



**BYRON
SHIRE
COUNCIL**

DRAFT Policy

Public Interest Disclosure

2023

Information about this document

Date Adopted by Council	
Resolution No	
Document Owner	General Manager
Document Development Officer	Legal Counsel
Review Timeframe	4 years
Last Review Date	Dd mmmm 2023
Next Scheduled Review Date	Dd mmmm 2027

Document History

Doc No.	Date Amended	Details/Comments eg Resolution No.
E2020/99025	25/02/2021	Internal Reporting Policy 2021
E2023/78183		Draft based on Model Public Interest Disclosure Policy. This Policy repeals the Internal Reporting Policy 2021 (E2020/99025)

Further Document Information and Relationships

Related Legislation	Public Interest Disclosures Act 2022
Related Policies	Code of Conduct for Councillors 2022 Code of Conduct for Staff 2022 Code of Conduct for Council Committee Members, Delegates of Council and Council Advisors 2023 Code of Meeting Practice 2022 Fraud and Corruption Control Policy 2023 Grievance Policy 2017 (staff reference E2015/26406)
Related Standards, Procedures, Statements, documents	Declaration of Gifts and Benefits Procedure 2019 (staff reference E2019/71345) Delegations for Mayor and Staff Procedure 2019 (staff reference E2019/14733)

Note: Any reference to Legislation will be updated in the Policy as required. See website <http://www.legislation.nsw.gov.au/> for current Acts, Regulations and Environmental Planning Instruments.

CONTENTS

Purpose	1
Accessibility of this Policy.....	1
Who does this Policy apply to?	1
Who does this Policy not apply to?	2
What is contained in this Policy?	2
1. How to make a report of serious wrongdoing	3
(a) Reports, complaints and grievances.....	3
(b) When will a report be a PID?	3
(c) Who can make a voluntary PID?	4
(d) What is serious wrongdoing?	5
(e) Who can I make a voluntary PID to?	5
(f) What form should a voluntary PID take?	6
(g) What should I include in my report?	7
(h) What if I am not sure if my report is a PID?	7
(i) Deeming that a report is a voluntary PID	7
(j) Who can I talk to if I have questions or concerns?	8
2. Protections.....	8
(a) How is the maker of a voluntary PID protected?	8
(b) Protections for people who make mandatory and witness PIDs	9
3. Reporting detrimental action.....	10
4. General support.....	10
5. Roles and responsibilities of Council employees	11
(a) The General Manager is responsible for:	11
(b) Disclosure Officers	11
(c) Disclosures Coordinator	11
(d) Supervisors	11
(e) All employees	12
6. How we will deal with voluntary PIDs.....	12

(a)	How Council will acknowledge that we have received a report and keep the person who made it informed.....	12
(b)	How Council will deal with voluntary PIDs.....	13
(c)	How Council will protect the confidentiality of the maker of a voluntary PID.....	15
(d)	How Council will assess and minimise the risk of detrimental action.....	16
(e)	How Council will deal with allegations of a detrimental action offence	17
(f)	What Council will do if an investigation finds that serious wrongdoing has occurred.....	18
7.	Review and dispute resolution.....	18
(a)	Internal review	18
(b)	Voluntary dispute resolution	18
8.	Other agency obligations	19
(a)	Record-keeping requirements	19
(b)	Reporting of voluntary PIDs and Council annual return to the Ombudsman	19
(c)	How Council will ensure compliance with the PID Act and this policy.....	19
	Appendix A – Disclosure Officers for Council	20
	Appendix B – Investigating Authorities	21
	Appendix C – Definitions	22

Purpose

All agencies in NSW are required to have a Public Interest Disclosures (**PID**) Policy under section 42 of the *Public Interest Disclosures Act 2022 (PID Act)*.

At Byron Shire Council (Council) we take reports of serious wrongdoing seriously. We are committed to building a 'speak up' culture where Public Officials are encouraged to report any conduct that they reasonably believe involves wrongdoing.

The integrity of our Council relies upon our staff, volunteers and contractors speaking up when they become aware of wrongdoing.

This policy sets out:

- how Council will support and protect you if you come forward with a report of serious wrongdoing
- how Council will deal with the report and our other responsibilities under the PID Act
- who to contact if you want to make a report
- how to make a report
- the protections which are available to you under the PID Act.

This policy also documents Council's commitment to building a speak up culture. Part of that speak up culture is having in place a framework that facilitates public interest reporting of wrongdoing by:

- protecting those who speak up from detrimental action
- imposing duties on Council when it receives reports of wrongdoing to take appropriate action to investigate or otherwise deal with them.

Council will provide adequate resources to:

- encourage the reporting of wrongdoing.
- protect and support those who make disclosures under this policy.
- provide training for key personnel.
- assess and investigate allegations.
- properly manage any workplace issues that the allegations identify or create.
- correct any problem identified through the disclosure and investigation.

Accessibility of this Policy

This policy is available on Council's [website](#) as well as on Council's Intranet.. All staff are informed of this Policy and advised how to access it when they start with Council. A hard copy of this Policy can be requested from any of the Directors, Managers or People and Culture Team.

Who does this Policy apply to?

This Policy applies to you, and is for your benefit, as a Public Official employed in or by Council or otherwise in the service of Council. Public Official is defined in Appendix C - Definitions.

The General Manager, Directors and Disclosure Officers along with supervisors in Council have specific responsibilities under the PID Act. This Policy provides information on how staff in these roles will fulfil their responsibilities. Other Public Officials who work in and for the public sector, but do not work for Council, may use this Policy if they want information on who they can report wrongdoing to in Council.

Who does this Policy not apply to?

This Policy does not apply to:

- people who have received services from Council and want to make a complaint about those services
- people, such as contractors, who provide services to Council, for example, employees of a company that sold computer software to Council
- consultants who are engaged to assist Council with its work, but who are not providing services on behalf of Council, as these consultants are not considered Public Officials under the PID Act.

If you are not a Public Official (see definitions in Appendix 3), this Policy does not apply to your complaint (but there are some circumstances where a complaint can be deemed to be a voluntary PID, see section 1(i) of this policy). You can still make a complaint to Council. This can be done by forwarding it to the General Manager, or to Council, via email or telephone (council@byron.nsw.gov.au or 02 6626 7000).

What is contained in this Policy?

