

## **Council Guideline**

# **Internal Ombudsman Charter**

Version 2 - 4 October 2022

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## Guideline - external Internal Ombudsman Charter

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### Introduction

#### Purpose

This Governance Charter is a formal statement of purpose, authority and responsibility for the Internal Ombudsman within Lake Macquarie City Council (Council).

- It establishes the Internal Ombudsman (IO) function within Council and recognises the importance of an independent and objective service to the organisation.
- It outlines the legal and operational framework under which the IO operates.
- It authorises the IO to promote and direct a broad range of independent and impartial reviews into administrative processes and services provided the Council.

This Governance Charter and the operation of the IO reflect the commitment of Council in operating to a high standard of ethical conduct, decision-making, corporate governance, and customer service.

#### Purpose of Internal Ombudsman

The IO combines an investigatory function with the capacity to identify system improvement opportunities within Council's governance framework. The position plays a pivotal role in ensuring the organisation has a strong foundation of systems and processes.

The IO provides residents, community members, local businesses, staff, Councillors and other Council stakeholders with an 'independent ear' regarding complaints about: administrative misconduct; unethical behaviour by Council; corrupt conduct; misconduct; or maladministration.

The IO is pro-active, assisting management to improve Council's operations and business integrity and performance.

#### Role, authority and confidentiality

The IO is authorised to direct a comprehensive program of work in the form of reviews, consultancy advice, and investigations of functions, processes, controls and governance frameworks in the context of the achievement of business objectives.

The IO will investigate matters within jurisdiction, reporting on the results of the investigation and making recommendations regarding required corrective action and business process and system improvements where relevant.

The IO will also provide Council with a proactive education service regarding continuous improvement in administrative processes, good governance and ethical decision-making across all Council services.

For this purpose, the IO is authorised to have full, free and unrestricted access to all functions, property, personnel, records, information, accounts, files and other documentation, as necessary to enable the function to meet its responsibilities.

All records, documentation and information accessed in the course of undertaking activities are used solely for the conduct of these activities.

The IO is responsible and accountable for maintaining the confidentiality of the information received during the course of this work. All documentation is to remain the property of Council, including where an external third-party provider performs any investigative services.

## Objectivity, independence and organisational status

The IO has independent status within Council, and reports functionally to the Chief Executive Officer (CEO) on the results of completed reviews and investigations for strategic direction and accountability purposes.

If independence or objectivity is impaired in fact or appearance, the IO will report details of the impairment to the CEO, or when necessary, the Executive. Impairment to organisational independence and individual objectivity may include, but is not limited to, personal conflict of interest, scope limitations, restrictions on access to records, personnel, and properties, and resource limitations.

The work of the IO does not relieve the staff of Council from their accountability to discharge their responsibilities. Council staff are responsible for risk management and the operation and improvement of Council processes and systems.

## Scope of work

The IO is responsible to review and investigate the following types of matters, but not limited to:

- Council administrative processes, including matters such as: development processes; waste management; sporting and community operations, recreation and environment, Council operations, Council committees and other staff matters as determined by the CEO.
- Allegations of a serious sensitive nature as defined in section 5.4.3 of Council's Feedback Management Policy, or other alleged improper conduct by Council or Council officials.
- Alleged failures to comply with Council's Code of Conduct (the applicable provisions of the Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW will be applied as required).
- Public interest disclosures (PID) including breaches of disclosure obligations.
- Referral of internal matters by the CEO, Mayor, members of Council's Executive Team; and external government agencies including but not limited to the NSW Independent Commission Against Corruption (the ICAC), the NSW Ombudsman, the NSW Office of Local Government.
- Identifying system improvement opportunities within Council's governance framework.
- decisions regarding access to information in accordance with provisions of the *Government Information (Public Access) Act 2009* (GIPA Act) and *Privacy and Personal Information Protection Act 1998* (PPIP Act)
- Review of Council's governance and integrity related policies and processes.
- Advising the CEO in relation to limitations of service determined by the Feedback Management Officer.

## Jurisdiction

The IO may, on receiving a complaint, or on the IO's own initiative, undertake an inquiry into a decision or recommendation, an act done or omitted, a procedure or process relating to a matter of administration or conduct of members of Council staff or Council (in its administrative capacity) whereby a person is or may be aggrieved.

The IO should be consulted in regard to relevant matters within the scope of the IO reportable to the Office of Local Government, the Independent Commission Against Corruption, the NSW Ombudsman and the NSW Police.

The IO is Council's designated:

- Disclosures Coordinator dealing with public interest disclosures by persons defined as public officials in the *Public Interest Disclosures Act 2022*
- Complaints Coordinator in accordance with Council's Code of Conduct



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The IO may conduct internal reviews of decisions relating to access to information in accordance with Part 5 of the GIPA Act and Part 5 of the PPIP Act.

