordance with project requirements. The term of appointment will cease upon the establishment of the Board.

Appointment Criteria

The key skills sought in committee members included:

- Artistic/heritage/gallery development
- Knowledge of community & networking capacity
- Public relations/ marketing/business
- Community/ government relations

Key personal attributes included:

- Sufficient time to devote to the role
- Good communication skills

- Ability to engage productively in critical debate
- Holding respect and good relationships with the Blue Mountains communities
- A focus on the broader interests of the whole community
- Understanding of and tolerance for committee processes
- A commitment to a positive outcome for the Cultural Centre and the Katoomba Library

The Committee would have a role in encouraging/sourcing appropriate additional expertise. These people will be incorporated into the specialist advisory sub-committees as required. It was envisaged that a specialist technical advisory panel for the Katoomba Library in particular would be established.

The Committee comprises both community members from the cultural and business communities, sufficient to ensure diversity of opinion and expertise, as well as members from key regional organisations with specialist expertise.

The membership of the Committee is proposed to be fifteen, as follows:

Chair (1)

Independent community member

Appointed Members (5)

These members are selected on the basis of their professional positions (ex-officio) and associated expertise within relevant regional organisations.

Community Members (7)

Community members represent a range of expertise from the local arts, cultural heritage & business communities across the mountains and were selected by an expression of interest process.

Council Representatives (2)

General Manager or delegate  
Blue Mountains Cultural Centre Director

Other relevant Council staff will be in attendance as required and the Committee will be resourced by the project administrator.

Councillors are welcome to attend as observers.

**ITEM NO: 4**

**SUBJECT: CODE OF CONDUCT**

**FILE NO: F00296**

**Recommendation:**

*That the Council adopts the Blue Mountains City Council Code of Conduct 2009 which includes amendments from the public exhibition process.*

**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. Councils are able to adopt this Model Code as a minimum and if they choose to do so, customise it for their purposes under the *Local Government (General) Regulation 2005*.

The Council adopted the Model Code of Conduct without variation and without public exhibition, on 5 August 2008.

Since that time the Model Code of Conduct was customised to reflect not only relevant intersecting policy changes, but updated to reflect practices within Blue Mountains City Council that were included in the 2005 BMCC Code of Conduct. The document was placed on Public Exhibition for a period of 28 days with receipt of submissions for a minimum of 35 days, following a resolution of the Council at the 30 September 2008 meeting (Minute No: 664).

**Public Exhibition Process**

The Public Exhibition process was advertised in the Blue Mountains Gazette on 8 October and on the Council Website with an exhibition period from 13 October to 10 November with submissions receipted for a further seven days.

**Outcomes from the Public Exhibition Process**

There was one submission from the public exhibition process. The following summary of the suggestions and the recommended course of action to be taken, relative to those suggestions, are included in the following table:

<b>Suggestion</b>	<b>Acceptance Status</b>	<b>Comment</b>
Include bullying and harassment as significant workplace issues that will not be tolerated under Respect (s4.8)	Not included	The Council has already signalled non-tolerance of this workplace behaviour through the Human Resources (HR) Department

<b>Suggestion</b>	<b>Acceptance Status</b>	<b>Comment</b>
		developing protocols that see such matters dealt with under Performance Management programs by HR and the relevant Manager.
Strengthening the method by which staff notify Conflicts of Interest within the organisation (s7.17)	Partial	s7.17 deals with persons operating on behalf of Council. However s7.19 deals with staff and the current internal practices have been included in this section for clarity of responsibility by the Officer and the organisation.  An update was also provided at s5.2 to alert personnel to the requirements under s7.17 and s7.19
Private employment policies should be developed within Council (s7.26)	Not included	The Council HR Department has protocols available on the intranet to guide personnel in this situation
Personal dealings with Council by staff should have specific procedures eg DA (s7.28)	Not included	This matter is dealt with by the HR Department through personnel contracts for particular staff and under Delegations eg Senior Officers and Planning staff have any DA referred to Council for determination
Gifts and Benefits – active management of this issue to ensure transparency (s8.0)	Not included	The Council has protocol on Gifts and Benefits and actively manages the process internally. Currently under that protocol the Gift Register is held by the Internal Auditor following sign-off of the Gift and Benefit Form by officer, the Public Officer and the Internal Auditor
Alcohol and other drugs – needs to be strengthened with suggestions for strengthening (s15.3).	Not included	This section currently complies with accepted OH&S requirements and the legal limit of alcohol. There is no legislative framework to enforce a zero tolerance policy with Local Council industrial requirements on either alcohol or other drugs.
Confidential information – policy required on defining confidential information (s10-9-10.10)	Not included	Council currently has an Access to Information Policy which defines confidential information under the Privacy Act and

<b>Suggestion</b>	<b>Acceptance Status</b>	<b>Comment</b>
		Freedom of Information legislation.
Inappropriate interactions - word not is missing (s9.8)	Included	
Staff Declaration of Intention to Comply – new employees, existing employees and councillor	Not included	<p>The HR Department currently has processes in place for Code of Conduct induction for all new employees. In late 2007 the Council provided training to the whole of the organisation on Code of Conduct requirements.</p> <p>Councillors were provided with Code of Conduct induction by BMCC as well as the Department of Local Government in October – November 2008. In addition, Council resolved to place the Draft Code of Conduct on public exhibition.</p>

The changes that have been included are tracked within the attached document. The only other tracked change is the date are to the front cover of the Code of Conduct to reflect adoption in January 2009.

**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 BMCC Code of Conduct 2008 will assist the Council in:

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

**Conclusion**

Following the June 2008 legislation from the Department of Local Government and the subsequent public exhibition process of the Council it is recommended that the BMCC Code of Conduct January 2009 be adopted. .

\* \* \* \* \*

*Enclsoure:* BMCC Code of Conduct 2009

**ITEM NO: 5****SUBJECT: CONDUCT REVIEW PANEL ARRANGEMENTS: CODE OF CONDUCT****FILE NO: F0378**

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**Recommendations:**

- 1. That the Council endorse the BMCC Code of Conduct Independent Review Panel selection process to address the requirements of the Department of Local Government 2008 Model Code of Conduct.*
  - 2. That the Council thank WSROC for their management of this process on behalf of BMCC.*
  - 3. That the Council endorse the BMCC Panel of Independent Reviewers for use in investigating alleged breaches of the Code of Conduct by Councillors or the General Manager, including the continued use of the current BMCC Code of Conduct Independent Reviewer, Mr Geoff Williams, Fraud Prevention Services.*
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**Report by General Manager:****Background**

The Department of Local Government completed a review of the Model Code of Conduct and legislated the Code on 20 June 2008. The Blue Mountains City Council subsequently adopted this Model Code of Conduct in July 2008.

There were key changes to the Code in terms of how complaints against the Mayor, Councillors and GM are managed by an independent panel/reviewer. This information is outlined below:

*“12.12: ... must resolve to appoint persons independent of council to comprise the members of a conduct review committee and/or to act as sole conduct reviewers.”*

The General Manager and Mayor are no longer to be included 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.