This Policy will provide you with information on the following:

- ways you can make a voluntary PID to Council under the PID Act
- the names and contact details for the nominated Disclosure Officers in Council
- the roles and responsibilities of Council staff who hold particular roles under the PID Act
- what information you will receive once you have made a voluntary PID
- protections available to people who make a report of serious wrongdoing under the PID Act and what Council will do to protect you
- Council procedures for dealing with disclosures
- Council procedures for managing the risk of detrimental action and reporting detrimental action
- Council record-keeping and reporting requirements
- how Council will ensure it complies with the PID Act and this Policy.

If you require further information about this Policy, how public interest disclosures will be handled and the PID Act you can:

- confidentially contact a nominated Disclosure Officer within Council
- contact the PID Advice Team within the NSW Ombudsman by phone: (02) 9286 1000 or email: pidadvice@ombo.nsw.gov.au
- access the NSW Ombudsman's PID guidelines which are available on its [website](#).

If you require legal advice with respect to the PID Act or your obligations under the PID Act, you may need to seek independent legal advice.

1. How to make a report of serious wrongdoing

(a) Reports, complaints and grievances

When a Public Official reports suspected or possible wrongdoing in the public sector, their report will be a PID if it has certain features which are set out in the PID Act.

Some internal complaints or internal grievances may also be PIDs, as long as they have the features of a PID. If an internal complaint or grievance is a report of serious wrongdoing, Council will consider whether it is a PID. If it is a PID, Council will deal with it as set out in this Policy and follow the other Council policies which are set out on page 1.

It is important Council quickly recognises when a PID is received. Once a PID is received, the person who has made the report is entitled to certain protections and Council have certain decisions that have to be made on how to deal with the PID and how Council will protect and support the person who has made the report.

(b) When will a report be a PID?

There are three types of PIDs in the PID Act. These are:

1. *Voluntary PID*: This is a PID where a report has been made by the Public Official because they decided, of their own accord, to come forward and disclose what they know.
2. *Mandatory PID*: This is a PID where the Public Official has made a report about serious wrongdoing because they have a legal obligation to make that report, or because making that report is an ordinary aspect of their role or function in Council.
3. *Witness PID*: This is a PID where a person discloses information during an investigation of serious wrongdoing following a request or requirement of the investigator.

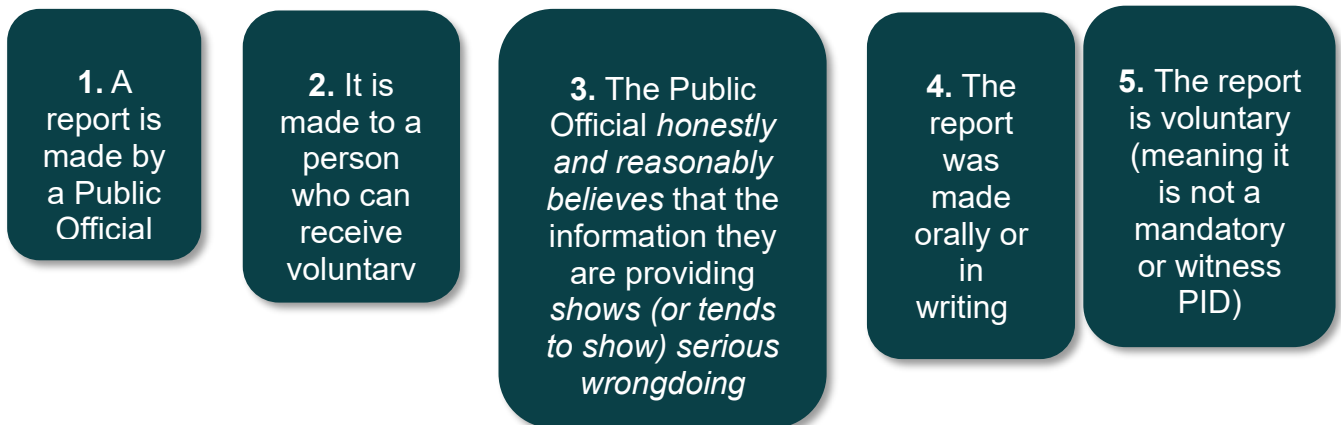
This policy mostly relates to making a voluntary PID and how Council will deal with voluntary PIDs. People who make a mandatory PID or a witness PID are still entitled to protection. More information about protections is available in section 2 of this policy.

You can find more information about mandatory and witness PIDs in the Ombudsman's guidelines 'Dealing with mandatory PIDs' and 'Dealing with witness PIDs'.

Voluntary PIDs are the kind of PIDs most people have in mind when they think about public interest reporting and 'whistleblowing'.

They involve a Public Official making a report because they have information that they believe shows (or tends to show) serious wrongdoing, where they are not under a legal obligation to make that report and where it is not an ordinary part of their role to report such wrongdoing.

A report is a voluntary PID if it has the following five features, which are set out in sections 24 to 27 of the PID Act:



If the report has all five features, it is a voluntary PID.

You will not be expected to prove that what you reported actually happened or is serious wrongdoing. You do have to honestly believe, on reasonable grounds, that the information you are reporting shows or tends to show serious wrongdoing.

Even though you do not have to prove the serious wrongdoing happened or provide evidence, a mere allegation with no supporting information is unlikely to meet this test.

If Council make an error and do not identify that you have made a voluntary PID, you will still be entitled to the protections under the PID Act.

If you make a report and believe Council made an error by not identifying that you have made a voluntary PID, you should raise this with a nominated Disclosure Officer or your contact officer for the report. If you are still not satisfied with this outcome, you can seek an internal review or Council may seek to conciliate the matter. You may also contact the NSW Ombudsman. Further information on rights to internal review and conciliation is found in section 7 of this Policy.

You must not make false or misleading statements when making a disclosure. This is an offence under the PID Act.

(c) Who can make a voluntary PID?

Any Public Official can make a voluntary PID — see ‘Who this policy applies to’. You are a Public Official if:

- you are employed by Council
- you are a contractor or volunteer who provides services, or exercises functions, on behalf of Council, or
- you work for an entity (such as a non-government organisation) who is contracted by Council to provide services or exercise functions on behalf of Council — if you are involved in undertaking that contracted work.

