



OBERON COUNCIL

Review of

**DEVELOPMENT ASSESSMENT AND
CONTRIBUTIONS**

IAB Job No. OBECOU11102

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EXECUTIVE SUMMARY

INTRODUCTION

Oberon is a small rural community that is classified as a Group 10 Council in the Division of Local Government (DLG) grouping utilised by the Department of Planning (DOP) in its performance monitoring for development assessment. In the former Department of Planning (DOP) 2008-2010 report, Oberon is shown to have processed one hundred and three (103) Development Applications (DA) valued at an estimated \$10.6M as well as thirty one (31) s96 modifications. Only one (1) Complying Development Certificate was issued during 2008/2009.

As part of Council's Approved Internal Audit Plan for the Year ended 30 June 2011, we have completed a second review for the year on DAs and related processes.

For this review, we have applied the ICAC Audit tool to the wider DA process to identify any areas that may require examination.

We have not previously conducted a process review of D etc at the Oberon Council.

OBJECTIVE

The overall objective of the assignment was to review the adequacy and effectiveness of internal controls and administrative arrangements relating to the determination of Development Applications (DAs), Construction Certificates (CCs), Complying Development Certificates (CDCs), Occupation Certificates (OCs), the levying of Section 64 (S64) and Section 94/94A (S94/94A) developer contributions, collection and accounting of revenue and ensuring that related expenditure is consistent with the agreed Contribution Plans.

METHODOLOGY AND SCOPE

The methodology used was risk-based which included:

- Discussions with Planning and Development, Finance and Administration, Customer Service and Operations staff.
- Examination of system control documentation to assess the efficiency and effectiveness of procedures, and to determine the extent to which they comply with relevant policy and procedures.
- A review of administrative practices to identify improvements and reduce any potential financial risks that could result from current processes and procedures.

The scope of the review included:

- Compliance with legislation including the Environmental Planning and Assessment Act 1979 (EP&A Act) and regulations, Local Government Act 1993 (LG Act) and regulations, Water Management Act 2000 (WM Act), Local Environment Plan (LEP), Development Control Plan (DCP), S64 and S94 Plans and Council policies and procedures.

EXECUTIVE SUMMARY

- An assessment of the risks/internal controls over the receiving, accessing and processing of DAs, CCs and OCs.
- Assessing the reported performance levels of the assessment process against the predetermined target performance levels developed by Council.
- Reviewing a random representative sample of DAs to determine the effectiveness and compliance within the steps leading to the issue of a final Notice of Determination including calculation and receipt of all relevant fees and any S64 and S94 levies.
- Assessing the accuracy and completeness of the Contributions Registers including controls over the monitoring of contributions due.
- Review of expenditure of these contributions by Council towards the provision or improvement of amenities or services.
- Assessing the accuracy and completeness of S64 and S94 project reporting against planned expenditure.
- A review of operational and administrative practices to identify improvements and reduce any potential operational or financial risks that could result from current processes and procedures.

In addition, we make reference to Council's compliance with key elements included in the ICAC Development Assessment Internal Audit Toolkit dated April 2010.

SUMMARY OF REVIEW FINDINGS

Overall, controls were assessed as **ADEQUATE**, subject to a number of recommendations made to further improve the internal controls within the areas of the development assessment process. These include the following and were rated as having a **Medium Risk**:

- Clarify the criteria for the determination of Development Applications by Council or through local delegation.
- Modify checklists for construction certificates with reference to legislative compliance of the EPA Act and Regulation and include evaluation criteria for peer review prior to issue.
- Promote a proactive approach to the identification of illegal construction and non compliance through strategies such as an Amnesty to allow owners to remedy any building works through submission of a Development Application.
- Undertake a comprehensive review and update of Contributions Plans in line with the projected outcomes from the Community Strategic Plan and include options for Planning Agreements and S94A Plans.
- Council should acknowledge their financial responsibility to ensure that any impacts on local services and infrastructure from private development are fully recovered from application of contributions levies rather than self funding through its own limited budget resources.

ACKNOWLEDGEMENT

We would like to recognise the valuable assistance of the Director Development and staff within the Development and Corporate & Community Services directorates in providing information and clarification of issues raised during this review.

ACTION PLAN

A summary of the recommendations contained within the report is presented in *Attachment A*. This summary is presented in the form of an *Action Plan* that is designed to allow management to more readily monitor the implementation of audit recommendations.

ACCOUNTABILITY AND RESPONSIBILITY

IAB Services takes responsibility for this report, which is prepared on the basis of the limitations set out below.

The matters raised in this report are only those that came to our attention during the course of our review and are not necessarily a comprehensive statement of all the weaknesses that exist or all improvements that might be made. OC should assess recommendations for improvements for their full commercial and operational impact before they are implemented.

This report is confidential, has been prepared solely for the use of OC and ownership of the report and any attachments lies with your organisation. It is the responsibility of your organisation to determine if you wish to release this report, in whole or in part. However, this should not occur without our prior written consent. Costs of information requests under any Freedom of Information legislation such as the NSW Government Information (Public Access) Act 2009 or the Commonwealth Freedom of Information Act 1982 or Subpoenas arising from actions taken by individuals or groups as a result of this report will be passed on to your organisation.

No responsibility to any third party is accepted as the report has not been prepared, and is not intended, for any other purpose.

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DETAILED REPORT OF FINDINGS

RISK RATING

We have given each finding in this report a risk (significance) rating on the following basis.

Extreme	Extreme risk, immediate action required.
High	High risk, urgent management attention is needed.
Medium	Medium risk, management responsibility must be specified.
Low	Low risk, manage by routine procedures.

1. BACKGROUND

Council currently has in place a Local Environment Plan (LEP) 1998 and a single Development Control Plan (DCP) that has been condensed from the previous number of DCPs into Chapter format to meet the direction by the former Department of Planning for a single DCP document.

Council has been undertaking a review of the LEP and as an initial step has now prepared a draft Land Use Strategy to inform the new Local Environment Plan. Funding has been received through the Comprehensive Planning Reform Project and Council has recently received \$100,000 from the Round 4 allocation. This will be applied to the \$68,000 that Council paid a previous consultant to terminate the contract and receive uncompleted work from the consultant and to complete the strategy 'in house'. The draft document is currently with the Department of Primary Industries for preliminary comment and endorsement.