There is also a complaint management section to guide all parties in how a review is conducted.

In order to address this new requirement the Council resolved on 26 August 2008 Council Meeting:

1. *That the Council note the options for progressing the development of the Independent Review Process for Councillors and the General Manager required under the 2008 Model Code of Conduct.*
2. *That the Council endorse the short-term strategy and broaden the terms of engagement for Mr Geoff Williams, Fraud Prevention Services to operate as an independent reviewer.*
3. *That the Council endorse exploring a co-operative arrangement through WSROC for the provision of independent review services. (Minute No: 603)*

This report details the process and outcomes to address this resolution of the Council.

### **WSROC Independent Review Panel Selection Process**

The Council advised WSROC of our intention to participate in the process for selecting Independent Reviewers under the Code of Conduct following the 26 August Council Meeting.

WSROC then consulted on, and implemented, a Code of Conduct Independent Reviewer Selection process. This process included:

- A request to WSROC member Councils a representative to participate in the selection process – the BMCC General Manager nominated the Executive Officer, Ms Julie Bargaquist;
- A selection process, marketplace criteria document and evaluation criteria were then developed by WSROC and provided to Council representatives for comment;
- On finalisation of the Selection Process criteria an advertisement was placed in various press across Sydney by WSROC for individuals, firms or companies to respond to the WSROC Code of Conduct Independent Reviewers Panel. In this document respondents could nominate which of the WSROC Councils they were prepared to provide services to;
- Throughout November 2008, the Council representatives reviewed the responses from the market and scored these using the predetermined evaluation criteria scoring process;
- At the 4 December 2008 WSROC General Managers Group the findings of the WSROC Code of Conduct Independent Reviewers Panel selection process were discussed; and
- On 10 December 2008, WSROC notified the participating Councils of the eligibility list of Code of Conduct Independent Review Panel members and outlined that the Councils could then ‘make final selection decisions regarding the individual Council panels.’

### **WSROC Code of Conduct Independent Review Panel membership**

It is considered that a comprehensive selection process was undertaken by WSROC to determine the following Code of Conduct Independent Review Panel members:

Armitage, Barbara (OAM)  
Baird, David  
Connolly, Bronwyn  
Gibbons, Kevin  
Grieves, Anthony

Hill, Robin  
Hopkins, Geoffrey  
Kleem, John  
Roach, Cath  
Thane, Kathryn.

**BMCC Code of Conduct Independent Review Panel membership**

Each independent Conduct Reviewer could indicate which Councils they were able to service. The following members of the WSROC Code of Conduct Independent Review Panel are able to provide services to BMCC:

Armitage, Barbara (OAM)  
Baird, David  
Gibbons, Kevin  
Grieves, Anthony  
Hill, Robin  
Hopkins, Geoffrey  
Kleem, John  
Thane, Kathryn.

The Council is requested to endorse this panel for BMCC along with one addition to the Code of Conduct Independent Review Panel members.

In 2007, the Council appointed Mr Geoff Williams of Fraud Prevention Services as the independent reviewer for any alleged breaches of the Code of Conduct by the Mayor, a Councillor or the General Manager. The independent reviewer role up to the advent of the 2008 Model Code of Conduct was to be part of a Council led panel.

At this time BMCC have not required the services of Mr Geoff Williams but there are circumstances that arise under the Code of Conduct where his professional expertise could be of assistance.

**Future independent review processes**

Councils now have the choice of either independent:

- Conduct Review Committees; or
- Individual reviewers.

In either circumstance the Conduct Review Committee or the sole Conduct Reviewer undertakes enquiries into alleged breaches. Members of the committee, or a sole Conduct Reviewer, must be independent of the Council and can act in the role for more than one Council.

In BMCC, the process being developed to assist in any investigation for a review of a potential breach of the Code of Conduct is:

- The initial investigation to determine whether it is necessary to conduct a full investigation of the matter would be undertaken by a sole reviewer. If the Conduct Reviewer Report outlines there is no breach of the Code of Conduct then no further action is taken. This process complies with the Code of Conduct which states:

“a person independent of council who is solely selected from those appointed by council to review allegations of breaches of the code of conduct by councillors or the general manager in accordance with the procedures set out in Sections 12, 13 and 14.” pp 4, S12.13 Department of Local Government Model Code of Conduct 2008

- If the Conduct Reviewer Report outlines that further investigation of the complaint is necessary and in consultation with the Councillors or General Manager determines that a Conduct Review Committee be established then this process would be undertaken to conduct the further investigation. This may occur where the initial investigation has uncovered complex, multiple issue which require additional expertise that is available from the panel of Conduct Reviewers. The Conduct Review Committee would then comprise three independent Conduct Reviewers chosen from the panel of providers in accordance with the Code of Conduct which states:

“a committee of three or more persons independent of council who are selected from those appointed by council to review allegations of breaches of the code of conduct by councillors or the general manager in accordance with the procedures set out in Sections 12, 13 and 14.” pp 4, S12.13 Department of Local Government Model Code of Conduct 2008

**Sustainability Assessment**

<b>Criteria</b>	<b>Positive</b>	<b>Negative</b>
Social	Provides positive process 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 by Councillors or the General Manager.	Nil
Environmental	Nil	Nil
Economic	Nil	Nil

**Financial Implications**

Each Conduct Reviewer has provided an indicative rates table which is subject to CPI. When an alleged breach of the Code of Conduct occurs then that incident would incur costs. The Council is reminded that in the past term of Council there were no alleged breaches of the Code of Conduct which required full investigation.

**Legal and Risk Impacts**

Practice outlined in this report comply with the Department of Local Government legislated Model Code of Conduct of 20 June 2008.

**Conclusion**

It is recommended that the Council endorse the comprehensive and professional process managed by WSROC for the selection of the Code of Conduct Independent Reviewers Panel undertaken on behalf of member Councils. From this process the Council is able to engage and endorse the BMCC Code of Conduct Independent Reviewers panel for investigating any alleged breaches of the Code of Conduct by Councillors or the General Manager.

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**ITEM NO: 6****SUBJECT: REVIEW OF THE CODE OF MEETING PRACTICE****FILE NO: C01672**

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**Recommendations:**

1. *That the Council endorse the revised Code of Meeting Practice 2009.*
  2. *That the Council place the revised Code of Meeting Practice on public exhibition under Section 361 of the Local Government Act for a period of 28 days.*
  3. *That the Council receive a further report on completion of the public exhibition period to assist in adoption of the Code of Meeting Practice 2009.*
- 

**Report by General Manager:****Reason for Report**

The Code of Meeting Practice was last exhibited to the public in June 2007. The Code was reviewed and non-statutory changes made in November 2001, June 2004, May 2005, September 2006 and October 2007. Under section 362 (2) of the Local Government Act 1993, non-statutory changes do not require public exhibition. However, due to the number of changes through revisions over a period of eight years it is considered beneficial to obtain public input at the beginning of the new Council term.