A Public Official can make a PID about serious wrongdoing relating to any agency, not just the agency they are working for. A PID can be made to an integrity agency like the

Independent Commission Against Corruption (ICAC) and the NSW Ombudsman. Appendix B of this policy has a list of integrity agencies.

(d) What is serious wrongdoing?

Reports must be of one or more of the following categories of serious wrongdoing to be a voluntary PID (in addition to having the other features set out here). Serious wrongdoing is defined in the PID Act as:

- *corrupt conduct* — such as a Public Official accepting a bribe
- *serious maladministration* — such as an agency systemically failing to comply with proper recruitment processes when hiring staff
- *a government information contravention* — such as destroying, concealing or altering records to prevent them from being released under a Government Information Public Access application
- *a local government pecuniary interest contravention* — such as a Council staff member recommending a family member for a Council contract and not declaring the relationship
- *a privacy contravention* — such as unlawfully accessing a person's personal information on Council's database
- *a serious and substantial waste of public money* — such as a Council not following a competitive tendering process when one is required for a contract to undertake local government work.

When you make your report, you do not need to state to Council what category of serious wrongdoing you are reporting or that you are reporting serious wrongdoing.

(e) Who can I make a voluntary PID to?

For a report to be a voluntary PID, it must be made to certain Public Officials.

Making a report to a Public Official who works for Council

You can make a report inside Council to:

- the General Manager;
- a Disclosure Officer for Council — a list of Disclosure Officers and their contact details can be found at Appendix A of this policy;
- your supervisor — this is the person who directly, or indirectly, supervises you. It can also be the person who you directly, or indirectly, report to. You may have more than one supervisor, for your team leader or the Manager of your team would both be a supervisor you could make a report to. Your supervisor will make sure that your report is communicated to a Disclosure Officer on your behalf or may accompany you while you make the report to a Disclosure Officer.

Making a report to a recipient outside of Council

You can also make your report to a Public Official in another agency (meaning an agency you do not work for) or an integrity agency. These include:

- the *head of another agency* — this means the head of any public service agency
- an *integrity agency* — a list of integrity agencies is located at Appendix B of this policy

- a *Disclosure Officer* for another agency — ways to contact *Disclosure Officers* for other agencies is located in an agency's PID policy which can be found on their public website
- a *Minister or a member of a Minister's staff* but the report must be made in writing.

If you choose to make a disclosure outside of Council, it is possible that your disclosure will be referred back to Council so that appropriate action can be taken.

Making a report to a Member of Parliament (MP) or journalist

Disclosures to MPs or journalists are different to other reports. You can only disclose a report of wrongdoing as a voluntary PID to an MP or journalist in the following circumstances:

- You must have first made substantially the same disclosure (described here as a 'previous disclosure') to someone who can receive disclosures.
- The previous disclosure must be substantially true.
- You did not make the previous disclosure anonymously.
- You did not give a written waiver of your right to receive information relating to your previous disclosure.
- You did not receive the following from Council:
 - notification that Council will not investigate the serious wrongdoing and will also not refer the previous disclosure to another agency, or
 - the following information at the end of the investigation period:
 - notice of Council decision to investigate the serious wrongdoing
 - a description of the results of an investigation into the serious wrongdoing
 - details of proposed or recommended corrective action as a result of the previous disclosure or investigation.

Investigation period means:

- after six months from the previous disclosure being made, or
- after 12 months if you applied for an internal review of Council's decision within six months of making the disclosure.

If all the above requirements are met, your disclosure to an MP or journalist may be a voluntary PID.

(f) What form should a voluntary PID take?

You can make a voluntary PID:

- *in writing* — this could be an email or letter to a person who can receive voluntary PIDs.
- *orally* — have a private discussion with a person who can receive voluntary PIDs. This can be face-to-face, via telephone or virtually.
- *anonymously* — write an email or letter or call a person who can receive PIDs to make a report without providing your name or anything that might identify you as the maker of the report. A report will only be considered anonymous if there is no reasonable or practical way of communicating with the person making the report. Even if you choose to remain anonymous, you will still be protected under the PID

Act. It may be difficult, however, for Council to investigate the matter(s) you have disclosed if Council cannot contact you for further information.

(g) What should I include in my report?

You should provide as much information as possible so Council can deal with the report effectively. The type of information you should include is:

- date, time and location of key events
- names of person(s) involved in the suspected wrongdoing, their role, title and how they are involved
- your relationship with the person(s) involved, such as whether you work closely with them
- your explanation of the matter you are reporting
- how you became aware of the matter you are reporting
- possible witnesses
- other information you have that supports your report.

(h) What if I am not sure if my report is a PID?

You should report all wrongdoing you become aware of regardless of whether you think it is serious wrongdoing. It is important for Council to understand what is or may be occurring.

Council is responsible for making sure your report is handled appropriately under the PID Act, or if it is not a PID, in line with our other policies or procedures. Even if your report is not a PID, it may fall within another one of Council's policies for dealing with reports, allegations or complaints.

(i) Deeming that a report is a voluntary PID

The General Manager can, in certain circumstances, determine that a report is a voluntary PID even if the report does not otherwise have all the features of a voluntary PID. This is known as the 'deeming power'.

By deeming that a report is a voluntary PID, it ensures that reporters are provided with protections under the PID Act.

If you make a report that has not met all the requirements of a voluntary PID, you can refer your matter to the General Manager to request consideration deeming your report to be a voluntary PID.

A decision to deem a report to be a voluntary PID is at the discretion of the General Manager. For more information about the deeming power, see the Ombudsman's guideline 'Deeming that a disclosure is a voluntary PID'.

All reports will be assessed to determine what action will be taken to deal with the report and whether or not the report will be treated as a Public Interest Disclosure.

Disclosures Officers are responsible to carry out an initial assessment and forward disclosures to the Disclosures Coordinator or General Manager for full assessment.

The Disclosures Coordinator in consultation with the General Manager or the Mayor (in the case of a disclosure about the General Manager) will:

- Assess Public Interest Disclosures in accordance with the PID Act and any applicable procedure or guideline; and
- Determine what action should be taken.

All reports will be assessed on the information available to the Disclosures Coordinator at the time. In assessing a report it may be decided that the report should be referred elsewhere or that no action should be taken on the report.

(j) Who can I talk to if I have questions or concerns?