Further, grant funding has been sourced as part of the LEP Acceleration Fund with Council's proposed Local Environment Plan being fast tracked to develop alongside the Land Use Strategy. Management anticipates that the exhibition of the draft Land Use Strategy will be undertaken by the end of October with finalisation of the document in early 2012.

2. DEVELOPMENT ASSESSMENT PROCESS

We commenced the review by interviewing senior planning staff and management using the ICAC Internal Audit Tool, April 2010 as a reference point to identify the current status of operations within the Development directorate.

This assessment follows a series of stages that include Pre- lodgement advice, lodgement, assessment, determination, determination and provision of direct and indirect contributions and planning agreements. These are specifically addressed in the ICAC 'checklist' in **Attachment B**.

FINDINGS

Overall, controls were assessed as **ADEQUATE**.

However, internal controls could be improved through the production of clear policy and procedures that define the activities to be undertaken in carrying out the processes. A more detailed assessment of the risks/internal controls over the receiving, accessing and processing of DAs and CCs is set out below.

PRE LODGEMENT

Pre-lodgement meetings are key to ensuring that stakeholder's awareness is high and more accurate submissions are received for determination by Council. Oberon Council undertakes pre lodgement meetings with proponents at no cost. However, there is no formal documentation of such as a Pre Lodgement Application form with explanatory notes. In addition there needs to be a cross reference to any future Development Application form earlier pre lodgements meetings and this will require a small amendment to the current DA format for this purpose.

Council is encouraged to finalise a policy for pre lodgement covering application format, type of advice, recording of meeting minutes and cross referencing to the DA form. As well a formal procedure could be included in a comprehensive Development Assessment Practice Manual at the earliest opportunity.

LODGEMENT

Council has prepared a schedule of all applicable fees for different categories of development applications and these are included within its Fees and Charges Schedule for 2011/2012. They are input into the *Civica Authority* System for automatic calculation of fees during assessment. They are also included in the current Management Plan. Council has a comprehensive checklist to cover compliance with legislative and policy for development applications that are lodged and these will now need to reference earlier pre-lodgement meetings that have provided specific advice on the proposal. From testing of files, we noted that cashier receipts were attached to the inner front cover of files to reference full payment of development fees and that these could be easily reconciled with the schedule. On a less frequent basis, we noted that a fee calculation sheet was placed on file which provides an audit trail for management review. This should be included in a number of standard checklists that are always attached to every file. Internal controls are satisfactory in that full payment is required upon receipt of the development application or certificates and the risk of loss of documentation has been minimised through the introduction of scanning of documents into the system.

ASSESSMENT

The use of templates for specific development and standard letters allows control over the assessment process and minimises potential errors in the final assessment. We recommend that all assessments be peer reviewed by an authorised officer of the Director, especially given the current case load of around one hundred (100) DAs per year. This task will be made easier by the identification of all relevant checklists that can be accessed and countersigned by the approving officer. From our testing of fifteen (15) files within the 2009/2010 financial year, we found that the assessment process generally met all required standards for best practice. There were three (3) files that were reviewed where checklists had not been completed or not filed as an 'audit trail' to allow internal further peer review. Four (4) assessments were noted where the checklists such as the BCA code checks were not completed to demonstrate compliance with the building code.

DETERMINATIONS

It is necessary that Council clearly establish staff delegations for determining development applications for transparency and accountability. All delegations for the Development directorate were up to date and referred either to the occupant of the position or to the position. We noted that determinations were signed without a corresponding staff title or details of the actual range

of delegated responsibility and the date of delegation. However, in a small Council, this potential risk is reduced. We were unable to obtain a list of criteria as to when DAs can be locally approved or called up by Council and this should be formalised and included in a Development Assessment Manual. Internal controls can be improved as detailed above through the checking of the assessment and determination by a senior officer or other colleague and the clear use of a current approved delegation for this function.

PROVISION OF DIRECT AND INDIRECT CONTRIBUTIONS

Contributions are discussed in more detail in Section 5 of this report. Council currently has in force a policy *Development Contributions & Water Management Works Plan (Amendment) 2004* which covers both S94 and S64 charges. There is a need to separate these two from the plan and update to a S94 Plan and S64 Developer Servicing Plan. In terms of the Section 94 Contributions Plan, we identified a need to reconcile the revenue collected for each of the three (3) plans and to ensure that there is clear nexus between the individual plan and the expenditure of these funds in the appropriate account. For S64s, there is a need to update the charges to ensure that the related income adequately covers the capital and on-going maintenance costs for sewer and water supply.

PLANNING AGREEMENTS

Section 93F of the EPA Act refers to the establishment of Planning Agreements and the requirements for negotiating such agreements. Council is yet to prepare a Policy on Planning Agreements and we recommend below in Section 5 that a general review of Contributions be undertaken to assess the benefits to Council of various methods of contribution income.

RISK RATING

MEDIUM

RISK/IMPLICATIONS

- Reduced internal controls may compromise the assessment process.
- The opportunity for peer reviews or checking by a senior officer may be adversely affected through lack of a clear audit trail to review file documentation.

RECOMMENDATIONS

- 2.1 Consolidate existing checklists and documentation into a Development Assessment (Practice Guide) Manual for staff to reference policies and procedures in this area.
- 2.2 Prepare a Pre lodgement Application form and explanatory sheet for proponents for downloading from Council's website.
- 2.3 Notes of all pre-lodgement meetings should be placed on both the Property file and a Master Pre Lodgement file on G drive for local access.
- 2.4 Complete all checklists and the Fee calculation sheets and place on file as an 'audit trail' for approving officers to countersign the determination.
- 2.5 Include a peer review or Director's check as a final internal control prior to final determinations or referral for Council approval.

- 2.6 Review the criteria relating to local delegations for the determination of DAs as well as the circumstances applying to the 'call up' or referral to full Council.

3. CONSTRUCTION CERTIFICATES/OCCUPATION CERTIFICATES

FINDINGS

Overall controls were assessed as **ADEQUATE**.

We reviewed ten (10) DA files where the owner had engaged Council as the certifying authority to issue construction certificates (CC) and fifteen (15) occupation certificates (OC) and tested for accuracy and compliance with legislation and building regulations. The use of private certifiers is limited in the Oberon LGA and the majority of these certificates are issued by Council staff. Council has a number of checklists that are utilised for CCs, depending on the type of construction and class of building.