**Background**

The Code of Meeting Practice has been in place since 2000. The changes made since 2000 include:

- Council meetings moving to a three-weekly meeting cycle as per the review of 20 November 2001;
- Amendments to the Order of Business “items 1 to 15” to conform to Council’s current Management Plan as per the review of 20 November 2001;
- An amendment to deal with matters En Globo was incorporated into the amended Code, printed on 20 November 2001;
- The matters En Globo then underwent minor amendments in the review of the Code on 9 June 2004;
- The review of the Code on 10 May 2005 addressed the Business Paper timeframe, and consideration was given to the option of publishing the Council Business Paper five working days prior to the Council Meeting. A motion was passed granting this and set the closing date for Councillors to submit any business to the General Manager by Monday, i.e. eight working days prior to the Council Meeting;
- The review of the Code on 5 September 2006 undertook the following changes:
  - Precluded the use of mobile phones in the Council Chambers, for both Councillors and the public, while a Council meeting was in progress;

- At this time the Code outlined that permission must be sought to capture photographs in order that an individual's right to privacy was not compromised;
- The Code, at this time, developed a substantially amended Introduction. This Introduction outlined more clearly the objectives of the Code including the four principles that the Council commits itself to in adopting the Code. The Introduction also included a new section entitled 'Preliminary' which covers how the Code may be cited; when it was last amended; and a list of definitions contained within the Code;
- For clarity, subheadings were introduced into Clause 1.6, **Participation in the Council Meetings**, creating sub-clauses 1.6.1 **Public Access** and 1.6.2 **Protocol**. An amendment was introduced to Clause 2.3 Confidential Business Paper to include: "The Confidential Business Paper will be circulated in a secure manner to all closed Council Meeting participants."; and
- There was also the introduction of a new section - Part 8 Miscellaneous; and
- In the October 2007 review the following items were altered:
  - 4.2 and 4.3 Rescission Motions clarified;
  - Part 8 Interest – Pecuniary and Non-Pecuniary added;
  - Part 9 Access to Information added;
  - Part 10 Miscellaneous added; and
  - Grammar, syntax, spelling and up-to-date terminology were included.

### **Proposed changes to the Code of Meeting Practice for 2009**

The following proposed changes have been made to the Code for 2009. The tracked changes are shown in the Enclosure include:

- 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;
- 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.

These changes are tracked within the Enclosure – Draft Code of Meeting Practice 2009.

### **Public exhibition process**

In accordance with Section 160 of the Local Government Act the Code of Meeting Practice 2009 is recommended for public exhibition to ensure public input to the practices included in the document. The document will be on public exhibition for a period of 28 days with receipt of submissions to the Council for a period of 42 days after the policy is placed on public

exhibition. This public exhibition process also satisfies the requirements of Section 362 of the Local Government Act in relation to the Adoption of the Code of Meeting Practice by a Council.

**Sustainability assessment**

<b>Type</b>	<b>Positive</b>	<b>Negative</b>
Economic	Nil	Nil
Social	Clear and up to date Code of Meeting Practice supporting principles of open and transparent government. Clarity in guidelines benefits the public, councillors and staff attending meetings.	Nil
Environmental	Nil	Nil

**Financial Implications**

The recommendation to publicly exhibit the attached Code does not require any additional expenditure.

**Legal and Risk Management Issues**

Refining and updating the Code of Meeting Practice 2009 ensures compliance with the Local Government Act and the Regulation and minimises the risk of legal disputes arising from the conduct of Council Meetings.

**Conclusion**

Although non-statutory changes do not require public exhibition there are substantial changes to the Code of Meeting Practice 2009 therefore it is recommended to exhibit to the public and consider any submissions made in relation to the Draft Code of Meeting Practice, due to the election of a new Council in 2008. Following the completion of the public exhibition process a further report will be provided to the Council.

\* \* \* \* \*

Enclosure: Draft Code of Meeting Practice 2009

**ITEM NO:** 7**SUBJECT:** INTERNAL AUDIT POLICY**FILE NO:** F04616

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**Recommendation:**

*That the Council endorses the Internal Audit Policy 2008.*

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**Report by General Manager****Reason for Report**

The General Manager, through the Internal Audit Steering Committee, adopted an Internal Audit Charter in July 2006 for internal operational purposes. The Charter provided guidelines for Council's Internal Auditor to review all aspects of the Council operations, activities, programs and procedures and to report to the General Manager through the Public Officer. In addition, the Charter provided for liaison and interaction with the Council appointed External Auditor.

In November 2008, the Internal Audit Charter 2006 was reviewed and updated in accordance with the Internal Audit Guidelines 2008 released by the Department of Local Government in October 2008. The updated Charter has been developed into a Policy for adoption by the Council.

**Background**

The Independent Commission Against Corruption (ICAC) believes that "corruption may flourish in organisations which neglect or undermine the internal audit function", and in such cases "the organisation will lose the benefit of independent review in ensuring the integrity of systems and procedures". The ICAC further states the need for internal audit to have the cooperation and support of management, with internal auditors reporting directly to the Chief Executive (ICAC *Report Trips and Traps - Travel in the NSW Public Sector*, February 1994).

As the Internal audit Guidelines 2008 have recently been released it is important that the community and Councillors are aware of the Internal Audit requirements of the Council. The Internal Audit Guidelines recently released by the Department of Local Government propose, in accordance with the ICAC philosophy, oversight of council systems and processes through an audit committee. The combination of an effective audit committee and internal audit function provide a formal means by which Councillors can have confidence that elements of risk management are working effectively. BMCC has had a revised Internal Audit Steering Committee in operation since September 2006.

**2008 Changes within the Policy**

Proposed updates to the Internal Audit Policy 2008 (see Attachment 1) are minor as the BMCC Internal Audit Charter 2006 fundamentally addressed the requirements set out in the

2008 Local Government Internal Audit Guidelines. The following table outlines the extent of changes that have been incorporated as a result of the new guidelines:

<b>Change Type</b>	<b>Description</b>
General	Updated Introduction to reflect compliance with the Internal Audit Guidelines released by the Department of Local Government in October 2008.
Formatting	Nil
Additions	Minor typographic and wording changes.

All major changes to the document are highlighted.

**Sustainability assessment**

<b>Type</b>	<b>Positive</b>	<b>Negative</b>
Economic	Nil	Nil
Social	Provide assurances to ratepayers and Councillors that risk management is conducted through Council’s Internal Audit function.	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**

The Internal Audit Policy provides assurance to Councillors that risk management is conducted through Council’s Internal Audit function.

**External Consultation**

No consultation required in preparation of this revised Policy.

**Conclusion**

It is recommended that the Council endorse the Draft Internal Audit Policy 2008

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Attachment



The City within a World Heritage National Park

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# INTERNAL AUDIT POLICY

## CONTENTS

1. Introduction
2. Internal Audit Function and Scope
3. Authority
4. Duties and Obligations
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9. Implementation Follow-up
10. Relationship with the Council External Auditors
11. Internal Audit Performance
12. Professional Development
13. Co-Sourcing
14. The Internal Audit Committee

## **1. INTRODUCTION**

Although there is no specific requirement under the Local Government Act, 1993 for internal audit in local Councils, the Department of Local Government recommends that the Council seriously consider the establishment of an internal audit function. This Policy was reviewed and updated in accordance with the Internal Audit Guidelines released by the Department of Local Government in October 2008. These guidelines propose oversight of council systems and processes through an audit committee. The combination of an effective audit committee and internal audit function provide a formal means by which councillors can obtain assurances that risk management is working effectively.