You should talk to your Director or Manager, the Manager People and Culture, Manager Corporate Services Executive Officer or the Disclosures Coordinator if you have concerns which need to be addressed. Questions or concerns will be treated confidentially.

2. Protections

(a) How is the maker of a voluntary PID protected?

When making a voluntary PID you receive special protections under the PID Act.

Council is committed to taking all reasonable steps to protect you from detriment as a result of having made a PID. Council is committed to maintaining your confidentiality as much as possible while the PID is being dealt with.

Council will not tolerate any type of detrimental action being taken against you because you have made a report, might make a report or are believed to have made a report.

The maker of a voluntary PID is protected in the following ways:

- *Protection from detrimental action*
 - A person cannot take detrimental action against another person because they have made a voluntary PID or are considering making a PID. Detrimental action includes bullying, harassment, intimidation or dismissal.
 - Once Council become aware that a voluntary PID by a person employed or otherwise associated with Council that concerns serious wrongdoing relating to Council has been made, Council will undertake a risk assessment and take steps to mitigate the risk of detrimental action occurring against the person who made the voluntary PID.
 - It is a criminal offence for someone to take detrimental action against a person because they have made or may make a voluntary PID. It is punishable by a maximum penalty of 200 penalty units or imprisonment for five years or both.
 - A person may seek compensation where unlawful detrimental action has been taken against them.
 - A person can apply for a court order (injunction) where detrimental action is threatened or has occurred (for example, an order to prevent dismissal or to require reinstatement).

Note that a person who makes a PID can still be subject to reasonable management action (such as ordinary performance reviews and performance management). Provided such action is not taken because of the PID, it is not detrimental action under the PID Act.

- *Immunity from civil and criminal liability*

Some Public Officials are often subject to a duty of confidentiality that prevents them disclosing certain information that they obtain or become aware of at work. Sometimes, in order to make a PID, Public Officials will need to breach or disregard such confidentiality duties. If that happens, a Public Official cannot be disciplined, sued or criminally charged for breaching confidentiality.

- *Confidentiality*

Public Officials and agencies must not disclose information tending to identify a person as the maker of a voluntary PID unless doing so is permitted by the PID Act.

- *Protection from liability for own past conduct*

The Attorney General can give the maker an undertaking that a disclosure of their own past conduct will not be used against them if a person discloses their own wrongdoing or misconduct while making a report. This undertaking can only be given on application by an integrity agency to the Attorney General.

(b) Protections for people who make mandatory and witness PIDs

Apart from PIDs that are made voluntarily by Public Officials, there are other types of reports that are recognised as PIDs under the PID Act. These are set out on pages 3 and 4.

Protections for makers of mandatory and witness PIDs are detailed in the table below.

Protection	Mandatory PID	Witness PID
Detrimental action — It is an offence to take detrimental action against a person based on the suspicion, belief or awareness that a person has made, may have made or may make a PID.	✓	✓
Right to compensation — A person can initiate proceedings and seek compensation for injury, damage or loss suffered as a result of detrimental action being taken against them.	✓	✓
Ability to seek injunction — An injunction can be sought to prevent the commission or possible commission of a detrimental action offence against a person. For example, an order to prevent dismissal or to require reinstatement.	✓	✓
Immunity from civil and criminal liability — a person will not incur civil or criminal liability if the person breaches a duty of confidentiality while making a disclosure. This means that legal action cannot be taken against a person for: <ul style="list-style-type: none"> • breaching a duty of secrecy or confidentiality, or • breaching another restriction on disclosure. 	✓	✓

3. Reporting detrimental action

If you experience adverse treatment or detrimental action, such as bullying or harassment, you should report this immediately. You can report any experience of adverse treatment or detrimental action directly to Council, or to an integrity agency. A list of integrity agencies is located at Appendix B of this policy.

Council will not tolerate any reprisal action against Public Officials who report wrongdoing.

If you believe that detrimental action has been or is being taken against you or someone else who has reported wrongdoing in reprisal for making a report, you should tell your supervisor or a Disclosures Officer immediately.

All supervisors must report any suspicions they have that reprisal action against a staff member is occurring, or any reports that are made to them, to the Disclosures Coordinator or the General Manager.

4. General support

The PID Act provides protection for people who report wrongdoing in accordance with this policy and the PID Act. Findings of Detrimental Action may:

- Result in a person being guilty of an offence as provided in the PID Act with criminal penalties that can be imposed include imprisonment or fines.
- Be a breach of Council's Codes of Conduct for which disciplinary action may be taken.
- Result in a person who has taken detrimental action being liable for payment of damages for any loss suffered by that person.

If a PID is received in accordance with the PID policy, the Mayor, General Manager or Disclosures Coordinator must:

- Conduct a risk assessment to identify any risks to the Council official who reported the wrongdoing
- Collaborate with the person that made the Public Interest Disclosure to develop strategies to deal with those risks, these may include:
 - Issuing warnings to those alleged to have taken reprisal action against the member of staff who made the disclosure.
 - Relocating the member of staff who made the disclosure or the subject officer within the current workplace.
 - Transferring the member of staff who made the disclosure or the staff member who is the subject of the allegation to another position for which they are qualified.
 - Granting the person who made the disclosure and/or the subject officer leave of absence during the investigation.

If you have reported wrongdoing and feel that any Detrimental Action is not being dealt with effectively, contact the NSW Ombudsman or the ICAC – depending on the type of wrongdoing reported. Contact details for these investigating authorities are included Appendix B.

5. Roles and responsibilities of Council employees

Certain people within Council have responsibilities under the PID Act.

General Manager

(a) The General Manager is responsible for:

- fostering a workplace culture where reporting is encouraged
- receiving disclosures from Public Officials
- ensuring there is a system in place for assessing disclosures
- ensuring the Council complies with this policy and the PID Act
- ensuring that the Council has appropriate systems for:
 - overseeing internal compliance with the PID Act
 - supporting Public Officials who make voluntary PIDs, including by minimising the risk of detrimental action
 - implementing corrective action if serious wrongdoing is found to have occurred
 - complying with reporting obligations regarding allegations or findings of detrimental action
 - complying with yearly reporting obligations to the NSW Ombudsman.