Our testing showed that the certificates were assessed adequately. However, we recommend that Council provide a single CC checklist that contains actual legislative or other references against which the individual criteria is being addressed. For example, Sections 109C and 109F of the EP&A Act and Clauses 139 to 148 and 168A of the EP&A Regulation 2000 apply for this purpose in the issuing of CCs. Other references would include such areas as fire safety measures and Basix requirements. The checklist will then effectively provide an 'audit trail' for later review, and the inclusion of an evaluation section towards the end of the form allows a senior officer to readily check the validity of the certificate prior to issue. These standard forms are freely available from the Internet as a guide to ensure legislative compliance and minimise the risk of error or omission.

We noted that in terms of OCs, in four (4) cases, a copy of the final OC was not on file and the interim inspection reports for the various stages of construction were not complete to support the final issue of the OC. Staff should ensure that the supporting documentation is correctly placed on file or referenced to another document.

RISK RATING

MEDIUM

RISK/IMPLICATIONS

- Construction certificates may be issued in error without proper assessment of the legislative requirements.
- Checklists may be out of date or incomplete.
- Certificates are issued without any evaluation from another staff member.
- Construction may be commenced without or prior to the issue of a construction certificate.
- Interim Occupation certificates with conditions may not be followed up for final approval.

RECOMMENDATIONS

- 3.1 Checklists for CCs should be improved by referencing the actual individual sections of EPA Act and Regulations.
- 3.2 The CC and OC checklists should incorporate an evaluation section for independent review prior to issue of the certificate.
- 3.3 Property files should have a complete record of checklists and staged inspection reports to support the issuing of CCs and OCs.

4. CONTRIBUTION PLANS

The Contributions Plans available to Council are initially those under S94 of the EPA Act. The S94 Plans which have been operating for a longer period require a 'nexus' to be demonstrated between the likely impact of any proposed development on Council services and/or infrastructure. This also requires the establishment and monitoring of a S94 Contributions Register that records the actual projects where contributions have been received and distributed to individual plans such as Rural Roads, Community Services etc that correspond to the contributions levied at the time of the determination of the Development.

S94A of the Act now provides an alternative approach, where a specific percentage is applied to the project cost and increases with the incremental costs of the project to a maximum of two percent.

As detailed in Section 2 of our Report, under Section 93F of the EPA Act, Planning Agreements can be established for certain projects and are often initiated by proponents of the development and can include provision for Works in Kind or other voluntary agreements.

S64 Developer Service Plans are treated separately as they relate specifically to the provision of water and sewerage services where developers pay fees to Council in recognition of new capital construction that impact on new or future infrastructure services.

FINDINGS

Overall controls were assessed as **ADEQUATE**.

Council currently has a *Development Contributions & Water Management Works Plan (Amendment) 2004* that was adopted by Council on 10 August 2004. We noted that within this Plan there is currently no separation of the S94 contributions and the S64 Service Delivery Plans for the water and sewerage operations. The Plan has not been updated since 2004 and we recommend that the Plans be separated and rewritten. We were advised that Executive Management Team (EMT) has had initial discussions on initiating a general review of these individual plans. However, we recommend that a broader review of all Contributions be undertaken to include an alternative S94A Plan as well as a policy on Planning Agreements for possible implementation under S93F of the EPA Act. The recommended review of the S94 and/or S94A alternative Plan should consider data from the new Community Strategic Plan, fees and charges and allocations within the Long term Financial Plan and Operational Plan. The current S64 Plan is in need of review and does not potentially cover newly identified services from the Community Strategic Plan and related documents. The new S64 Developer Charges Plan that should be reviewed and developed

within these strategies should ensure that future development and operational costs are well defined to ensure that future capital and recurrent costs are sufficient to meet demand. We reviewed the current status of the Contributions Plans for 2009/2010 and 2010/2011 to ascertain the income from contributions and expenditure for the 2009/2010 financial year. We noted that the current Register does not sufficiently detail the individual projects and the transactions between accounts including future financial projections for input into Capital Works programs in future budgets. The Register should be reconciled prior to any possible replacement of the S94 Contributions Plan which contains the need for a clear nexus between projects and expenditure. Compliance with the requirements of the EPA Regulation relating to this area include information for:

- development consents for which contribution conditions of consent have been imposed
- the nature and extent of all contributions received
- the contribution plan under which each contribution condition was imposed
- the dates on which contributions were received.

It is imperative that Council recognise the significant reliance on contributions from all Contributions plans to adequately cover the impact of development on Councils infrastructure and services. Any action by councils to reduce contribution charges within Plans or through deletion of conditions in any assessment has significant budgetary impacts on Councils operational and capital programs.

RISK RATING

MEDIUM

RISK/IMPLICATIONS

- Contribution plans may be non compliant with legislation and subject to challenge by developers and other proponents.
- Projects are delayed and go beyond the seven year cut off deadline by which infrastructure works must be carried and this leads to reimbursement of funds.
- Contribution plans are not regularly reviewed and indexed for CPI changes that lead to losses in revenue to Council.
- OC staff and Councillors are not aware of the objectives of Contributions and the important roles that it plays in income generation.
- Developer Service Charges are insufficient for the ongoing costs of water and sewerage works within the area.
- Contribution Plans are not aligned to the CSP vision and outcomes.
- Shortfall of funds leads to unsustainable infrastructure.
- Contributions are not properly accounted for or invested appropriately leading to lost income opportunities.

RECOMMENDATIONS

- 4.1 Separate the current *Development Contributions & Water Management Works Plan (Amendment) 2004* into two (2) separate plans to cover Section 94 Contributions and S64 Developer Service Plans.
- 4.2 Undertake a general review of all Council Contributions, including the benefits of an alternate S94A Contribution Plan and the potential for Planning Agreements for certain development types.
- 4.3 Update the S94 and S64 Plans for current charges that can be linked to data from the new Community Strategic Plan, Long term Financial Plan and Operational Plan.
- 4.4 Reconcile the current Contributions Plan Register which is currently undertaken on an annually based Register to comply with EPA Regulations.

5. ENFORCEMENT OF ILLEGAL OR NON COMPLAINT DEVELOPMENT

FINDINGS

Overall controls were assessed as **ADEQUATE**.

