GUIDE TO PREPARING AND MAINTAINING COUNCIL POLICIES, CODES OF PRACTICE, AND CODES OF CONDUCT

March 2012

Adopted by the District Council of Loxton Waikerie at the general meeting of 17 April 2015

Next review : April 2017 (every 2 years)

GDS Reference: 18.63.1

LGA Guide to Preparing and Maintaining Council Policies, Codes of Practice, and Codes of Conduct

1. INTRODUCTION

Policies, codes of practice and codes of conduct are fundamental components of a Council's good governance framework. Councils use them to:

- set directions;
- guide decision making by the elected Council and administration; and
- inform the public about how Council will normally act.

A Council's public policies, codes of practice, and codes of conduct are all available for scrutiny on a Council's website. Accordingly, a Council will be held to account in applying them.

However, development of these standards takes time, and it can be difficult to maintain an up-to-date, comprehensive and consistent set of documents.

This Guide has been prepared to assist Councils to manage the content and presentation of their suite of policies and codes.

2. THE HIERARCHY OF POLICIES

Laws are the highest forms of policy. Everyone must live under the rule of law, and Council-developed policies cannot require a Council to act in a way, which would be contrary to any law.

Strategic management plans (SMPs) while not policies, are the top level documents which set out a Council's aspirations for its community. As such, they give guidance for developing related policies, which ought to reflect the directions of the SMPs. The SMPs must be comprehensively reviewed once every four years (within 2 years after a general election) - s122(4)(b).

The *Local Government Act 1999* (the Act) requires a Council to have many public policies and codes. A full list is provided in Attachment 1.

The LGA endeavours to provide, on its website, up-to-date model policies and codes for all such documents that a Council is required by law to adopt. A Council's policies and codes required by law should expand upon, not merely reiterate the legislative requirements and should include detail of any position taken by a Council where the law allows discretion.

In addition, a Council may adopt many more policies, which may be considered optional. A range of common optional policies and codes is listed at Attachment 2.

Under the principles of administrative law, a Council should not deviate from an adopted policy without a clear, substantiated reason for doing so. On the other hand, Council must not routinely and constantly apply a policy in all circumstances. Discretion may be exercised when there are clear, substantiated reasons to deviate from a policy, and the law permits the Council to exercise that choice.

3.   WHY ADOPT ADDITIONAL, OPTIONAL POLICIES?

A Council's decisions impact on the lives and wellbeing of residents, ratepayers and businesses.

A decision made in the absence of any policy or code might be perceived as arbitrary, or reflecting a personal bias or preference of the decision-maker. However, if a decision is made in accordance with a Council policy or code, both the decision-maker and the public can be assured that the decision reflects the Council's overall aims and principles of action.

Accordingly, policies and codes can be used in many contexts to:
- reflect the key issues and responsibilities facing a Council;
- provide a policy context and framework for developing more detailed objectives and management systems;
- guide staff and ensure consistency in delegated and day-to-day decision-making; and
- clearly inform the general public of a Council's commitments.

4   POLICIES AND CODES VERSUS PROCEDURES

A useful and basic distinction can be made between on the one hand, *policies* and *codes*, and on the other hand *procedures*. This distinction is based on the respective responsibilities of an elected Council and of the CEO / administration. One of the basic responsibilities of a Council is to set *policy* consistent with its SMPs. Giving effect to those policies is then the responsibility of the CEO and administration, and this will normally involve setting clear and detailed *procedures* to be followed by staff.

Council Policy or Code
Sets out the elected Council's position on an issue or set of issues to guide decision-making. It should be a higher level statement of direction – relatively short and concise. It should not include the type of detail normally found in procedures. It needs to be formally adopted by the Council. A suggested model template for a Council policy document is shown in Section 6 below.