(b) Disclosure Officers

Disclosure Officers are responsible for:

- receiving reports from Public Officials
- receiving reports when they are passed on to them by supervisors
- ensuring reports are dealt with appropriately, including by referring the matter to the appropriate complaint unit (if relevant)
- ensuring that any oral reports that have been received are recorded in writing.

(c) Disclosures Coordinator

The General Manager has appointed Council's Legal Counsel as Council's Disclosures Coordinator.

The responsibilities of the Disclosures Coordinator include:

- assisting the General Manager to perform the General Manager's role under this policy and the PID Act.
- receiving disclosures about wrongdoing by Public Officials including referring disclosures to the General Manager or Mayor.
- ensuring that their actions adhere to the requirements of this policy and the PID Act including protecting and maintaining the confidentiality of the Public Official making the disclosure.
- ensuring that instances of Detrimental Action are reported and dealt with under Council's Code of Conduct.

(d) Supervisors

The responsibilities of supervisors include:

- receiving reports from persons that report to them or that they supervise
- passing on reports they receive to a Disclosure Officer.

(e) All employees

All employees must:

- report suspected serious wrongdoing or other misconduct
- use their best endeavours to assist in an investigation of serious wrongdoing if asked to do so by a person dealing with a voluntary PID on behalf of Council
- treat any person dealing with or investigating reports of serious wrongdoing with respect.

All employees must not take detrimental action against any person who has made, may in the future make, or is suspected of having made, a PID.

6. How we will deal with voluntary PIDs

(a) How Council will acknowledge that we have received a report and keep the person who made it informed

When a Disclosure Officer in Council receives a report which is a voluntary PID, or looks like it may be a voluntary PID, the person who made the report will receive the following information:

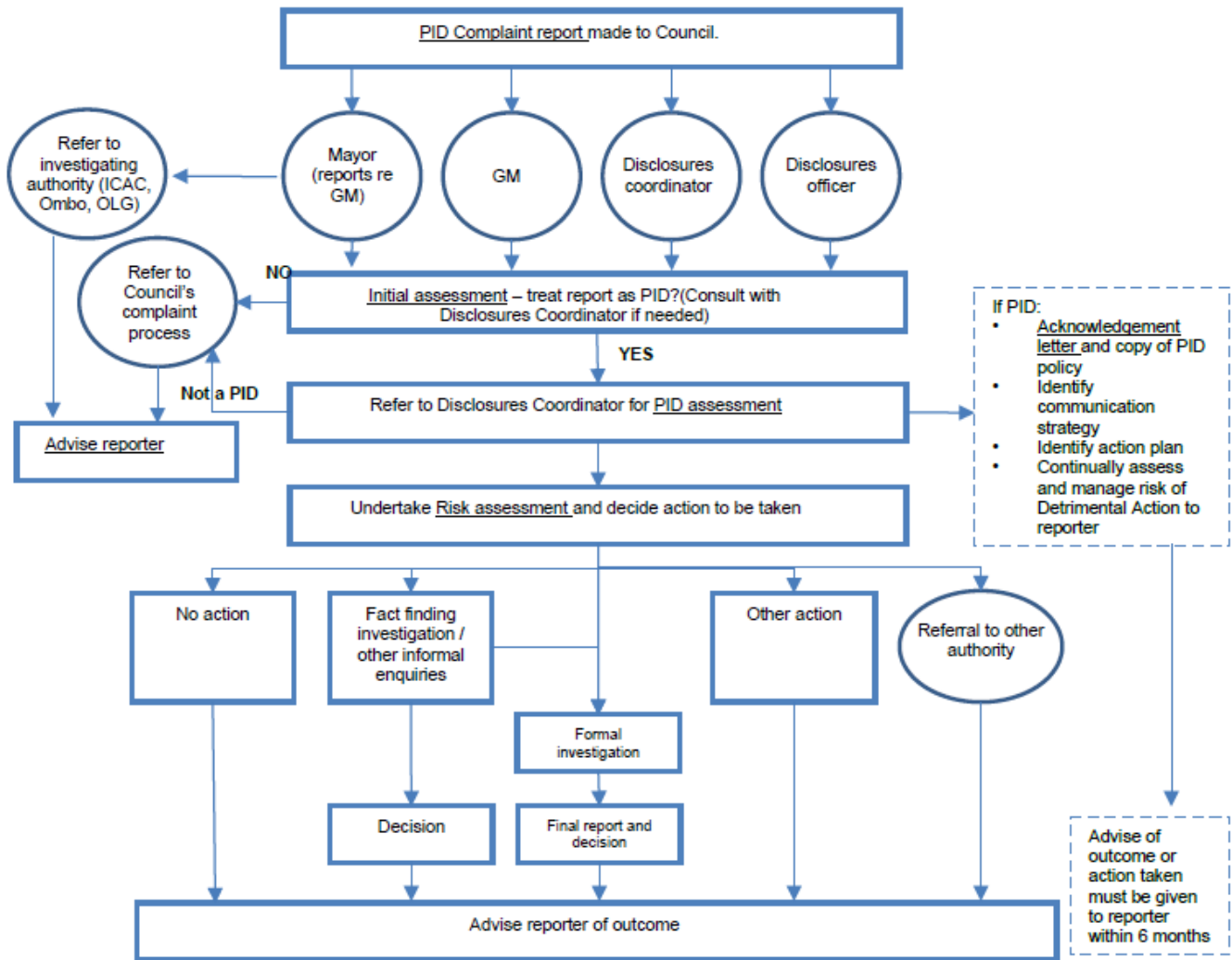
- You will receive an acknowledgment that the report has been received. This acknowledgement will:
 - state that the report will be assessed to identify whether it is a PID
 - state that the PID Act applies to how Council deals with the report
 - provide clear information on how you can access this PID policy
 - provide you with details of a contact person and available supports.
- If the report is a voluntary PID, Council will inform you as soon as possible how it intends to deal with the report. This may include:
 - that it is investigating the serious wrongdoing
 - that it will refer the report to a different agency (if appropriate) to deal with the voluntary PID and, if Council does this, it will provide you with details of this referral
- If Council decides to not investigate the report and to not refer it to another agency for it to be investigated, you will be told the reasons for this decision. If Council decides to investigate the report, it will provide you with updates on the investigation at least every three months. During this time, if you would like more frequent updates, you should contact the contact person who was nominated when you made the report.
 - If Council investigates the report, it will provide you with the following information once the investigation is complete:
 - a description of the results of the investigation — that is, Council will tell you if serious wrongdoing was found to have taken place.