There is potential across all Councils for development to occur without proponents submitting an application and building illegally, being refused an application fully or with compliance conditions applied that may not be acceptable to the proponent or simply the final construction does not meet the conditions of consent and is deemed non compliant. The risk is that Council development staffing is limited and that enforcement is compromised, geographical areas are vast and difficult to access on a regular basis or in larger Councils areas, staff may be spread over many functions and knowledge of individual cases is lessened. Council has been innovative in having developed a comprehensive policy in April 2008 (with a review date of April 2010), *Policy 3128 Unauthorised Development Works and Other Activities* which addresses the above areas of concern. It contains a four (4) step Compliance Checklist to guide staff in the process to investigate claims of non compliance with planning requirements within the local government area. It does rely on notification by the public in many cases. However, occasionally an applicant may seek to legalise early unauthorised work or apply for an extension of a building that has been built originally without Council approval and does not meet building regulations. In our DA review, we identified one case at 156 Springmount Road Oberon which has been determined by Council following a proposal by the owner to convert a galvanised iron (GI) garage to a dwelling and dwelling additions. On investigation on 21 June 2010, staff found that the garage had been converted to living quarters over its recent history. Council sought reasons from the owner to not enforce a Penalty Infringement Notice (PIN) under S71A of the EPA Act for these works and then encouraged the owner to submit a formal DA/CC application for determination. The application DA 0.2010.34.1 was determined on 18 August 2010 and refused pending the proponent meeting twenty four (24) conditions. The matter remains unresolved and we recommend that Council resubmit such cases for continual monitoring to report on any progress or further illegal occupation against Council directions. In order to identify a wider area of illegal occupation within the LGA, Council may wish to consider other options such as offering an amnesty to ratepayers who may wish to declare any unauthorised building works. Such a notice could be included in rate notices to ensure wide coverage and be supplemented by media

advertisement. The strategy should encourage ratepayers to submit a DA without payment of Penalty Infringement Notices for a specific time period for remedy any illegal or unauthorised works. This would then provide staff with a list of affected properties as well as feedback as to the status of illegal and non compliant building works.

RISK RATING

MEDIUM

RISK/IMPLICATIONS

- Non compliant building works represent a danger to persons in the vicinity through potential failure or electrical fires.
- Council compliance monitoring for building works is threatened by inadequate surveillance or staff availability.
- Monitoring on outstanding determination conditions is compromised unless files are regularly resubmitted for ongoing progress reports.

RECOMMENDATIONS

- 5.1 Review Policy 3128 *Unauthorised Development Works and Other Activities* to update any references to legislative and Council system changes.
- 5.2 Ensure that cases of non compliance are resubmitted on a regular basis to properly monitor the status of illegal or non compliant building works.
- 5.3 In the case cited above, write to the proponent to seek formal advice as to his actions towards resolving the current unauthorised work.
- 5.4 Council should consider offering an amnesty to allow ratepayers to report any potential illegal or non compliant building works without any infringement subject to a Development Application is submitted.


END OF REPORT

ATTACHMENT A – ACTION PLAN FOR IMPLEMENTATION OF REPORT RECOMMENDATIONS

No	Summary of Recommendation(s)	Risk Rating	Management Response(s)	Responsible Manager(s)	Target Implementation Date(s)
2 DEVELOPMENT ASSESSMENT PROCESS					
2.1	Consolidate existing checklists and documentation into a Development Assessment (Practice Guide) Manual for staff to reference policies and procedures in this area.	Medium	Will Action	Gary Wallace	3/12
2.2	Prepare a Pre lodgement Application form and explanatory sheet for proponents for downloading from Council's website.	Medium	Actioned	Gary Wallace	Complete
2.3	Notes of all pre-lodgement meetings should be placed on both the Property file and a Master Pre Lodgement file on G drive for local access.	Medium	Actioned	Gary Wallace	Complete
2.4	Complete all checklists and the Fee calculation sheets and place on file as an 'audit trail' for approving officers to countersign the determination.	Medium	Will Action	John Chapman	12/11
2.5	Include a peer review or Director's check as a final internal control prior to final determinations or referral for Council approval.	Medium	Actioned	Gary Wallace	Complete
2.6	Review the criteria relating to local delegations for the determination of DAs as well as the circumstances applying to the 'call up' or referral to full Council.	Medium	Will Action	Gary Wallace/Leanne Mash	3/12
3 CONSTRUCTION CERTIFICATES/OCCUPATION CERTIFICATES					
3.1	Checklists for CCs should be improved by referencing the actual individual sections of EPA Act and Regulations.	Medium	Will Action	Gary Wallace/Mark Dicker	12/11

ATTACHMENT

No	Summary of Recommendation(s)	Risk Rating	Management Response(s)	Responsible Manager(s)	Target Implementation Date(s)
3.2	The CC and OC checklists should incorporate an evaluation section for independent review prior to issue of the certificate.	Medium	Not feasible under current resources		
3.3	Property files should have a complete record of checklists and staged inspection reports to support the issuing of CCs and OCs.	Medium	Will link DA & Property files in line with the implementation of Info Expert electronic document management system	John Chapman/Gary Wallace	1/12
4 CONTRIBUTION PLANS					
4.1	Separate the current <i>Development Contributions & Water Management Works Plan (Amendment) 2004</i> into two (2) separate plans to cover Section 94 Contributions and S64 Developer Service Plans.	Medium	Currently being developed	Gary Wallace	1/12
4.2	Undertake a general review of all Council Contributions, including the benefits of an alternate S94A Contribution Plan and the potential for Planning Agreements for certain development types.	Medium	Currently being developed	Gary Wallace	1/12
4.3	Update the S94 and S64 Plans for current charges that can be linked to data from the new Community Strategic Plan, Long term Financial Plan and Operational Plan.	Medium	Currently being developed	Gary Wallace	3/12
4.4	Reconcile the current Contributions Plan Register which is currently undertaken on an annually based Register to comply with EPA Regulations.	Medium	Finance has established this register already – will review and add to as necessary	Gary Wallace/ John Chapman	12/11