The IO shall seek to act in a fair and transparent manner and to apply the principles of procedural fairness to any inquiry into a complaint.

The IO has the right to undertake an inquiry into any complaint without the need for any prior consent of any person or body within Council against whom the complaint is made.

Once an inquiry has concluded, any executive decisions in relation to findings and recommendations of the IO require the approval of the CEO or the Mayor (in the case of any findings or recommendations relating to the CEO).

### Declining to undertake inquiry

The IO may decline to investigate a matter where:

- the complaint, in the opinion of the IO, is trivial, frivolous, vexatious or not made in good faith
- an adequate remedy or right of appeal already exists, whether or not the complainant uses the remedy or the right of appeal
- the complaint relates to Councillors or delegates, where the complainant has had knowledge of the matter for more than three (3) months before making the complaint
- the complaint relates to a decision, recommendation, act or omission of which the complainant had knowledge for more than 6-months before making the complaint
- the complaint relates to a decision of the Council or standing committee of the Council
- the complaint relates to matters before a court or tribunal
- the complaint relates to matters under investigation by:
  - The Office of Local Government
  - The Independent Commission Against Corruption
  - NSW Ombudsman
  - NSW Police Force
  - Information and Privacy Commission
- the complaint relates to the appointment or dismissal of an employee or any industrial or disciplinary issue other than in relation to the administrative procedures/process of the appointment, dismissal or disciplinary issue
- the complaint relates to a matter awaiting determination by the Council (conduct in dealing with the matter can be assessed)
- the complaint relates to the actions or conduct of private individuals
- senior Council staff have not had adequate opportunity to address the complaint
- there is insufficient information available
- the complainant declines or refuses to provide further information and/or there are threats made against Council.
- it concerns a review of a decision of the elected Council, or committee of Council, or matters awaiting determination
- It relates to a planning decision.

Any matters referred to in this section that are considered systemic, reflect a pattern of conduct, and/or are serious and significant, may be investigated or reviewed by the IO at the CEO's discretion.

The IO may refer matters as appropriate to any other internal Council department or senior person to investigate a matter, or to any external agency to investigate as appropriate.

When the IO decides not to investigate, or ceases to investigate a matter, the IO will inform the complainant in writing of the decision and provide the reason for the decision.

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### Anonymous complaints

The IO will not investigate anonymous complaints, unless the issue places public safety at risk or raises a serious matter (such as allegations of corrupt conduct, serious misconduct, maladministration or waste) and there is sufficient information to carry out an investigation or make a prima facie case.

### Confidentiality

The IO and every person carrying out duties in connection with investigations conducted by the IO and any person who becomes aware of an investigation being carried out by the IO, will maintain confidentiality in respect of all matters that come to their knowledge.

### Privacy

Personal and private information are managed in accordance with Council's Code of Conduct and Privacy Management Plan and the NSW *Privacy and Personal Information Protection Act 1998*. Complainants' details will not be disclosed without their consent, unless it is in the public interest to do so (Public Interest Disclosures Reporting Policy applies). Council staff and Councillors are also bound by the confidentiality and privacy provisions of Council's Code of Conduct.

### Reviews and investigation

The process for reviews and investigations conducted by the IO will operate around the following principles as the IO considers necessary:

- Review of the matter as to its jurisdiction and priority allocated
- Acknowledgement sent to the complainant
- Preliminary documentation review of any records or information available in relation to the issues raised, including any current policies and procedures applicable to the matter, and site inspections where relevant
- Interviews with relevant persons
- Preparation of a confidential report to the CEO (or if in relation to the CEO, the Mayor) which will include:
  - A review of the evidence available to the investigation
  - Findings / determinations
  - Appropriate recommendations.
  - Any other issues identified for further review by Council.
- A letter to the complainant detailing the results of the investigation, and any actions if appropriate, giving consideration to relevant privacy legislative requirements. Information provided to the complainant detailing the results of some investigations may therefore be limited.

The procedures adopted and undertaken by the IO will comply with relevant legislation, Council policies and follow best practice. The timeframe for the investigation will be determined by the allocation of the priority of the matter, and other work constraints of the IO. The IO may refer matters to other bodies, internal or external to Council for investigation due to the nature of the matter, the current resourcing of the IO, or the urgency of the matter.

### Recommendations

The IO may make any recommendations considered appropriate including that:

- An administrative decision or recommendation by Council staff be revoked or varied
- A Council policy, procedure or process be revised
- A matter be referred to the CEO (or the Mayor) for further consideration

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- Council provide a written apology to a complainant
- An omission or delay be addressed and rectified where possible
- Council provide a particular service or good, or perform corrective work
- Council undertake an appropriate correction, deletion or addition to a record
- Reasons be given by Council staff for a decision
- Such other steps are taken that the IO considers reasonable in the circumstances.