In addition, the Independent Commission Against Corruption (ICAC) believes that “corruption may flourish in organisations which neglect or undermine the internal audit function”, and in such cases “the organisation will lose the benefit of independent review in ensuring the integrity of systems and procedures”. The ICAC further states the need for internal audit to have the cooperation and support of management, with internal auditors reporting directly to the Chief Executive (ICAC *Report Trips and Traps - Travel in the NSW Public Sector*, February 1994).

The Internal Audit function has been established within the Blue Mountains City Council to review all aspects of the Council operations, activities, programs and procedures and to report objectively thereon, with the Internal Auditor reporting to the General Manager through the Public Officer.

### **1.1 Statutory Obligations of the General Manager**

Section 355 in Part 2 of Chapter 12 of the Local Government Act, 1993 states that the General Manager “is generally responsible for the efficient and effective operation of the Council organisation and for ensuring the implementation, without undue delay, of decisions of the Council”. Furthermore, the General Manager has the following particular functions:

- a) The day-to-day management of the Council;
- b) The exercise such of the functions of the Council as are delegated by the Council to the General Manager;
- c) To appoint staff in accordance with an organisation structure and resources approved by the Council;
- d) To direct and dismiss staff;
- e) To implement the Council EEO plan;
  
- f) To ensure that effective measures are taken to secure the effective, efficient and economical management of financial operations within each Group of the Council administration; and
  
- g) Authorising and recording procedures are established to provide effective control over the Council assets, liabilities, revenue and expenditure and secure the accuracy of the accounting records, including a proper division of accounting responsibilities among the Council staff.

The Internal Audit (IA) function has been established to assist the Council General Manager in achieving these statutory functions.

## **2. INTERNAL AUDIT FUNCTION AND SCOPE**

### **2.1 Definition of Internal Audit**

The Institute of Internal Auditor's states that *Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve effectiveness of risk management, control, and governance processes* (IIA August 1999).

### **2.2 The Council's Internal Auditor is responsible to the General Manager/or their Delegate for:**

- (a) The development of a dynamic comprehensive Audit Policy with relevant associated Policy and supporting programs, for the efficient and effective performance of the internal Audit function;
- (b) The development of annual IA Plans;
- (c) Monitoring management controls to ascertain whether results are consistent with established objectives and goals and whether the operations or programs are being carried out as planned and authorised by the Council;
- (d) Monitoring compliance with relevant legislation, Department of Local Government directives and other regulatory instruments;
- (e) Anticipating, identifying, and assessing risks to the assets, activities and interests of the Council;
- (f) The examination and review of major computer-based operations, including any proposal for the acquisition, use or enhancement of computer facilities at the development stage of any such proposal, and the Internal Auditor shall be involved in the development/acquisition of any new major computerised financial system;
- (g) Investigating actual and potential lapses of control and incidents of risk over the financial and other operations and activities of the Council;
- (h) Examining and reviewing the Council performance indicators/measures, and provide guidance in the derivation and implementation of new performance measures and indicators;
- (i) Carrying out any assignment specifically directed by the General Manager or Internal Audit Steering Committee (IASC); and
- (j) Making recommendations for the improvement of control, the responses to risk, and the attainment of the Council objectives.

## **3. AUTHORITY**

- 3.1 Authority is vested in the Internal Auditor to enable the internal audit function to be performed efficiently, conveniently and to the satisfaction of the Internal Auditor with

every assistance from officers and employees of the Council and without any impediment.

- 3.2 For the purpose of performing any internal audit function, the Internal Auditor is authorised, without restriction -
- (a) To have access to any office, store or other premises or property owned or used by the Council in its operations and activities;
  - (b) To have access to, and be presented with, any books, accounts, files, documents or papers pertaining to the operations or activities of the Council and to take copies thereof;
  - (c) To have access to any of the Council PC or laptop computers, including the data and other files stored electronically on such computers, network or back-up media, and to:
    - obtain details of any software stored on the computer, network or back-up media, or
    - to remove the computer or back-up for analysis (subject to not affecting operational needs), or
    - to take electronic or printed copies of data files and/or data stored in or generated from such files;
  - (d) For the purpose of counting or inspection, to be presented with any moneys, certificates, value documents or other assets of the Council for which a memorandum shall be signed by the Internal Auditor acknowledging receipt; and
  - (e) To be supplied with all relevant information and explanations as requested and to be given every assistance in the performance of the duties entrusted.

## **4. DUTIES AND OBLIGATIONS**

- 4.1 It is the duty of the Internal Auditor to carry out the IA functions in the most professional manner, maintaining independence from line management and not compromising impartial and unbiased judgement.
- 4.2 At all times, confidentiality shall be preserved and the utmost discretion exercised by the Internal Auditor to ensure that information of a private, confidential or sensitive nature, known through the performance of the Internal audit function, is not divulged, except where necessary in performance of that function.
- 4.3 Due regard shall be had for the care, security and safekeeping of any books, accounts, files, documents, papers, or other items whilst in the possession of the Internal Auditor for the purpose of audit and these shall be returned to their customary holder as soon as possible.
- 4.4 Recognised professional standards, practices and procedures for internal audit shall be applied to all aspects of the audit function.

- 4.5 Prior to the commencement of an audit, the Internal Auditor shall, as a matter of courtesy, inform the functional head of the Group, Section or Office of the impending audit, unless a surprise audit is authorised, and at the time of commencement of the audit, report to the officer-in-charge of the Group, Section or Office.
- 4.6 The Internal Auditor shall exhibit good conduct and a professional and courteous manner in performing the audit functions.

## **5. CODE OF ETHICS**

- 5.1 Internal Auditors are expected to adopt professional ethical standards in order to meet their responsibility to the Council. The Council accepts that a suitable code of ethics is one based on the *Institute of Internal Auditors* Code of Ethics, as adopted by the Institute's Board of Directors in June 2000. On this basis, the Council code of ethics for Internal Auditors is as follows:
- 5.2 Internal auditors are expected to apply and uphold the following principles:

- a) Integrity:

- The integrity of internal auditors establishes trust and thus provides the basis for reliance on their judgment.

- b) Objectivity:

- Internal auditors exhibit the highest level of professional objectivity in gathering, evaluating, and communicating information about the activity or process being examined. Internal auditors make a balanced assessment of all the relevant circumstances and are not unduly influenced by their own interests or by others in forming judgments.

- c) Confidentiality:

- Internal auditors respect the value and ownership of information they receive and do not disclose information without appropriate authority unless there is a legal or professional obligation to do so.

- d) Competency:

- Internal auditors apply the knowledge, skills, and experience needed in the performance of internal auditing services.