ATTACHMENT

No	Summary of Recommendation(s)	Risk Rating	Management Response(s)	Responsible Manager(s)	Target Implementation Date(s)
5 ENFORCEMENT OF ILLEGAL OR NON COMPLAINT DEVELOPMENT					
5.1	Review Policy 3128 <i>Unauthorised Development Works and Other Activities</i> to update any references to legislative and Council system changes.	Medium	Policy under review	John Chapman/Gary Wallace	1/12
5.2	Ensure that cases of non compliance are resubmitted on a regular basis to properly monitor the status of illegal or non compliant building works.	Medium	Reviewed on a 2 month basis currently	Gary Wallace/ Leanne Mash	Complete
5.3	In the case cited above, write to the proponent to seek formal advice as to his actions towards resolving the current unauthorised work.	Low	Currently in place	Gary Wallace	Underway now
5.4	Council should consider offering an amnesty to allow ratepayers to report any potential illegal or non compliant building works without any infringement subject to a Development Application is submitted.	Medium	Not currently a priority. The process is not within current resources. Will look to review annually in line with priorities for that financial year	Nil	Nil

ATTACHMENT B – THE ICAC DEVELOPMENT ASSESSMENT INTERNAL AUDIT TOOL

INTRODUCTION

Recent ICAC investigations have identified development assessment processes as a significant corruption risk for councils.¹ While local councils in NSW vary in size and complexity of operations, the ICAC believes that this is a corruption risk area common to all councils. The ICAC has developed this tool to assist local councils in managing their exposure to corruption risks in development approval processes.

Failure to identify and manage corruption risks² leaves an organisation vulnerable to corruption. Corruption has both short and long-term negative consequences for an organisation, including:

- damage to reputation
- loss of public confidence
- direct financial loss
- wasted resources
- the financial and resource cost of an internal and/or external investigation
- adverse effects on other staff and the morale of the agency generally.

Internal audit is a key component of all councils' corporate governance³, and risk identification is a key element in the internal audit function.

¹ See for example: *Report on an investigation into corruption allegations affecting Wollongong City Council – part three*, Independent Commission Against Corruption, Sydney, October 2008.

² For more information on corruption risks see *Corruption Risk Management*, Independent Commission Against Corruption, Sydney, February 2008.

³ In October 2008, the then NSW Department of Local Government released its *Internal Audit Guidelines* (which were Director General's Guidelines for the purposes of the Local Government Act 1993). The guidelines aim to assist councils with putting effective internal audit practices in place. They describe internal audit and risk management systems for local councils and include appropriate structures, functions, charter, and membership of audit and risk management committees.

This tool identifies corruption risks inherent in the development assessment process and how these may be detected and managed through the internal audit process.

HOW TO USE THE DEVELOPMENT ASSESSMENT INTERNAL AUDIT TOOL

This tool is designed to assist in the audit of a council's development assessment and determination processes. The tool is not intended to provide a comprehensive analysis of organisational risks involved in this operational area. Instead, it canvasses some of the corruption risks identified in the ICAC's recent investigations. It also incorporates compliance with some key legislative provisions. The tool focuses on procedural controls and does not incorporate broader issues, including those related to organisational culture.

Councils should also consider adopting additional strategies to help inform their audit methodology. For example, interviews can be conducted with key staff involved in development assessment and determination to obtain additional details about:

- a council's control framework
- the effectiveness of the control framework in ensuring the appropriate discharge of duties
- other risks and controls.

The tool is divided into the specific categories involved in development assessment and determination. It also includes information related to the determination and provision of direct and indirect contributions, and planning agreements. The categories used in the tool are:

- pre-lodgement advice
- lodgement
- assessment
- determination
- determination and provision of direct and indirect contributions planning agreements.

The audit process for each category is divided into two parts.

Part A focuses on the general control framework that the council has in place for that category. It involves the reviewer rating a council’s compliance with key internal and external controls.

Part B focuses on the application of the control framework to specific development approvals. This involves the reviewer rating the degree to which a selected development approval complies with these controls and other procedural requirements.

The ICAC recommends that compliance with the statements contained in both Parts A and B is assessed using the following matrix:

RATINGS			
No issues with compliance (1)	Minor issues with compliance (2)	Insufficient compliance (3)	Significant lack of compliance (4)

High ratings are indicative of areas where a council should review its control framework and/or compliance with it.

Councils are welcome to adapt all or part of the tool for their own purposes and to supplement the tool with their own additional controls. The tool is current at the time of publication. Updated copies of the tool can be downloaded from the ICAC website at www.icac.nsw.gov.au.

The ICAC acknowledges the assistance provided by:

- Local Government Managers Australia (NSW).
- the Local Government Internal Auditors Network.
- Wyong Shire Council.
- Sutherland Shire Council.
- Bankstown City Council.
- Fairfield City Council.

- The Hills Shire Council.
- The Division of Local Government, Department of Premier and Cabinet.
- The NSW Department of Planning.

CATEGORY: PRE-LODGE MENT ADVICE

Part A: General control framework	Rating (1-4)	Evidence/comments
Council has a policy setting out the nature of and limitations on the pre-lodgement advice that it provides.	4	No formal policy or working procedure has been completed and needs to be presented to Council later in the year to enable pre lodgement to be introduced. Recommended that a policy be developed to guide Proponents and Council staff.
Council has in place procedures for managing and recording the pre-lodgement advice that it provides.	3	This appears to be inconsistent as some staff report that notes are kept and placed on the property file, others are kept personally while some may not be kept at all. One option is to scan all pre-lodgement meetings and keep on Council's G drive for retrieval when a DA is finally submitted. The DA form should also have provision to note when a Pre- lodgement meeting was held.
Council has a standard process in place to record the payment of pre-lodgement fees.	N/A	No fees are charged by Council as it is seen as helpful in ensuring the potential applicants will submit a more compliant application when taking into account the matters clarified at these meetings.
Council can demonstrate a consistent approach to communicating to the community the information required for pre-lodgement discussions.	4	Not evident and no application form with these details are available.
Council communicates to the community the types of requests for pre-lodgement advice that it considers appropriate.	4	To be included in the new policy and procedure or information brochure available from Council's web site.
Council communicates to the community the limitations on the pre-lodgement advice that it provides.	4	To be included in the new policy and procedure as to the <u>limitations</u> of its advice.