- information about any corrective action taken as a result of the investigation/s
- Corrective action could include taking disciplinary action against someone or changing the practices, policies and procedures that Council have in place which led to the serious wrongdoing.
- There may be some details about both the findings made as a result of the investigation and the corrective action taken that cannot be revealed to you. Council will always balance the right of a person who makes a report to know the outcome of that report, with other legal obligations Council have.
- If you have made an anonymous report, Council will not be able to provide this information to you.

(b) How Council will deal with voluntary PIDs

Once a report that may be a voluntary PID is received Council will look at the information contained in the report to see if it has the features of a voluntary PID. This assessment is undertaken to identify whether the report is a voluntary PID or another type of disclosure, and to make sure that the right steps are followed. If it is a voluntary PID, Council will ensure that Council complies with the requirements in the PID Act.

Decision Tree of PID reporting process



Report not a voluntary PID

Even if the report is not a voluntary PID, it will still need to be dealt with in a manner consistent with the Council policies and procedures set out on page 1 or through an alternate process.

If the report is not a voluntary PID, Council will let you know that the PID Act does not apply to the report and how it will deal with the concerns raised in the report.

If you are not happy with this assessment or otherwise disagree with it, you can raise it with the person who has communicated the outcome with you or a Disclosure Officer, or you can request an internal review or request that the matter be conciliated. Council can, but do not have to, request the NSW Ombudsman to conciliate the matter.

Cease dealing with report as voluntary PID

Council may stop dealing with a voluntary PID because it is not actually a voluntary PID (meaning it does not have all the features of a PID).

Where the report is a voluntary PID

If the report is a voluntary PID:

- In most cases Council will conduct an investigation to make findings about whether the matters disclosed in the report occurred, who was involved, who was responsible, and whether the people involved, or the Council engaged, in serious wrongdoing. There may be circumstances where Council believes an investigation is not warranted, for example, if the conduct has previously been investigated.
- There may also be circumstances where Council decides that the report should be referred to another agency, such as an integrity agency. For example, reports concerning possible corrupt conduct may be required to be reported to the ICAC in accordance with section 11 of the Independent Commission Against Corruption Act 1988.
- If a matter is referred Council will provide you with details of the referral and, if available, a contact person within the other agency.
- If Council decide not to investigate a report and to not refer the matter to another agency, it must let you know the reasons for this.

(c) How Council will protect the confidentiality of the maker of a voluntary PID

Council understand that people who make voluntary PIDs may want their identity and the fact that they have made a report to be confidential.

Under the PID Act, information tending to identify a person as the maker of a voluntary PID (known as identifying information) is not to be disclosed by a Public Official or an agency.

There are certain circumstances under the PID Act that allow for the disclosure of identifying information. These include:

- where the person consents in writing to the disclosure
- where it is generally known that the person is the maker of the voluntary PID because of their voluntary self-identification
- when the Public Official or Council reasonably considers it necessary to disclose the information to protect a person from detriment
- where it is necessary the information be disclosed to a person whose interests are affected by the disclosure
- where the information has previously been lawfully published
- when the information is disclosed to a medical practitioner or psychologist for the purposes of providing medical or psychiatric care, treatment or counselling to the individual disclosing the information
- when the information is disclosed for the purposes of proceedings before a court or tribunal
- when the disclosure of the information is necessary to deal with the disclosure effectively
- where there is a legal obligation to disclose the information
- if it is otherwise in the public interest to disclose the identifying information.

Council will not disclose identifying information unless it is necessary and authorised under the PID Act or other applicable legislation.

Council will put in place steps to keep the identifying information of the maker and the fact that a report has been made confidential. It may not be possible for Council to maintain complete confidentiality while it progresses the investigation, but will do all that it practically can to not unnecessarily disclose information from which the maker of the report can be identified. Council will do this by taking steps to maintain confidentiality. These could include:

- Council will limit the number of people who are aware of the maker's identity or information that could identify them.
- If Council must disclose information that may identify the maker of the PID, it will still not disclose the actual identity of the maker of the PID, unless Council has their consent or is required by law to do so.
- Council will ensure that any person who does know the identity of the maker of a PID is reminded that they have a legal obligation to keep their identity confidential.
- Council will ensure that only authorised persons have access to emails, files or other documentation that contain information about the identity of the maker.
- Council will undertake an assessment to determine if anyone is aware of the maker's identity and if those persons have a motive to cause detrimental action to be taken against the maker or impede the progress of the investigation.
- Use security groups within Council's electronic systems to limit the number of people able to access information relating to the PID.

Council will provide information to the maker of the PID about the importance of maintaining confidentiality and advising them how best to protect their identity, for example, by telling them not to discuss their report with other staff.

If confidentiality cannot be maintained or is unlikely to be maintained, Council will:

- advise the person whose identity may become known
- update Council risk assessment and risk management plan
- implement strategies to minimise the risk of detrimental action
- provide additional supports to the person who has made the PID
- remind persons who become aware of the identifying information of the consequences for failing to maintain confidentiality and that engaging in detrimental action is a criminal offence and may also be a disciplinary matter.

(d) How Council will assess and minimise the risk of detrimental action

Council will not tolerate any detrimental action being taken by any person against a person who has made a PID, investigators, witnesses or the person the report is about.

Council will assess and take steps to mitigate detrimental action from being taken against the maker of a voluntary PID, the person whose conduct is the subject of a PID, investigators and witnesses.

Council will take steps to assess and minimise the risk of detrimental action by:

- explaining that a risk assessment will be undertaken, and a risk management plan will be created (including reassessing the risk throughout the entirety of the matter)
- providing details of the unit/role that will be responsible for undertaking a risk assessment

- explaining the approvals for risk assessment and the risk management plan, that is, rank or role of the person who has final approval
- explaining how the agency will communicate with the maker to identify risks
- listing the protections that will be offered, that is, the agency will discuss protection options with the maker which may including remote working or approved leave for the duration of the investigation
- outlining what supports will be provided.

Detrimental action against a person is an act or omission that causes, comprises, involves or encourages detriment to a person or a threat of detriment to a person (whether express or implied). Detriment to a person includes:

- injury, damage or loss
- property damage
- reputational damage
- intimidation, bullying or harassment
- unfavourable treatment in relation to another person's job
- discrimination, prejudice or adverse treatment
- disciplinary proceedings or disciplinary action, or
- any other type of disadvantage.