## **6. RULES OF CONDUCT**

### **6.1 Integrity**

Internal auditors:

- a) Shall perform their work with honesty, diligence, and responsibility;
- b) Shall observe the law and make disclosures expected by the law and the profession;
- c) Shall not knowingly be a party to any illegal activity, or engage in acts that are discreditable to the profession of internal auditing or to the organisation; and
- d) Shall respect and contribute to the legitimate and ethical objectives of the organisation.

## **6.2 Objectivity**

Internal auditors:

- a) Shall not participate in any activity or relationship that may impair or be resumed to impair their unbiased assessment. This participation includes those activities or relationships that may be in conflict with the interests of the organisation;
- b) Shall not accept anything that may impair or be presumed to impair their professional judgment; and
- c) Shall disclose all material facts known to them that, if not disclosed, may distort the reporting of activities under review.

## **6.3 Confidentiality**

Internal auditors:

- a) Shall be prudent in the use and protection of information acquired in the course of their duties; and
- b) Shall not use information for any personal gain or in any manner that would be contrary to the law or detrimental to the legitimate and ethical objectives of the organisation.

## **6.4 Competency**

Internal auditors:

- a) Shall engage only in those services for which they have the necessary knowledge, skills, and experience;
- b) Shall perform internal auditing services in accordance with the Standards for the Professional Practice of Internal Auditing; and
- c) Shall continually improve their proficiency and the effectiveness and quality of their services.

*Excerpts from the Code of Ethics adopted by The IIA Board of Directors, June 17 2000.*

## **7. STANDARDS**

- 7.1 The Internal Auditor shall comply with the following:
- a) Standards for the Professional Practice of Internal Auditing issued by the Institute of Internal Auditors;
  - b) Auditing Practice Statements appropriate to internal auditing as issued by the Australian Society of Certified Practising Accountants and the Institute of Chartered Accountants in Australia; and
  - c) Statement on Information Systems Auditing Standards issued by the Information Systems and Control Association.
- 7.2 The Internal Auditor is required to:
- a) Comply with professional standards of conduct;
  - b) Possess the knowledge, skill, and technical proficiency essential to the performance of internal audits;
  - c) Be skilled in dealing with people and in communicating audit issues effectively;
  - d) Maintain technical competence through a program of continuing education; and
  - e) Exercise due professional care in performing internal audits.

## **8. ANNUAL INTERNAL AUDIT PLAN**

- 8.1 Three months prior to the commencement of each financial year, the Internal Auditor shall submit to the General Manager and the IASC, for approval, a detailed Audit Plan showing the areas and locations of audit work proposed for the ensuing year. The Annual Audit Plan shall be consistent with and flow from Internal Audit Policy and any associated Policy and where appropriate shall include any planned special assignments.
- 8.2 Any significant changes necessitated to the approved plan shall be submitted, together with reasons for such changes, to the General Manager, for information.

## **9. INTERNAL AUDIT REPORTS**

- 9.1 During, or on conclusion of the audit, the Internal Auditor shall consult with the functional head of the Group for the purpose of discussing the results of the audit prior to the finalisation of the formal audit report.
- 9.2 A draft audit report shall be submitted to the relevant Group Manager which will show the results of the Audit. Explanations as to the matters raised and suggested remedial action or recommendations for improvements shall be included in the report.

- 9.3 The Group Manager shall give a formal reply where possible for inclusion in the Audit report - or at least a verbal reply for inclusion.
- 9.4 The Internal Auditor shall submit a quarterly report to the IASC, giving clear indication of the level of performance achieved by the Council and the results of any appraisal, inspection, investigation, examination, review or special assignment carried out. Where appropriate, it shall also include recommendations for improvements in operating performance or control.
- 9.5 As soon as practical after the end of each financial year the Internal Auditor shall submit an Annual Report to the General Manager, summarising the audits undertaken during the year and the results of these audits. The report shall include reference to areas where weaknesses were consistently encountered; suggested remedial measures and any general observations or recommendations considered appropriate.

## **10. IMPLEMENTATION FOLLOW-UP**

- 10.1 Within six months of any audit report, the Internal Auditor will follow-up to determine the current status regarding implementation of audit recommendations (except for recommendations that have been considered by management and a decision made not to implement).
- 10.2 A follow-up report shall be provided to the General Manager bi-annually on the status of all recommendations that should have been implemented.

## **11. RELATIONSHIP WITH THE COUNCIL EXTERNAL AUDITORS**

- 11.1 The Internal Auditor shall liaise closely and cooperate with the Council External Auditors in the preparation of the Internal Audit work schedule and other audit matters so that the resources of the Internal Auditor shall be used to the best effect.
- 11.2 The Internal Auditor shall be the Council primary contact with the External Auditors in relation to audit follow-up, and shall ensure that formal and informal External Audit recommendations are implemented or at least addressed as appropriate.
- 11.3 Internal Audit Plans, working papers, flow charts, and reports shall be readily available to the Council External Auditors.
- 11.4 A meeting will be held bi-annually between the Internal Auditor as the representative of the Council and the Council External Auditors for the purpose of discussing audit matters.

## **12. INTERNAL AUDIT PERFORMANCE**

### **12.1 Quantitative**

- a) Achievement of the Annual Audit Plan;
- b) Number of compliance audit requests from management completed; and
- c) Number of management audit/review requests from management completed.

**12.2 Qualitative**

- a) Appropriate and useful recommendations;
- b) Professionalism of the Internal Auditor; and
- c) Professional Development of the Internal Auditor.

**12.2 Other**

- a) Feedback from the IASC;
- b) Feedback from the General Manager
- c) Feedback from auditees;
- d) Feedback from the Council external auditors; and
- e) Internal Professional Performance Review System.

**13. PROFESSIONAL DEVELOPMENT**

- 13.1 The Internal Auditor shall obtain and maintain membership of the LGA Internal Audit Network for Internal Auditors and maybe a member of the Institute of Internal Auditors.
- 13.2 The Internal Auditor shall engage in various professional development courses aimed at enhancing their knowledge and expertise relevant to the audit duties and functions.
- 13.3 The Internal Auditor shall engage in suitable in-house training on relevant computer software to ensure retention and updating of skills needed to effectively use relevant Council computer programs and software.
- 13.4 The Internal Auditor shall maintain an involvement with appropriate government fraud control organisations, such as the [NSW Public Sector] Corruption Prevention Network Inc.
- 13.5 The Internal Auditor shall produce an agreed professional development/staff training plan, in accordance with the Council policy for staff training, and in consultation with the Internal Audit Committee.

**14. CO-SOURCING**

Subject to appropriate budgetary requirements, the Internal Auditor may seek appropriate external assistance for complex and unique assignments. Such co-sourcing to be endorsed by the General Manager or the Audit Committee.

**15. THE INTERNAL AUDIT COMMITTEE**

- 15.1 The Internal Audit Committee comprises:

- a) General Manager (Chair) or Nominee;
- b) Chief Financial Officer;
- c) Executive Officer;
- d) Group Manager, C&C;

- e) Group Manager, E&CS;
- f) Group Manager, BMCS;
- g) Human Resources Manager;
- h) Manager, Assets & Contract Management;
- i) Risk Management Co-ordinator;
- j) Internal Auditor; and
- k) External Auditor.