Part B: Sample development approval	Rating (1-4)	Evidence/comments
Council fee associated with pre-lodgement advice paid.	N/A	No fees are applied.
Request for pre-lodgement advice retained as a council record.	N/A	Form not yet prepared
Appropriate records kept of pre-lodgement meeting(s) that record the advice provided to potential applicants or their representatives.	3	Inconsistent approach. Not yet compliant pending introduction of reporting template and record of minutes of the pre lodgement meetings.
Written record of pre-lodgement advice provided to potential applicant.	3	Not yet but should be included as a requirement within the new policy
Documents including pre-lodgement meeting minutes and written advice kept on appropriate file relating to the proposed development.	3	Not consistently as yet but should be included as a requirement within the policy
Pre-lodgement advice does not contain assurances on compliance with LEP, DCP etc or on merit assessment outcomes.	3	Not yet but should be included as a requirement within the policy to ensure that proponents are not provided with any improper advice prior to assessment.

CATEGORY: LODGEMENT

Part A: General control framework	Rating (1-4)	Evidence/comments
Council has a schedule or equivalent of all applicable fees for different categories of development applications (e.g. lodgement fees, bonds, development application advertising fees).	1	Compliant with EPA Regulations and Fees and Charges in Management Plan
Council has in place procedures for verifying an applicant's cost estimates for building and associated works. ⁴	1	Council can check any apparent underestimates based on Rawlinsons 2009 before seeking independent QS from proponent.
Council has developed a standard internal checklist to ensure all relevant information is lodged with a development application and fees are paid.	1	Compliant.

⁴ Examples include requesting copies of all quotations from the applicant, requesting an independent report from a quantity surveyor verifying the applicant's cost estimates and checking against published estimates. It is appropriate for more scrutiny to be applied to developments that have a significant cost compared to smaller developments.

Part B: Sample development approval	Rating (1-4)	Evidence/comments
Evidence on relevant property file that all required development fees paid in full.	1	Receipt attached to inside front cover of file or DA form.
Council has obtained adequate verification of applicant's cost estimates for building and associated works (verification methodology will depend upon council's internal processes in this regard.)	2	Most applications are dwellings and other types where costing can be assessed from building footprint and there are examples of comments on file. Rawlinson also available.
Standard checklist completed in relation to submitted application form and any required additional documentation provided.	1	Compliant

CATEGORY: ASSESSMENT

Part A: General control framework	Rating (1-4)	Evidence/comments
Council has developed a policy (or equivalent) detailing the statutory and Council policy requirements regarding the advertising of specific categories of development. ⁵	1	Clause 23 & Schedule 3 of LEP 1998.
Council has developed a policy (or equivalent) detailing the statutory and Council policy requirements regarding the notification of specific categories of development.	3	Referenced to EPA Act Will be included in new LEP
When advertising or notifying development applications, Council discloses whether the application is accompanied by a SEPP 1 (or equivalent) objection.	1	Compliant
Council provides information on development assessment processes with notification letters.	1	Compliant
Council has developed a policy or equivalent detailing the circumstances (including legislative) in which external referrals will be required for specific categories of development.	2	Determined by the Director/ Manager when allocating applications to staff.

⁵ Please note that some LEPs contain notification/ advertising requirements for development.

Council has developed a policy or equivalent detailing the circumstances in which internal referrals for specific categories of development will be required.	2	Determined by the Director/Manager when allocating applications to staff.
Council has business rules in place to ensure that all development applications that are lodged are allocated for assessment.	2	Not directly and included in the Policy 1118 Values, Principles and Business Ethics.
Internal business rules are established regarding the allocation of development applications to council officers for assessment without reference to the wishes of the applicant.	2	Only 3 EFT staff (incl. Director) that makes this difficult however could be included in a future policy document.
The above internal business rules ensure that conflicts of interest are considered during the application process.	2	Consider adding an item concerning any relationship of applicant(s) to a Council staff member or Councillor regarding potential conflicts of interest. Otherwise Code of Conduct covers this.
Council has a policy or equivalent setting out the situations in which on-site meetings are required.	2	Council advise that it is mandatory. Clause 129B and 129C of Regulation.
Council has a standard format for completing development assessment reports for determinations by Council and determinations under delegated authority.	1	Compliant.
Council has clear criteria for determining which matters are referred to its IHAP, relevant subcommittee or community consultation body (if applicable).	N/A	Not utilised.
Council communicates to the community the statutory requirements in relation to submitting amended development applications prior to determination. ⁶	3	Include in future DA policy and procedure.
Council has procedures in place for the internal review of development assessment reports and recommendations in specified circumstances, including developments relying on significant SEPP 1 objections or equivalent.	2	Informal process during assessment and needs potential peer review arrangements.

⁶ See clause 55 of the EP&A Regulation 2000.

Part B: Sample development approval	Rating (1-4)	Evidence/comments
Copy of advertisement placed on the relevant property file.	1	Not relevant to all sampled documents
Advertisement incorporates all required statutory and Council policy information.	1	When required for the specific application
Sample notification letter and a record of all addressees placed on relevant file.	1	On relevant files
Notification letter incorporates all statutory and Council policy requirements.	1	On relevant files
External expert advice has been requested in accordance with Council policy	1	Not relevant to all sampled documents
Development assessment report addresses external expert advice.	1	Where it is relevant such as RFS.
All external expert advice received placed on the property file.	1	Compliant
Internal expert advice requested in accordance with Council policy.	1	Compliant
Development assessment report addresses internal expert advice.	1	Compliant
All internal expert advice received placed on the relevant file.	1	Compliant on relevant files
Development allocated for assessment in accordance with internal business rules (including consideration of conflicts of interest).	1	From discussion with Manager on allocation and rotation process.
On-site review conducted (if required).	1	Compliant
Outcomes of on-site meeting recorded and placed on relevant file.	1	Compliant
Development assessment report completed in standard format and placed on relevant property file.	1	Compliant
Development assessment report addresses relevant submissions.	1	From sampled documents where objections have been received.
All submissions received placed on the relevant file.	1	From sampled documents