Detrimental action does not include:

- lawful action taken by a person or body to investigate serious wrongdoing or other misconduct
- the lawful reporting or publication of a finding of serious wrongdoing or other misconduct
- the lawful making of adverse comment, resulting from investigative action
- the prosecution of a person for a criminal offence
- reasonable management action taken by someone in relation to a person who made or may make a PID. For example, a reasonable appraisal of a PID maker's work performance.

(e) How Council will deal with allegations of a detrimental action offence

If Council becomes aware of an allegation that a detrimental action offence has occurred or may occur, Council will:

- take all steps possible to stop the action and protect the people
- take appropriate disciplinary action against anyone that has taken detrimental action
- where the detrimental action is of a serious nature that could amount to a criminal offence, refer it to the Police , ICAC, the Law Enforcement Conduct Commission or the NSW Ombudsman, if appropriate
-

Referrals about potential detrimental action offences should be discussed with and made to the General Manager, the Manager People and Culture or the Disclosures Coordinator.

(f) What Council will do if an investigation finds that serious wrongdoing has occurred

If, after an investigation, it is found that serious wrongdoing or other misconduct has occurred, Council will take the most appropriate action to address that wrongdoing or misconduct. This is also known as corrective action.

Corrective action can include:

- a formal apology
- improving internal policies to adequately prevent and respond to similar instances of wrongdoing
- providing additional education and training to staff where required
- taking employment action against persons involved in the wrongdoing (such as termination of employment, relocation, a caution or reprimand)
- conducting further investigations into related matters or further referrals to investigation agencies
- payment of compensation to people who have been affected by serious wrongdoing or other misconduct.

7. Review and dispute resolution

(a) Internal review

People who make voluntary PIDs can seek internal review of the following decisions made by Council:

- that Council is not required to deal with the report as a voluntary PID
- to stop dealing with the report because Council decided it was not a voluntary PID
- to not investigate the report or to not refer the report to another agency
- to cease investigating the report without either completing the investigation or referring the report to another agency for investigation.

Council will ensure internal reviews are conducted in compliance with the PID Act.

If you would like to make an application for an internal review, you must apply in writing within 28 days of being informed of Council's decision. The application should state the reasons why you consider Council's decision should not have been made. You may also submit any other relevant material with your application.

Applications for an internal review should be made to the General Manager who will appoint an appropriately qualified officer to conduct the review. That officer may be a person external of Council.

(b) Voluntary dispute resolution

If a dispute arises between Council and a person who has made a report which is, or may be, a voluntary PID, Council may request the NSW Ombudsman to conciliate the dispute. Conciliation is a voluntary process and will only be suitable for disputes where Council and the maker of the report are willing to resolve the dispute.

8. Other agency obligations

(a) Record-keeping requirements

Council must keep full and accurate records with respect to all information received in connection with the PID Act. This ensures that Council complies with its obligations under the *State Records Act 1998*.

All records will be stored electronically in Council's EDMS system. Security will be applied by a caveat system to the appropriate folder in which the records are held. Records kept by Council are subject to the Government Information (Public Access) Act 2009.

(b) Reporting of voluntary PIDs and Council annual return to the Ombudsman

Each year the Disclosures Coordinator will provide an annual return to the NSW Ombudsman which includes:

- information about voluntary PIDs received by Council during each return period (yearly with the start date being 1 July)
- action taken by Council to deal with voluntary PIDs during the return period
- how Council promoted a culture in the workplace where PIDs are encouraged.

(c) How Council will ensure compliance with the PID Act and this policy

Council's Integrated Planning and Reporting documents includes actions to ensure actions delivery of ethical and effective leadership, including compliance with the PID Act and this Policy, Council's Disclosure Coordinator is required to provide updates on actions taken, monthly to the Council's General Manager and Directors and six monthly to the Council. .

Appendix A – Disclosure Officers for Council

- General Manager
- Director Sustainable Environment and Economy
- Director Infrastructure Services
- Director Corporate and Community Services
- Executive Officer
- Manager People and Culture
- Manager Corporate Services
- Legal Counsel
- The following officers at Council's permanently maintained remote workplaces (at which more than one person is employed):
 - Out of School Hours workplaces – OOSH Coordinator
 - Depot - Manager Works and Manager Utilities
 - Childcare Centre – Sandhills Director
 - Resource Recovery Centre – Team Leader Resource Recovery Operations
 - Cavanbah Centre – Team Leader Cavanbah Centre

Each of the above officers can be contacted by Council staff by all internal communication methods.

Other persons may contact the above officers by calling (02) 6626 7000 and asking to speak to the relevant officer stating that the matter is confidential.

Appendix B – Investigating Authorities

The contact details for external investigating authorities that Public Officials can make a public interest disclosure to or seek advice from are listed below.

Integrity agency	What they investigate	Contact information
The NSW Ombudsman	Most kinds of serious maladministration by most agencies and Public Officials (but not NSW Police, judicial officers or MPs)	Telephone: 1800 451 524 between 9am to 3pm Monday to Friday Writing: Level 24, 580 George Street Sydney NSW 2000 Email: info@ombo.nsw.gov.au
The Auditor-General	Serious and substantial waste of public money by auditable agencies	Telephone: 02 9275 7100 Writing: GPO Box 12 Sydney NSW 2001 Email: governance@audit.nsw.gov.au
Independent Commission Against Corruption	Corrupt conduct	Telephone: 02 8281 5999 or toll free on 1800 463 909 (callers outside Sydney) between 9am and 3pm, Monday to Friday Writing: GPO Box 500 Sydney NSW 2001 or faxing 02 9264 5364 Email: icac@icac.nsw.gov.au
Office of the Local Government	Local government pecuniary interest contraventions	Email: old@olg.nsw.gov.au
The Privacy Commissioner	Privacy contraventions	Telephone: 1800 472 679 Writing: GPO Box 7011 Sydney NSW 2001 Email: ipcinfo@ipc.nsw.gov.au
The Information Commissioner	Government Information contraventions	Telephone: 1800 472 679 Writing: GPO Box 7011 Sydney NSW 2001 Email: ipcinfo@ipc.nsw.gov.au