The Executive Officer shall act as Chair if the General Manager is unavailable.

15.2 The functions of the Internal Audit Committee are to:

- a) Advise on the content of the Internal Audit program;**
- b) Advise on the broad allocation of Audit resources;
- c) Assess the effectiveness of the Audit program; and
- d) Determine relevant Audits for relevant activities, e.g. Probity Audits, Audit Management/ISO, Risk Management.

15.3 More specifically, the Committee shall have responsibility for:

- a) Agreeing on the annual and comprehensive long-term Audit Plan as developed by the Internal Auditor.
- b) Receiving and discussing the Internal Auditor's quarterly Reports.
- c) Ensuring the maintenance of appropriate internal working papers.
- d) Allocating responsibility for following-up audit recommendations.

15.4 The Committee shall meet each three months.

15.5 Review of Policy is to be on an annual basis. This process is to be undertaken by the Internal Auditor who, notwithstanding whether any amendments are proposed, is to then present the revised Policy to the Audit Committee for review and approval.

**ITEM NO:** 8

**SUBJECT: PROBITY AUDIT POLICY FOR COUNCIL'S CAPITAL WORKS PROGRAM**

**FILE NO:** F04616

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**Recommendation:**

*That the Council endorses the Probity Audit Policy 2008.*

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**Report by General Manager**

**Reason for Report**

In July 2006, Council adopted a Probity Audit Policy for Council's Capital Works Program (CWP). The objective was to ensure the Council followed the probity fundamentals for Council's CWP and to remain within the Probity Guidelines developed by ICAC.

The Probity Audit Policy applies to significant projects in Council's CWP. This includes the Annual CWP as well as individual projects that are significant Capital Works and may have both community and political sensitivities. This policy has been reviewed and updated in conjunction with the 2008 Election of Councillors.

It is also considered to be prudent to provide transparency to the ratepayers on the methods that Council has employed, since 2006, to manage probity considerations on major capital expenditure.

**Background**

To remain within the Probity Guidelines developed by ICAC in the late 1990s the Council requires a position on Probity Audit. The Council has relied heavily on the ICAC publication '*Probity and probity advising*' 2005. Not only has this document informed the current position on Probity Audit but recent Audit industry publications, discussions with our current Probity Auditors and reference to the BMCC Code of Conduct 2008 has provided general information on trends in probity audit requirements. Other Councils were also approached in relation to their Probity Audit position and documentation.

The original 2006 Probity Audit Policy, which outlines the Council position on Probity Auditing for the Capital Works Program, was used as background information to select a panel of independent Probity Audit Service Providers that have been in place since January 2007 on the Major Capital Works Projects, including:

- Blue Mountains Culture Centre and Mixed Use Development Project;
- Blaxland Waste Management Facility;
- Lawson Town Centre Redevelopment; and
- Springwood Town Centre Revitalisation.

**2008 Changes to the policy**

The following table outlines the extent of changes that have been incorporated since the original version from 2006 to create the Draft Probity Audit Policy 2009 (see Attachment 1)

<b>Change Type</b>	<b>Description</b>
General	Updated to refer to Internal Protocol: Self-Assessment Probity Audit Procedures
Formatting	Policy Template – for consistency with the Blue Mountains City Council Policy template.
Additions	Nil

**Sustainability assessment**

<b>Type</b>	<b>Positive</b>	<b>Negative</b>
Economic	Nil	Nil
Social	Enables both ratepayers and Council Staff to understand and comply with the probity fundamentals within the Probity Guidelines developed by ICAC for Council’s Capital Works Program.	Nil
Environmental	Nil	Nil

**Financial Implications**

Whilst the approval of the attached policy does not require any increase in expenditure there is a cost for engaging probity auditors on each project.

**Legal and Risk Management Issues**

Improves the risk management of the Council by ensuring Council’s CWP follows the probity fundamentals within the Probity Guidelines developed by ICAC.

**Conclusion**

It is recommended that the Council endorse the Probity Audit Policy 2008.

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Attachment

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POLICY:	<b>PROBITY AUDIT</b>
STATUS:	<b>ADOPTED</b>
ADOPTED:	<b>July/2006</b>
LAST REVISION:	<b>21 November 2008</b>
POLICY REF.:	<b>11/2008/Version 2</b>
ISSUED BY:	<b>Executive Services</b>
INQUIRIES:	<b>Internal Auditor</b>

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**OBJECTIVE**

That the Council follows the probity fundamentals for Council’s Capital Works Program (CWP) to remain within the Probity Guidelines developed by ICAC.

**SCOPE**

This policy applies to Council’s significant Capital Works Program (CWP) that contains not only, the Annual CWP but individual projects that have significant Capital Works in their own right with both community and political sensitivities.

**BACKGROUND**

To remain within the Probity Guidelines developed by ICAC since the late 1990s the Council requires a position on Probity Audit. The Council has relied heavily on the ICAC publication ‘*Probity and probity advising*’ 2005. Not only has this document informed the current position on Probity Audit but recent Audit industry publications, discussions with our current Probity Auditor and reference to the BMCC Code of Conduct has provided general information on trends in probity audit requirements. Other Councils were also approached in relation to their Audit position and documentation.

This document outlines the Council position on Probity Auditing for the Capital Works Program.

**POLICY STATEMENT**

**What is a Probity Audit?**

The term probity means integrity, uprightness and honesty. Although the term probity audit is normally used in the field, in actual fact the probity role is one of both advising and auditing.

For public officials and public sector agencies, creating and maintaining probity involves more than simply avoiding corrupt or dishonest conduct. It involves applying and complying with public sector values and duties such as impartiality, accountability and transparency.

Ensuring probity in public sector activities is part of every public official's duty to adopt processes, practices and behaviour that enhances and promotes public sector values and interests.

Effective probity management is concerned with the procedures, processes and systems used rather than the outcome of an activity, undertaking or project. It should also be recognised that – despite good management of probity risks – mistakes, delays and disputes can arise. Similarly, even the best probity processes do not guarantee that a project or activity will be immune from problems or criticism.

Considering and addressing probity issues should be a normal part of any significant project being undertaken by an agency, regardless of whether a probity adviser is appointed. Addressing probity issues does not necessarily incur delays or additional costs if this is incorporated into the project planning process from the outset.

Dealing with probity issues early in the planning process of a public sector project can:

- Improve the quantity and quality of private sector involvement by generating confidence in the process;
- Remove ambiguities in the evaluation of proposals;
- Assist in ensuring overall project objectives are met; and
- Minimise costly challenges in the future concerning the integrity or processes of the project.

### **Why Probity Audit?**

Probity involves more than just avoiding corrupt or dishonest conduct: it involves ensuring that often-complex public sector processes – such as procurement, disposal of assets, sponsorship and administration of grants are conducted in a manner that is fair, impartial, accountable and transparent as well as always in the public interest.

Probity plans are now part of the planning and management of many large, complex and/or potentially controversial projects. In some jurisdictions, they are mandatory for very large projects – in New South Wales, for example, state agencies are required to submit a probity plan as part of their reporting to Treasury on projects that are valued at over \$10 million and/or are classified as high risk. These major projects have probity audit as a budget item.