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Application determined after closing date for submissions.	1	Compliant
Development assessment report considers: <ul style="list-style-type: none"> ▪ statutory compliance ▪ merit considerations under section 79C of the EP&A Act ▪ consideration under any other relevant Acts or legislation. 	1	From sampled documents
Outcomes of all substantive meetings including applicant meetings/mediation meetings are documented and placed on the relevant file.	1	From one related file within sample of documents
Development referred to IHAP, relevant subcommittee and/or community consultation body (if applicable) in accordance with pre-established criteria.	N/A	.
Outcome of IHAP proceedings, subcommittee and/or community consultation body meetings are recorded on relevant file.	N/A	
Development assessment report addresses outcome of IHAP proceedings, subcommittee and/or community consultation body meetings.	N/A	
Amended development application has annexed to it written particulars sufficient to indicate the nature of the changed development (if applicable).	N/A	Not included in sample tested
Amended development application was assessed to determine whether additional advertising, notifications and referrals were required (if applicable).	N/A	Not included in sample tested
Further advertising, notification and referrals undertaken in accordance with council policy and statutory requirements (if required).	N/A	Not included in sample tested
Amended development application was assessed to determine whether a new development application was required (if applicable).	N/A	Not included in sample tested
Development assessment report reviewed by Manager in accordance with Council's procedures.	N/A	Not included in sample tested

CATEGORY: DETERMINATION

Part A: General control framework	Rating (1-4)	Evidence/comments
Council has a delegations policy clearly setting out delegations.	1	Compliant
Delegations are reviewed and confirmed by management after a specified time period ⁷ .	1	Compliant
Council's delegations policy clearly requires all development applications where there has been a variation greater than 10% in standards under SEPP 1 (or equivalent) to be determined by full Council ⁸ .	3	Criteria for DA determination by delegated authority should be included in the new policy.
Council has a policy that clearly sets out the circumstances in which developments can be 'called up' to Council.	1	No. Include in new policy.
Council has a public register that can be accessed from its website of development applications determined with variations in standards under SEPP 1 (or equivalent).	4	Not accessible through web site
Council's SEPP 1 (or equivalent) register includes: <ul style="list-style-type: none"> ▪ the reasons for the proposed variation ▪ the extent of the variation (e.g. expressed as a percentage variation) ▪ reasons for Council's determination ▪ information as to whether Department of Planning concurrence was required. 	4	SEEP1 Public Register has Nil return
Council completes quarterly returns on variations to development standards using SEPP 1 (or equivalent).	1	Compliant
Council submits the quarterly returns to the Department of Planning within four weeks of the end of a calendar quarter.	1	Compliant
Council keeps a register containing the names of councillors who	4	Only from Minutes of meetings

⁷ See also section 380 of the Local Government Act 1993.

⁸ Please note that the Director-General of the NSW Department of Planning has granted a number of councils an interim variation on the requirement that all DAs where there has been a variation greater than 10% in standards under SEPP 1 be determined by full council.

supported the decision and those that opposed the decision for each planning decision made at a Council or committee meeting.		
Council has a register of development applications and consents.	1	Recorded in <i>Authority</i>
Council planning staff provides a report to Council on the development applications determined where there had been a variation in standards under SEPP 1 (or equivalent).	1	Compliant
Part B: Sample development approval	Rating (1-4)	Evidence/comments
Determination made in accordance with Council's delegations policy.	1	As currently understood pending clarification of policy
Determination made by full Council where there has been a variation greater than 10% in standards under SEPP 1 (or equivalent) ⁹ .	1	Not included in sample documents
Determination made in accordance with Council's 'call up' provisions.	1	As currently understood pending clarification of policy
Development entered onto Council's SEPP 1 register (if relevant).	N/A	Not included in sample documents
Councillors' voting pattern in relation to the development is recorded on a register (if relevant).	3	In Council Minutes not separate Register as yet.
Notice of determination placed on property file.	1	Compliant
Council register of planning determinations updated.	1	Compliant

⁹ Please note that the Director-General of the NSW Department of Planning has granted a number of councils an interim variation on the requirement that all DAs where there has been a variation greater than 10% in standards under SEPP 1 be determined by full council.

CATEGORY: DETERMINATION AND PROVISION OF DIRECT AND INDIRECT CONTRIBUTIONS

Part A: General control framework	Rating (1-4)	Evidence/ comments
Council has a direct contributions plan (or plans) authorising contributions and specifying contribution rates.	1	Compliant
Council's direct contributions plan (or plans) is based on specific methodologies for calculating contributions.	1	Compliant
Council has a plan (or plans) for indirect (fixed development consent levies) authorising of contributions and levies.	1	Compliant
Council's contributions plans comply with relevant section 94E directions issued by the Minister for Planning.	3	Plans to be reviewed in mid 2011
Council's contributions plans comply with any individual determinations issued by the Minister for Planning to Council.	3	Plans to be reviewed in mid 2011
Council's contributions plans have regard to the key considerations for development contributions listed under section 116D of the EP&A Act.	1	Contribution for wind farms set by L&EC and other major developments by negotiation.
Council's contributions plans provide that contributions for community infrastructure relate to: <ul style="list-style-type: none"> • "key community infrastructure" (being community infrastructure prescribed by the Environmental Planning and Assessment Regulation 2000), or • "additional community infrastructure" that has been approved by the Minister for Planning. 	1	Community Enhancement Program Policy (CEPP) identifies community projects
Council's contributions plans are supported by a schedule of works that contain an estimate of the cost and staging of identified community infrastructure.	1	
Council's contributions plans and supporting documentation are freely accessible to the public in a format that can easily be understood.	2	Can be improved and subject of next review in 2011.

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Council has a standard procedure and criteria that it uses to assess proposals for works in kind or the dedication of land in lieu of payment of direct financial contributions.	1	
Council has a requirement that the value of proposals for works in kind or the dedication of land in lieu of direct financial contributions are assessed independently of the applicant.	1	In CEPP
Council has a requirement that all works in kind provided under a direct contributions scheme are subject to a legal agreement between Council and the applicant.	1	
Council has a requirement that all legal agreements pertaining to works in kind include: <ul style="list-style-type: none"> • works to be undertaken • the timing of the works • the quality of the works • the costs of the works • the applicant's rights and responsibilities • Council's rights and responsibilities. 	1	Complaint
Council does not issue credits to applicants for works in kind which are provided in excess of the approved condition outside of a standard procedure involving approval by Council.	1	
Council's contributions plans specify when contributions are due.	1	
Council's contributions plans only permit the uniform deferral, waiver or discounting of contributions when certain conditions are met and do not allow this on a case-by-case basis.	1	
Council's contributions plans do not allow the deferral, waiver or discounting of contributions on a case-by-case basis.	1	
Council has procedures in place for assessing and processing requests for the deferral, waiver or discounting of a contribution prior to the issuing of a consent.	1	Deferral or periodic payments only