Procedure (also may be called an operating guideline)
Sets out the specific staff responsibilities and processes required to implement a particular area of Council policy. Procedures can be as detailed as necessary to clearly specify what staff should do in each situation relevant to the policy. Procedures are not required to be adopted by Council, though they may be noted by Council when adopting the policy. They are essentially guidelines adopted by executive management to give effect to policy. So long as updates/revisions to procedures remain consistent with the adopted Council policy they can be made without Council approval.

While this simple distinction gives a good basis for a sound policy framework it should be recognised that, there will be exceptions, such as:
- procedures which are of direct relevance to ratepayers (such as grievance procedures) that they should be endorsed by the Council; and
- in some cases procedures will give effect to what may be called administrative policy statements – i.e. policy statements relating to aspects of administrative practice that are clearly responsibilities of the CEO rather than the Council (e.g. employment related).

Such exceptions can be accommodated without undue difficulty in a robust and pragmatic policy framework.

5   DEVELOPING POLICIES AND CODES

Balancing the vision and requirements of a Council cannot be achieved easily or quickly. The process takes time and experience. It is perhaps better to think in terms of "policy development", as it is an iterative process requiring information and analysis.

5.1 The role of Council Members in development of policies and codes

In the creation of new policies or codes, or where major revisions are anticipated, it is important to understand the preferences of the elected Members of Council at an early stage of the process. This may best be achieved through a workshop or some other form of consultation.

A policy or code can be an important tool in managing new strategic directions. At least after each comprehensive review of a Council's SMPs,[1] the Council should be engaged in a process which considers the need for new policy and provides the administration with a starting point for development of policies or codes.

At times Council Members may not appreciate the importance of their role in this regard, and it will be incumbent on the Chief Executive to provide them with direction. This may be identified in the Council Members' Training and Development Plans.

5.2 The role of the administration

Information sharing amongst Councils is common practice, and it is logical to research the policies and codes of other Councils, as well as LGA "model" documents in formulating a Council's standards. However, this must be followed by critical analysis of how policies and codes developed by others might be integrated into a Council.

To produce a document of consistent style and quality it is advisable to create a small team of officers responsible for identifying and analysing the various issues and constructing a policy or code, which takes account of the issues. The format of reports should follow a template such as the example below.

It is essential that there is a sense of corporate "ownership" of adopted policies and codes. Therefore once drafted and authorised for consultation by the management team, policies and codes should be circulated for input/feedback from officers of all relevant disciplines and departments to ensure all of the issues likely to arise are adequately covered.

Policies or codes that relate to financial governance of a Council should also be referred to Council's Audit Committee for feedback.

5.3 Consulting the Community

When a policy or code under construction or review may impact directly on a specific sector or the community at large it is important to undertake stakeholder consultation. Depending on the significance of the content, this may occur at an early stage (during consideration of various options for example) or after a Council has adopted a draft, for the purposes of consultation.

The *Local Government Act 1999* requires some of a Council's policies and codes to undergo a process of public consultation before they are adopted or amended. See Attachment 3. All consultation should be in line with a Council's Public Consultation Policy.

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[1] Section 122 (4)(b) of the Act requires that the strategic management plans must be comprehensively reviewed at least once every four years, no later than the mid-point of Council's four-year electoral cycle.

5.4 Recommending a policy to Council

All new policies and codes, and any policies or codes under review, for which material changes are proposed, should be accompanied by a report when presented for Council consideration. The report should include:

- an explanation of why the new document (or change) is needed;
- a description of the development process, and the next steps if Council adopts the policy or code;
- the extent of any community consultation and a summary of the feedback received; and
- a recommendation for adoption.

6 CONSTRUCTION

All policies and codes should have consistent style characteristics, such as the use of:

- clear and concise language;
- plain English without acronyms and technical jargon;
- headings which reflect the content of the section;
- all non essential details contained in a procedure, rather than in the policy or code itself;
- exclusion of statements which will "date" the policy or code, or require frequent review e.g. "The fee for this service is included in Council's Fees and Charges Register" rather than "the fee for this service is $100.00";
- a consistent scheme of typography, layout and design, including consistent use of type faces, font sizes, numbered headings, colours, Council logo, headers, footers, a title page (or not), a table of contents (or not), references and pagination details (e.g. "Page 4 of 5"); and
- administrative details relating to content management as described in Section 7 below.