### Implementation of findings and recommendations

When any recommendation or finding is made, the IO may request the CEO or the appropriate Director to notify the IO about steps taken, or proposed, to give effect to any findings and recommendations made by the IO.

### Report to a complainant

When an inquiry is undertaken about a complaint, the IO shall report the findings and recommendations to the complainant, in such manner and at such time as the IO deems suitable.

### Review of findings and recommendations made by the IO

No proceeding of the IO is invalid because of technical defects in the conduct of any investigation process. Any such defects in the conduct of an investigation will be considered individually in terms of their impact on the outcome of the investigation.

The IO's recommendations can only be reviewed by a body external to the IO.

No proceeding can be brought against the IO for anything done in the course of the exercise or performance of functions and duties of the IO unless it is done in bad faith.

### The Internal Ombudsman's skills and operating principles

The IO will:

- Possess the knowledge, skills, and technical proficiency essential to the performance of the role
- Be skilled in dealing with people and in communicating issues effectively
- Maintain their technical competence through a program of continuing education
- Exercise due professional care in performing engagements
- Conduct themselves in a professional manner
- Conduct activities in a manner consistent with the concepts expressed in the Code of Conduct.

### Annual planning

The IO will prepare an Annual Plan (Plan) and consult with Council's Executive on the proposed areas for inclusion. The Plan will be submitted to Council's Executive for approval.

The Plan will be based on a risk assessment of Council's key strategic and operational areas and identified system improvement opportunities within Council's governance framework.

The IO has the discretionary authority to adjust the Plan as a result of receiving special requests from management to conduct reviews that are not on the plan.

### Reporting arrangements

In addition to the confidential reporting of each matter investigated, the IO will prepare and submit reports to the Executive, or as determined by the CEO, on the operations of the IO service. This may include:

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- Summary of the matters received including how they were processed, the source of the complaint, and the types of complaints received
- A summary of the investigations conducted and their recommendations
- Trends identified in matters received or investigated
- Educational activities conducted
- Advice provided
- Issues identified for future review
- Status of the IO Annual Plan
- Other performance indicators, including statutory reporting
- Financial implications and impacts
- Other procedural matters of note.

In addition, the IO will submit reports on complaints alleging fraud and corruption to the Audit, Risk and Improvement Committee every 6 months.

The IO will also develop key performance indicators for consideration and endorsement by the CEO, as a means of assessing the performance of the IO to be periodically evaluated.

### Review and evaluation

The IO shall review this Charter every three years to ensure it remains up-to-date and reflects the current scope of IO work.

Council's Executive will approve any substantive changes to this Charter.



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# Controlled Document Information

### Authorisation Details

<b>Folder No:</b>	F2004/12078	<b>TRIM Record No:</b>	D10763546
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<b>Department:</b>	Executive Group	<b>Officer:</b>	Internal Ombudsman - Martene Archer
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<b>Review Timeframe:</b> Max < 4 years	3 years	<b>Next Scheduled Review Date:</b>	4 October 2025
<b>Authorisation:</b>	Executive Meeting - 4 October 2022		
<b>Authorisation – Executive Team adoption date:</b>	4 October 2022		

### Related Document Information, Standards & References

<b>Related Legislation:</b>	(Legislation Name) Local Government Act 1993 Public Interest Disclosures Act 2022 Government Information (Public Access) Act 2019 Privacy and Personal Information Protection Act 1998 Independent Commission against Corruption Act 1988	(Relationship/Context)
<b>Related Policies:</b>	(Policy Name) Council's Codes of Conduct Procedures for the Administration of the code of conduct for Councils in NSW Fraud and Corruption Prevention Policy Public interest disclosures reporting Policy Feedback Management Policy Privacy Management Plan Business Ethics Policy	(Relationship/Context)
<b>Related Procedures, Guidelines, Forms, WHS Modules/PCD's, Risk Assessments, Work Method Statements:</b>	(Document Name)	(Relationship/Context)
<b>Standards, COP's &amp; Other References</b>	(Standard, COP or Other References)	(Relationship/Context)

### Definitions

Term / Abbreviation	Definition
IO	Internal Ombudsman

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### Consultation (update for each version created)

<b>Key Departments, Teams, Positions, Meetings:</b>	Internal Ombudsman, Internal Auditor, General Counsel, Head of Customer Experience, Manager People and Culture, Feedback Management Officer
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### Version History

Version No	Date Changed	Modified By	Details and Comments
1	22 Oct 2019	M Archer	Inaugural Internal Ombudsman Governance Charter
2	August 2022	M Archer	Reviewed for currency