### **Probity Fundamentals**

There are five inter-related fundamentals that all probity advisers, project teams and agencies should keep in mind. The fundamentals should also provide the foundation for any probity engagement. The five fundamentals are:

#### **Best value for money**

This is achieved by fostering an open competitive environment in which proponents can make attractive, innovative proposals with the confidence that they will be assessed on their merits. Lapses in probity often end with one or more parties obtaining unreasonable financial gains at the expense of the public interest.

Value for money does not necessarily mean lowest price. Agencies need to consider non-price elements of proposals (including risk) and devise criteria that allow them to be evaluated.

This fundamental should also be considered in light of Triple Bottom Line (TBL) reporting for sustainability. TBL is a consideration in all major Capital Works projects.

**Impartiality**

Individuals and organisations involved in preparing and submitting proposals for large public sector contracts often invest considerable time, effort and resources in doing so. In return, they are entitled to expect impartial treatment at every stage of the process. If they do not consider the process to be impartial and honest they may withhold valuable ideas or be deterred from bidding in the future. Any form of bias, whether driven by personal interests or not, could jeopardise the integrity of the project.

There is a further risk that proponents who believe the process is prejudiced will commence legal action. Regardless of the outcome, this can cause delays and result in financial costs not anticipated in the project budget.

**Dealing with conflicts of interest**

A large percentage of the matters reported to the ICAC involve an actual, potential or perceived conflict of interest. A conflict of interest is a conflict between the public duty and private interests of a public official where the public official has private interests which could improperly influence their official duties and responsibilities.

The community and potential proponents have a right to expect that public officials will make decisions that are not influenced by private interests. Similarly, when the private sector is engaged to perform public sector duties, there is an obligation to ensure that conflicts of interest are disclosed and effectively managed.

Agencies should also be aware that perceived or potential conflicts of interest can be as damaging as actual conflicts.

**Accountability and transparency**

Accountability and transparency are related concepts. Accountability involves agencies being able to demonstrate and justify the use of public resources to an appropriate authority. This involves allocating and taking responsibility for past and expected performance. This necessarily involves keeping good records that leave an audit trail.

Transparency refers to the preparedness to open a project and its processes to scrutiny and possible criticism. This also involves providing reasons for all decisions that are taken and the provision of appropriate information to relevant stakeholders.

Demonstrating accountability and transparency gives proponents and taxpayers additional confidence in the decisions being made. It also reduces the opportunities for corrupt conduct and fraud.

**Confidentiality**

Information can only be released, consistent with the fundamental principles of public accountability and transparency, which are fundamental to the work of public sector organisations and public officials. However, there is some information that needs to be kept confidential, at least for a specified period of time, in order to protect the integrity of the

process and give proponents the confidence to do business with government. This information can include the content of proposals, intellectual property and proponents' pricing and profit structures. Importantly, much of the information relating to the project needs to be kept confidential up to the point where a contract is signed with the successful proponent. However, once this has happened, government guidelines require that certain sector accountability and transparency.

**Other Considerations**

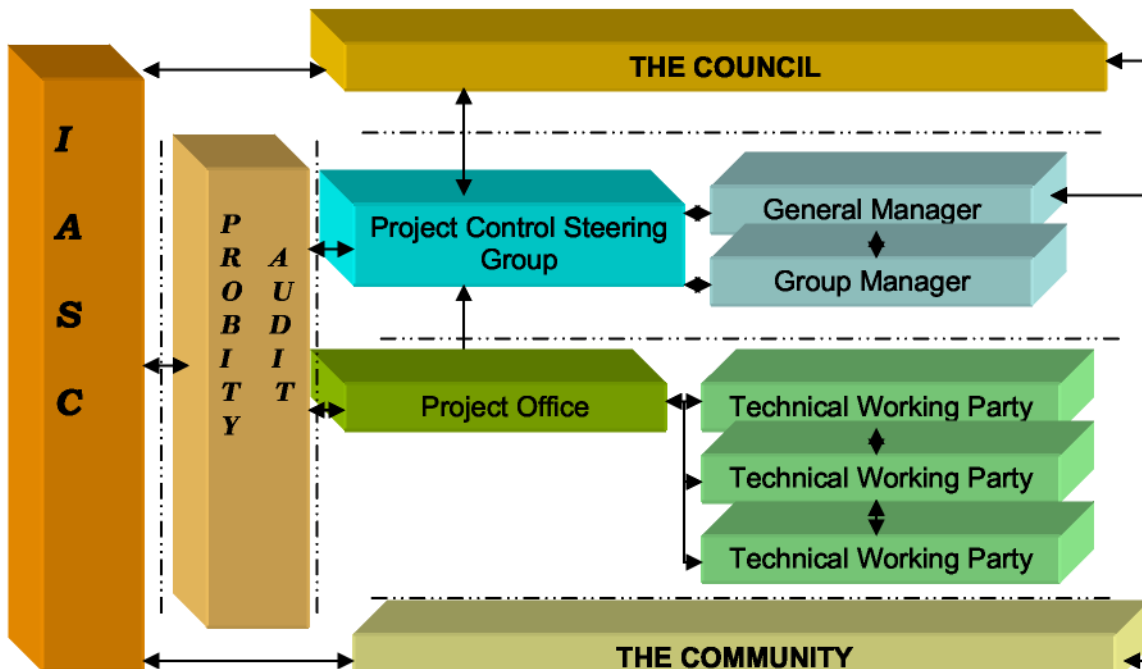
The Council should also consider the following issues when deciding on the need and the approach to engaging a Probity Auditor on a particular Capital Works Project:

- Dollar value of the project and potentially set a dollar value;
- The Council role in the Project;
- The Governance structure of the Project; and
- The length of term of the Project.

**Governance Model for Probity Audit**

The BMCC Governance Model for Probity Audit has been adapted from the ICAC 2005 model and complies with that model. The customizations on the BMCC Governance Model are for Reporting through the Internal Audit Steering Committee (IASC) to the Council. The model is outlined in the following schematic:

**BMCC AUDIT GOVERNANCE MODEL**



This model has the Strategic Management of the Probity Audit undertaken within the IASC. The IASC Strategic Management includes such key functions as:

- Appointment of the Probity Auditor;
- Sign-off of the Probity Plan from the Project Control Steering Group or equivalent;
- Sign-off of variations to the Probity Plan that occur throughout the lifecycle of a Project;
- Sign-off of Probity Clearance Reports at the relevant stages of a Project; and
- Presentation of any relevant Audit Reports to the Council; and
- Authorisation of payments to the Probity Auditor.

The Operational Management of the Probity Audit, as outlined in the ICAC documentation, resides with the Project Control Steering Group or Project Office once the Probity Audit Plan is signed-off. The high level activities of the Probity Audit with their associated timelines should be included in the Project Plan. Payments documentation should be aligned within the plan to sign-off of Probity Clearance Reports and documentation presented to the Internal Auditor for relevant authorisation.