It is important to divide the policy or code into sections, which flow logically. Use of a template will serve as a reminder about important content and assist in consistency. Numbering the sections aids specific reference to the policy or the code, especially during a Council debate.

Most policies or codes will follow a template such as this:

1 Objective
Statements about the purpose and objectives of the policy or code. This can include reference to legislative requirements.

2 Scope
A statement of what the policy or code covers, who it applies to and what is specifically excluded. This can also reference other documents or standards that are directly relevant to the scoping statement.

3 Definitions
Key terms which are used in the policy or code. Standardisation of definitions across all related standards can be challenging. Consider maintaining a control copy of all definitions used in policies and codes.

4 Policy statement
This section often begins with a Council's commitment to the specific values embodied in the policy or code. It should then enunciate a Council's position at a high level.

5 onwards [Specific provisions]
Break continuation of the policy statement or code into logical sections with separate numbered headings, or use subsets of Section 5 such as 5.1; 5,2; 5.2.1; 5.3 etc

Last Further information
A Council is required to make available on request, all <u>public</u> policies and codes. The common use of websites has diminished the need for a Council to

charge a fee for hard copies. The following is a suggested wording for the last section of all such documents:

"This policy [code] is available for inspection at the Council offices at [insert addresses of Council's offices] during ordinary business hours

It is also available for inspection, download or printing, free of charge, from Council's web site: www.xxx.sa.gov.au.

Any grievances in relation to this policy [code] or its application should be forwarded in writing addressed to the Chief Executive Officer of Council."

7 CONTENT MANAGEMENT

Information such as the following should accompany all policies and codes. Grouping these aspects together at the beginning or end of documents aids consistency and access and ensures that they are always considered.

Strategic Reference	A statement that links the named policy or code to an objective of the strategic management plans
File reference	A reference that links the named policy or code to Council's records management system
Responsibility:	The title of the senior manager or department which is responsible for the named policy or code
Version:	The number of times that the named policy or code has been altered since its effective date
Last revised date:	The date on which Council most recently reviewed and either altered or readopted the named policy or code
Minutes reference:	The minute reference of the date on which the named policy or code was last revised or readopted
Next review date:	An indication of the review cycle, and the next date of review e.g. biennially, June 2013
Applicable Legislation:	Legislation and regulatory obligations which apply to the named policy or code
Related Policies:	Other Council policies or codes which might be read in conjunction, cover a related topic or may assist interpretation
Related Procedures:	Title of documents (created or used by Council) which provide procedures, standards, frameworks, plans, guidelines etc about the delivery of the named policy or code

8 IMPLEMENTING A NEW POLICY OR CODE

Notwithstanding the consultation phase prior to Council adoption, it is critical that all staff are made aware of the fact that a new policy or code is now in place. In the same way that staff induction should include a "sign off" on relevant legislation and policy, organisations will benefit from the implementation of a procedure to ensure new and revised policies and codes are understood. If amendments have been made since the consultation phase, this should also be highlighted at this time.

The senior manager responsible for a policy or code must ensure that any changes necessary to align procedures to the new policy or code are made and communicated immediately.

9   REVIEWING POLICIES AND CODES

Policies and codes are living documents. Accordingly, they must be subject to evaluation and review, on a regular basis, to ensure that they continue to reflect a Council's views.

Some evaluation is informal, such as receiving reports of issues, which arise in administering the policy or code, or conflicts with other processes, which may have been overlooked. The senior manager responsible for a policy or code must attend to these reports.

Formal evaluation includes the collection and reporting of data about the administration of the policy or code. This will generally be presented to senior management annually, and be included in a report to Council.

Any changes to legislation may also impact on the contents of policies, codes or procedures. The LGA will advise Councils of relevant legislative amendments, through an LGA Circular, but a Council must have a system in place for ensuring such 'triggers' are acted upon.