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Council policy only permits the deferral, waiver or discounting of contributions with the explicit approval of a senior manager or Council via a standard agreement.	1	Bank guarantee required under legally binding agreement.
Contributions amended by section 96 of the EP&A Act are only dealt with via the delegation of a senior manager or Council.	1	Under control of Director, Finance and Administration
<p>Council has a contributions register(s) that records:</p> <ul style="list-style-type: none"> • development consents for which contribution conditions of consent have been imposed • the nature and extend of all contributions received • the contribution plan under which each contribution condition was imposed • the dates on which contributions were received. 	1	Compliant
Council has processes in place to ensure contributions are paid at the time specified in conditions of consent.	1	Yes and need to formalise in new policy
Council has processes in place to follow up unpaid contributions.	N/A	
Council has indexing provisions for contributions.	1	
Council has developed a checklist of conditions that should be met prior to the release of linen (subdivision) plans that includes the payment of contributions.	1	
Part B: Sample development approval	Rating (1-4)	Evidence/comments
Contributions authorised by a contributions plan.	1	Compliant
Financial contributions have been paid as per the consent condition.	1	Compliant
Financial contributions were paid at the time specified in the conditions of consent.	1	Compliant

Contributions-owing information updated as appropriate. ¹⁰	1	Only for staged development
Contributions determined in accordance with Council's contribution plan and relevant section 94E directions executed by the Minister for Planning.	N/A	No Section 94E directions in place
Contributions register has been updated.	1	
Any works in kind or dedication of land in lieu of payment of direct contributions were assessed in accordance with Council's standard procedure and criteria.	N/A	Not included in test sample
Works in kind or dedication of land in lieu of payment of direct contributions were assessed independently of the applicant.	N/A	Not included in test sample
Any works in kind negotiated in lieu of financial contributions were subject to a legal agreement covering: <ul style="list-style-type: none"> • works to be undertaken • the timing of works • the quality of the works • the costs of the works • the applicant's rights and responsibilities • Council's rights and responsibilities. 	N/A	Not included in test sample
Any deferral, waiver or discount of contributions was in compliance with Council policies and procedures.	N/A	Not included in test sample

¹⁰ This is intended to deal with contributions not immediately paid and due in a later time period – as may occur in staged development.

CATEGORY: PLANNING AGREEMENTS

Part A: General control framework	Rating (1-4)	Evidence/comments
Council has a planning agreements policy.	N/A	Council has not yet considered Planning Agreements in the DA process
Council's planning agreements policy sets out the processes it will follow in relation to negotiating and preparing planning agreements.	N/A	
Council's planning agreements policy stipulates the circumstances in which Council would ordinarily consider entering into a planning agreement.	N/A	
Council's planning agreements policy stipulates that planning agreements are to be negotiated independently of the development assessment and determination processes.	N/A	
Council's planning agreements policy provides for the assessment of the value of each public benefit provided against objective criteria.	N/A	
Council's planning agreements policy has regard to the key considerations for development contributions listed in section 116D of the EP&A Act.	N/A	
<p>Council's planning agreements policy has regard to the specification that any infrastructure provided under an agreement is:</p> <ul style="list-style-type: none"> • "key community infrastructure" (being community infrastructure prescribed by the Environmental Planning and Assessment Regulation 2000), or • public infrastructure that has been approved by the Minister for Planning. 	N/A	
Council's planning agreements policy incorporates any relevant directions made by the Minister for Planning.	N/A	
Council's planning agreements policy covers the circumstances in which refunds may be given.	N/A	

Council's planning agreements policy covers procedures for the review and modification of planning agreements.	N/A	
Council's planning agreements policy is publicly available and easily accessible.	N/A	
Council reports on its use of planning agreements in its annual report.	N/A	
Council maintains a publicly available planning agreements register.	N/A	
The register includes a short description of any planning agreement that applies to the area of the Council (including the date the agreement was entered into, the names of the parties and the land to which it applies).	N/A	
Part B: Sample development approval	Rating (1-4)	Evidence/comments
Council has prepared a written statement (known as an explanatory note) that summarises the objectives, nature and effect of the proposed planning agreement.	N/A	Test samples did not include Planning agreements as they are yet to be implemented as an alternative approach.
The planning agreement was assessed against the key considerations for development contributions established by section 116D of the EP&A Act.	N/A	
The explanatory note contains an assessment of the merits of the proposed agreement.	N/A	
The explanatory note identifies how the agreement promotes the public interest and one or more of the objectives of the EP&A Act.	N/A	
The explanatory note identifies how the agreement promotes one or more of the elements of Council's charter.	N/A	
The planning agreement provides a description of the land to which the agreement applies.	N/A	

The planning agreement includes a description of: <ul style="list-style-type: none"> • the change to or the making or revocation of the environmental planning instrument, or • the development to which the agreement applies. 	N/A	
The planning agreement specifies the nature and extent of the provision to be made by the developer under the agreement.	N/A	
The planning agreement specifies the time or times by which the provisions are to be made.	N/A	
The planning agreement specifies the manner by which the provision is to be made.	N/A	
The planning agreement provides for the enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer.	N/A	
The planning agreement does not impose an obligation on Council to grant a development consent.	N/A	
The planning agreement does not impose an obligation on Council to exercise any function under the EP&A Act in relation to a change to or the making or revocation of an environmental planning instrument.	N/A	
File notes were made of discussions between the developer and Council during the negotiation of the planning agreement and placed on the relevant file.	N/A	
Council has included in its annual report particulars of compliance with and the effect of the planning agreement whilst it remains in force.	N/A	
Council gave public notice of the proposed planning agreement. ¹¹	N/A	

¹¹ Clause 25D of the Environment Planning and Assessment Regulation 2000 deals with the public notification of planning agreements.

Council made the explanatory note available for public inspection for a period of not less than 28 days.	N/A	
The public notice of the proposed planning agreement specified the arrangements relating to inspection by the public of the explanatory note for the proposed agreement.	N/A	
The planning agreement was endorsed by Council.	N/A	
Council provided a copy of the planning agreement to the Minister for Planning within 14 days of the agreement being entered into (in cases where the Minister is not a party to the agreement).	N/A	
Council provided a copy of any amendments to the planning agreement to the Minister for Planning within 14 days after the amendment was made (in cases where the Minister is not a party to the agreement).	N/A	