Appendix C – Definitions

Term / Abbreviation	Definition
Agency	<p>'Agency' is defined in section 16 of the PID Act to mean any of the following:</p> <ul style="list-style-type: none"> • a Public Service agency • a group of staff comprising each of the following services, or a separate group of that staff: <ul style="list-style-type: none"> – the NSW Police Force – the Teaching Service of New South Wales – the NSW Health Service – the Transport Service of New South Wales • a statutory body representing the Crown • an integrity agency • a public authority whose conduct or activities are authorised to be investigated by an integrity agency under another Act or law • a State owned corporation or its subsidiaries • a Local Government Authority • a Local Aboriginal Land Council • the Department of Parliamentary Services, the Department of the Legislative Assembly and the Department of the Legislative Council • a Minister's office is not an agency for the purposes of the PID Act.
Corrupt Conduct	<p>Corrupt Conduct means dishonest or partial exercise of official functions by a Public Official. For example:</p> <ul style="list-style-type: none"> • improperly using knowledge, power or position for personal gain or the advantage of others • acting dishonestly or unfairly, or breaching public trust • using their position in a way that is dishonest, biased or breaches public trust. <p>For more information about corrupt conduct, see the NSW Ombudsman's guideline on what can be reported.</p>
Council	Council means Byron Shire Council.
Detriment	<p>Detriment is defined in section 32(1) of the PID Act as disadvantage to a person, including:</p> <ul style="list-style-type: none"> • injury, damage or loss • property damage • reputational damage • intimidation, bullying or harassment • unfavourable treatment in relation to another person's job • discrimination, prejudice or adverse treatment • disciplinary proceedings or disciplinary action.

Detrimental Action	Detrimental action is defined in section 32(2) of the PID Act as an act or omission that causes, comprises, involves or encourages detriment to a person or a threat of detriment to a person (whether express or implied).
General Manager	The senior staff officer appointed under the <i>Local Government Act 1993</i> (NSW).
Government Information Contravention	<p>Government Information Contravention means a failure to properly fulfil functions under the <i>Government Information (Public Access) Act 2009</i>. For example:</p> <ul style="list-style-type: none"> • destroying, concealing or altering records to prevent them from being released • knowingly making decisions that are contrary to the legislation • directing another person to make a decision that is contrary to the legislation. <p>For more information about government information contravention, see the NSW Ombudsman’s guideline on what can be reported.</p>
Identifying information	Under section 64(1) of the Act, identifying information is information which tends to identify a person as the maker of a voluntary PID.
Integrity agency	<p>The following are ‘integrity agencies’ as defined under section 19 of the PID Act:</p> <ul style="list-style-type: none"> • the Ombudsman • the Auditor-General • the Independent Commission Against Corruption • the Law Enforcement Conduct Commission • the Inspector of the Independent Commission Against Corruption • the Inspector of the Law Enforcement Conduct Commission • the Secretary of the Department of Planning, Industry and Environment (when exercising certain functions under the <i>Local Government Act 1993</i>) • the Privacy Commissioner • the Information Commissioner • a person or body declared by the regulations to be an integrity agency.
Investigating Authority	Investigating Authority means an authority listed in Appendix 1. Public Officials can contact the relevant authority for advice about how to make a disclosure.

<p>Local Government Pecuniary Interest Contravention</p>	<p>Local Government Pecuniary Interest Contravention means the failure to fulfil certain functions under the <i>Local Government Act 1993</i> relating to the management of pecuniary interests. A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. For example:</p> <ul style="list-style-type: none"> • a senior Council Officer recommending a family member for a Council contract and not declaring the relationship • a senior Council Officer holding an undisclosed shareholding in a company competing for a Council contract. <p>For more information about local government pecuniary interest contravention, see NSW Ombudsman’s guideline on what can be reported.</p>
<p>Maladministration</p>	<p>Maladministration means conduct that involves action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives. For example:</p> <ul style="list-style-type: none"> • making a decision and/or taking action that is unlawful • refusing to grant an approval for reasons that are not related to the merits of their application. <p>For more information about maladministration, see NSW Ombudsman’s guideline on what can be reported.</p>
<p>PID Act</p>	<p>PID Act means the <i>Public Interest Disclosure Act (NSW)</i>.</p>
<p>Public interest disclosure</p>	<p>The term public interest disclosure is defined in section 21 of the PID Act to mean:</p> <ul style="list-style-type: none"> • a voluntary PID • a witness PID or • a mandatory PID.
<p>Public Official</p>	<p>‘Public Official’ is defined in section 14 of the PID Act as follows:</p> <ul style="list-style-type: none"> • a person employed in or by an agency or otherwise in the service of an agency • a person having Public Official functions or acting in a Public Official capacity whose conduct or activities an integrity agency is authorised by another Act or law to investigate • an individual in the service of the Crown • a statutory officer • a person providing services or exercising functions on behalf of an agency, including a contractor, subcontractor or volunteer

	<ul style="list-style-type: none"> • if an entity, under a contract, subcontract or other arrangement, is to provide services on behalf of an agency or exercise functions of an agency in whole or in part—an employee, partner or officer of the entity who is to be involved in providing the services in whole or in part, or who is to exercise the functions • a judicial officer • a member of Parliament, including a Minister • a person employed under the <i>Members of Parliament Staff Act 2013</i>.
<p>Serious and Substantial Waste</p>	<p>Serious and Substantial Waste means the uneconomical, inefficient or ineffective use of resources that could result in the loss or wastage of local government money. This includes all revenue, loans and other money collected, received or held by, for or on account of Council. For example:</p> <ul style="list-style-type: none"> • poor project management practices leading to significant projects running over time • having poor or no processes in place for a system involving large amounts of public funds. <p>For more information about serious and substantial waste, see NSW Ombudsman’s guideline on what can be reported.</p>
<p>Supervisor</p>	<p>Is any person who supervises, directly or indirectly, a Public Official. At Council this could include Supervisors, Team Leaders, Coordinators, Managers, Childcare Centre Director, or Chairs of 355 Committees or leaders of groups of Council volunteers for example.</p> <p>(The PID Act describes people who supervise public officials as <i>managers</i>, however, Manager as a title has a restrictive meaning, so for this Policy, Council uses the broader term of supervisor instead.)</p>