The Chief Executive can re-present the policy or code to Council at any time if there are changes to legislation, changed circumstances or other issues that require attention.

Even if a policy or code is working well it should be periodically reviewed and reindorsed by Council.

There are statutory requirements for some policies or codes to be reviewed on a predetermined basis. See Attachment 3. This can create a major workload for both staff and Council Members. The most practical way to manage this work is to set a cycle of policy review so that the workload is spread throughout the cycle. Council Members can be given the opportunity to nominate which policies they believe may need significant change, so that these can be given sufficient attention within the annual business cycle.

Certain codes need to be revised early in the term following the election of a new Council. (See Attachment 3.)

Use the content management box to assign a review cycle such as:
- annually;
- biennially;
- within 3 months of the election of a new Council; or
- prior to budget adoption; and then nominate the year and month in which the policy is next scheduled for review.

10   ELECTRONIC MANAGEMENT OF COUNCIL POLICIES
A Council's records management system will contain the "official" (protected or locked from editing) version of policies. Staff should be encouraged to use this in preference to maintaining a hard copy policy manual. It is recommended that a statement such as this:

> "NOTE: *Electronic version in the XX Records Management System is the controlled version. Printed copies are considered uncontrolled. Before using a printed copy, verify that it is the current version.*"

should be embedded in the footer of all policy documents.

A Council's website is becoming increasingly important as its public face and therefore should reflect the professionalism of the organisation. This includes the presentation of a Council's policies. Care should be taken with the design of logos, font sizes etc to ensure that policies can be easily read on-line and printed.

Care is also required in the way in which the documents are named and stored. Ensure that:
- only current versions of policies are present on the website; and
- search engines will recover the correct document for logical searches.

Attachment 1 specifies the policies and codes that must, under the Act, be made available to the public. However, it would be good practice to make available to the public, any additional Council policies that:
- apply to the community at large;
- affect residents and businesses;
- cover the actions of the Elected Council as an entity and Council Members; or
- refer to the management of Council property or a Council area at large.

Administrative procedures that are intended for the management of Council employees and internal work processes do not need to be public documents, even though some may be reviewed by Council or its Audit Committee.

ATTACHMENT 1
Policies[2] required under the *Local Government Act 1999*
(Those that are shaded must be available for public inspection and purchase)

Prudential Management. Required by section 48 (aa1)(d) of the Act, this policy must give guidance to ensure that, in assessing any project (no matter how large or small) a Council acts with due care, diligence, foresight; and identifies and manages the risks associated with the project. The LGA has produced a model policy.[3]

'Contracts and Tenders' or 'Procurement' policy, required by section 49 of the Act, must deal with the contracting out of services, the use of competitive tendering and/or other measures to ensure that services are delivered cost-effectively, and also specify a Council's attitude towards the use of local goods and services. The LGA has published a model policy.[4]

Council as a seller. Required by section 49 (1)(d) of the Act, this policy must give guidance on the sale or disposal of land or other assets, to ensure transparency and accountability. The LGA has published a model policy.[5]

Public consultation policy. Section 50 of the Act requires a public consultation policy, and sets out the minimum requirements for the policy. The LGA has released a discussion paper.[6]

Code of conduct for elected Members of a Council. See section 63 of the Act. This Code must incorporate (among other things) a Caretaker Policy governing the conduct of Council Members during an election period.[7]

Training and development policy for elected members. See Section 80A of the Act.[8]

Code of practice for public access to meetings of a Council and its Committees, and access to Minutes and documents. See section 92 of the Act. The LGA has published a model code.[9]

Code of conduct for Council staff. See section 110 of the Act. This code must incorporate (among other things) a Caretaker Policy governing the conduct of Council staff during an election period. The LGA has published a model code.[10]

Internal financial controls. Required by section 125 of the Act, this policy assists a Council to safeguard its assets, and to secure (as far as possible) the completeness, accuracy and reliability of Council records. It should also serve to protect a Council from fraud and corruption. The LGA has issued a model policy.[11]

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[2] This list does not include other documents, such as management plans, financial plans, business plans, or procedures documents, that a Council is required to have.