### **Engaging a Probity Advisor/Auditor**

There are two methods for achieving probity audit on a project:

1. Engaging an external Probity Auditor; or
2. Self Assessment Probity Audit.

The use of either type is individually discussed in the section below.

### **External Probity Auditor**

A number of organisations and individuals now provide advice on probity issues to public sector organisations on a commercial basis.

In NSW, the Department of Commerce maintains a panel of standing offer contractors for the provision of “audit and audit-related services”. Agencies can obtain quotations from a number of the contracted firms for probity advising services. Local councils may also access this panel. The Department itself also employs officers with expertise in dealing with probity issues and complex tendering and procurement processes. The Department also has RFT (Request for Tender) process review committees with a mandate to examine the probity and procedural aspects of tenders.

Criteria for use in assessing the need for a probity adviser includes:

1. The expected cost of the project is high relative to the types of project normally undertaken by the agency.
2. The project itself is inherently complex or risky.
3. There has been a relevant history of controversy or litigation in relation to the agency, the project or one of the potential proponents.
4. The project is politically sensitive (for example, a major privatisation or a project with a significant environmental impact).
5. It is anticipated that there will be an in-house or public sector bid and independent scrutiny is needed to avoid actual or perceived bias. Additionally, if there is an incumbent contractor with a strong relationship with the agency other competitors may require additional assurance that the process is genuine.
6. The costs of bidding are expected to be high relative to the size of the contract.
7. The project involves significant intellectual property, an unsolicited proposal for a major project or highly subjective selection criteria.
8. The agency wishes to make substantial changes to the scope of the project or the

- bidding process after it has already commenced.
9. The evaluation process requires lengthy and detailed face-to-face meetings with individual proponents and/or site visits.
  10. The project is expected to be privately financed; or uses a complicated contract structure such as a build-own-operate-transfer contract or alliance contract; or where a very long term public-private partnership is to be established.
  11. Guidelines issued pursuant to section 400C of the Local Government Act 1993 (or any other guidance from the Department of Local Government) either recommend or require the appointment of a probity adviser for a public-private partnership.
  12. The market is highly concentrated or there are very few players and information sharing, collusion or other forms of anti-competitive behaviour are a possibility.
  13. A proponent has already been involved in the feasibility study or pre-tender stages of the project, having thereby potentially obtained an unfair advantage.
  14. The agency is expecting to make a sizeable profit or generate a considerable income stream from the project.
  15. The agency is not an informed buyer, or lacks experience in the nature or magnitude of the project being undertaken.

Once the need for an external probity auditor is identified, the Council Officer should approach Executive Services for the allocation of a Probity Auditor from the Panel of Probity Audit Service Providers.

Probity advisers should not be engaged on a 'set and forget' basis. The presence of a probity adviser should not give the project manager or the project team a reason for ignoring or side-stepping probity issues. The probity adviser should certainly be relied upon to identify problems and recommend solutions, but it is not necessarily his or her job to implement those solutions.

#### **Self-Assessment Probity Audit Procedures**

The Self-Assessment Probity Audit Procedures, an internal protocol, are an alternative procedure for a project when it does not meet the criteria for an External Probity Auditor but there is concern that the public perception of the project.

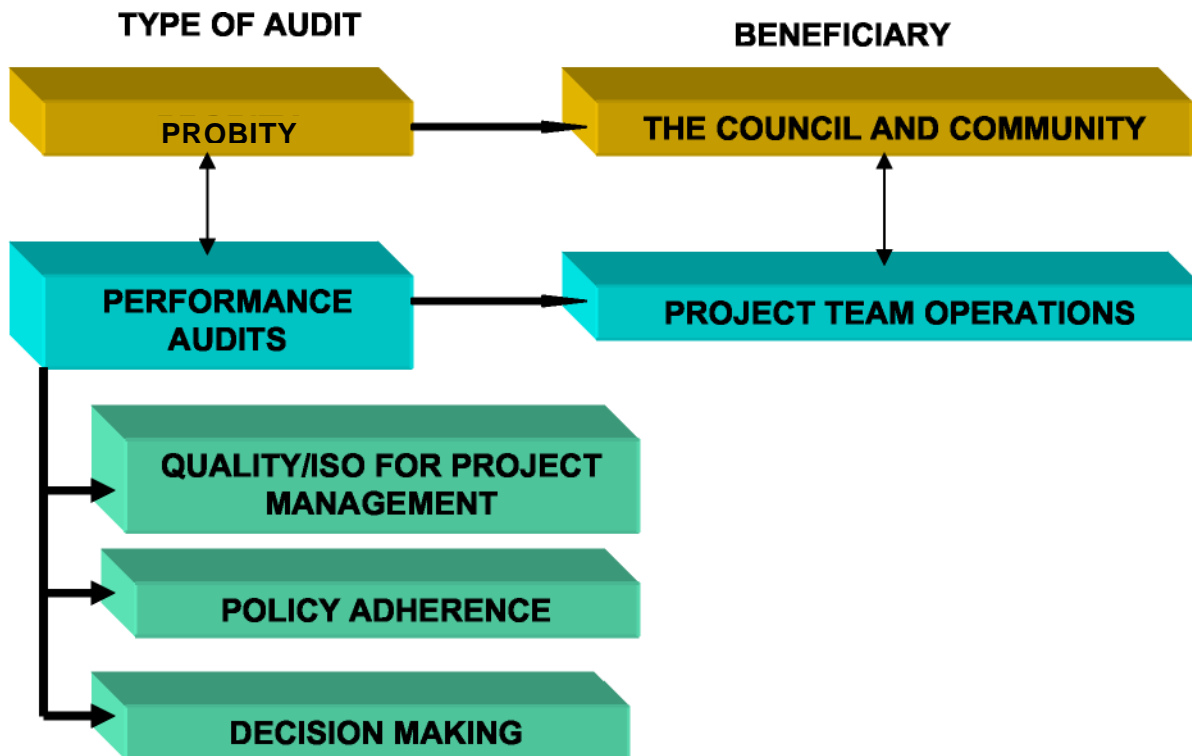
The type of circumstances where public perceptions may be applied will usually be in Capital Works and Tender Processes that fall outside of the previous section guidelines. In these circumstances the Project Team must assign a person external to the Team who has the skills and capacity to apply the Self-Assessment Probity Audit Procedures to the project. Workload permitting this may be:

- A Manager from a different branch to the one who owns the project;
- The Internal Auditor; or
- Team Leader – Compliance.

**Inclusion of Associated Audit Activities**

The Probity Audit plan should also take into account the other elements of auditing that need to occur on Capital Works Projects as outlined in the following schematic:

**AUDIT FUNCTIONS MODEL**



The Audit Functions will vary relevant to the type of project but could include at a minimum:

- Quality Management Audits against relevant ISO standards eg Performance of Project Management;
- Internal Audit of the Community Consultation Process;
- Internal Audit of the Council decision processes (if these are not included in the Probity Audit plan); and
- Management processes of external funding.

**Related Documents:**

- Internal Audit Policy
- Internal Audit Plan
- External Audit Program