[3] A model prudential management policy is provided as an Attachment to LGA Financial Sustainability Information Paper No. 27 – *Prudential Management* at www.lga.sa.gov.au/goto/fsp

[4] A model procurement policy is to be published in the first half of 2012, at: http://www.lga.sa.gov.au/goto/guidelines/

[5] A model policy on the sale or disposal of land or other assets is to be published in the first half of 2012, at: http://www.lga.sa.gov.au/goto/guidelines/

[6] 'Public Consultation – A Discussion Paper' is at http://www.lga.sa.gov.au/goto/guidelines/

[7] A 'Model Code of Conduct for Council Members' is included as Part B of the LGA's *Guidelines for Developing a Code of Conduct for Council Members* at: http://www.lga.sa.gov.au/goto/guidelines/

[8] A 'Model Council Member Training and Development Policy' is provided as Part B of the LGA's *Guidelines for Developing a Code of Conduct for Council Members* at: http://www.lga.sa.gov.au/goto/guidelines/

[9] A 'Model Code of Practice for Access to Council and Committee Meetings and Associated Documents' is at: http://www.lga.sa.gov.au/goto/guidelines/

[10] A 'Model Code of Conduct for Employees' is at http://www.lga.sa.gov.au/goto/guidelines/

[11] A model internal financial controls policy is provided as an Attachment to LGA Financial Sustainability Information Paper No. 21 – *Internal Financial Controls* at www.lga.sa.gov.au/goto/fsp

Naming roads and places. Section 219 of the Act requires a Council to prepare and adopt a policy on assigning names, for public and private roads and public places. The LGA has issued a model policy.[12]

Order-making policy. Section 259 of the Act requires a policy on the issuing of orders about hazards, nuisances, and unsightly conditions on private land. The LGA has issued a model policy.[13]

Review of decisions. Section 270 (a1) of the Act requires a Council to have "policies, practices and procedures" for dealing with any reasonable request for the provision, or improvement, of a service; and complaints. The LGA has published a guide to making such a policy.[14]

Caretaker policy. Section 91A of the *Local Government (Elections) Act 1999* requires a Council to adopt a caretaker policy governing the conduct of Members of Council and staff during the election period for a general election. This policy must form part of the codes of conduct for Council Members and Council Staff. (See above.)

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[12] A 'Model Policy for the Selection of Road and Public Place Names' is at: http://www.lga.sa.gov.au/goto/guidelines/
[13] A model order-making policy is at: http://www.lga.sa.gov.au/goto/guidelines/
[14] 'Internal Review of Council Decisions - A Guide to Policy Making' is at: http://www.lga.sa.gov.au/goto/guidelines/

ATTACHMENT 2
Additional optional (recommended) policies

Service Levels and Resource Allocation. This should clearly set out the roles and functions that a Council is prepared to adopt, the specific services that it will provide, the level of service and means of delivery.[15]

Rating. In light of the sensitivity of a Council's setting and administration of rates, a full and explicit policy detailing the basis on which the rate has been set, advice on rate rebates and concessions allowed, methods of payment, advice on postponement of rates for Seniors Card holders etc. is strongly recommended. Section 123 of the Act requires that certain details about rates policy must be included as part of a Council's Annual Business Plan.[16]

Reimbursement of Council Members' expenses. Section 77 of the Act permits (but does not require) a Council to have a policy on this matter. [17]

Funding (also known as Revenue and Financing). This should set out a Council's position on how it intends to pay for its services and infrastructure having regard to the sources of funds available and the beneficiaries of the expenditure.[18]

Treasury Management. This policy should set out the ways in which a Council's borrowings are raised and cash and investments are managed. It should also set out how a Council intends to manage its interest rate exposures.[19]

Accounting. This policy should set out a Council's significant accounting policies. It should be based upon Note 1 of the Model Financial Statements on the finance page of LGA's web site.

Budget reporting and amendment policy. This policy should set out how the CEO reports against the budget, and also to what extent, and how the Council will allow the CEO flexibility to vary budget expenditure, during a financial year, in response to changes in circumstances or opportunities. It should also specify how the Council will deal with budget carryovers.[20]

Delegations. This policy supports a Council's Governance policy and specifies the delegations made by Council. [21]

Whistleblower Protection. This policy should clearly set out the arrangements that a Council has in place for individuals to raise concerns, in confidence, about possible corrupt or illegal conduct in financial reporting or other matters. The LGA has published a model policy.[22]

Policy on casual vacancies. If a Council area is not divided into wards, a Council may have a policy, under section 6 of the *Local Government (Elections) Act 1999*, that it will not fill a single casual vacancy with a supplementary election.

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[15] Three model 'Service Level Policies' have been provided as Attachments to LGA Financial Sustainability Information Paper No. 26 – *Service Range and Levels* at www.lga.sa.gov.au/goto/fsp

[16] A Model 'Rating Policy' is included as an Attachment to Financial Sustainability Information Paper No. 20 – *Rating Policy and Other Funding Options* to be published in the first half 2012, at www.lga.sa.gov.au/goto/fsp

[17] Nevertheless, if a Council does have such a policy, it must be made available for public inspection and purchase, under section 77(3) and (4).

[18] A Model 'Funding Policy' is included as an Attachment to Financial Sustainability Information Paper No. 20 – *Rating Policy and Other Funding Options* to be published in the first half 2012, at www.lga.sa.gov.au/goto/fsp

[19] A Model 'Treasury Management Policy' is included as an Attachment to Financial Sustainability Information Paper No. 15 – '*Treasury Management'* at www.lga.sa.gov.au/goto/fsp

[20] A Model 'Budget Reporting and Amendment Policy' is provided as an Attachment to Financial Sustainability Information Paper No. 25 – *Monitoring Council Budget Performance* at www.lga.sa.gov.au/goto/fsp.

[21] Although a Delegations *Policy* is optional, a Council's must have a *record* of delegations. This record must be made available for public inspection and purchase, under section 44(7) and (8) of the Act. A 'Delegations Information Paper' is at http://www.lga.sa.gov.au/goto/guidelines/

[22] A model 'Whistleblower Protection Policy' is at: http://www.lga.sa.gov.au/goto/guidelines/. Although there is no legal requirement to have such a policy, or to make it public, it would thwart the purpose of the policy if it were not publicly available.

ATTACHMENT 3
Policies[23] that require consultation before being adopted or amended:

- **Public Consultation Policy**. See s.49(6) of the Act.

- '**Code of practice' for access to meetings** of a Council and its Committees, Minutes and Documents. See s.92 of the Act.

Policies and Codes that a Council must review by specified times

- **Code of conduct for elected members of a Council**. It must be reviewed within 12 months after each general election. See s.63 of the Act.

- **Code of practice** for access to meetings of a Council and its Committees, Minutes and Documents. It must be reviewed within 12 months after each general election. See s.92 of the Act.

- **Code of conduct for Council employees.** It must be reviewed within 12 months after each general election. See s.110 of the Act.

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[23] Apart from "policies" public consultation is also required under the *the Act* for other Council matters, such as:
- representation reviews. See s.12
- the times and places at which a Council's offices are open. See s.45(3)
- Prudential reports on major projects. See s48(2)(d)
- the draft Annual Business Plan. See s.123
- the basis on which a Council calculates rates payable. See s151(5) and s156(14a)
- excluding land from classification as community land. See s193(2)
- adopting or amending a management plan for community land. See ss.197, 198
- Granting a lease of licence over community land. See s.202
- Granting a permit to fence, enclose or partition any part of a roadway. See s.223
- Permitting vegetation with a "significant impact" to be planted on a road. See s.232
- the preparation of stormwater management plans. See Schedule 1A – clause 13(2)