

Alcohol and Other Drugs – Councillor Procedure Procedure

Procedure Owner/Responsible Officer	Enterprise Risk Management Coordinator
Department	People and Performance
Date approved	19 October 2021
Next review date	April 2025
TRIM reference	XX

Contents

Procedure Statement/Objectives	2
Scope	2
References	2
Consultations	2
Definitions	3
Variation and review	4
PROCEDURE	4
1. Testing Procedure – Alcohol	4
2. Testing procedure – other drugs	5
3. Confirmatory testing	6
4. Procedure for non-negative results	7
5. Tampering with samples	7
6. Dealing with aggressive behaviour	7
7. Grievances/ disputes relating to this procedure	8
Related Forms/Documents	8
Attachments	8
Authorisation	8
Appendix 1: Alcohol testing flowchart	9
Appendix 2: Drug testing flowchart	10
Appendix 3: Disciplinary action flowchart	11

Procedure Statement/Objectives

The purpose of this Procedure is to:

- manage alcohol and other drugs and their effect on workers' fitness for work whilst performing duties at Council; and
- ensure that Council has a mechanism to appropriately manage the misuse of alcohol and other drugs in the workplace through training, education and where required, rehabilitation.

The objective of this Procedure is to:

- eliminate the risks associated with the misuse of alcohol and other drugs in the workplace, thereby providing a safer work environment;
- reduce the risks of alcohol and other drugs impairment in the workplace; and
- promote a supportive culture that encourages a cooperative approach between Mayor and Councillors and builds on the shared interest in workplace health and safety.

Scope

This Procedure applies to the Mayor, Councillors and Chief Executive Officer (referred to as 'worker' throughout this Policy for consistency with standard Work Health and Safety (WHS) practice and legislation within Kiama Municipal Council.

References

This Procedure should be read in conjunction with the following:

- Alcohol and Other Drugs Procedure for Councillors
- Work Health and Safety Act 2011
- Work Health and Safety Regulations 2017
- Code of Conduct for Councillors
- Procedures for the Administration of the Code of Conduct
- Road Transport Act 2013
- Narcotics Drugs Act 1967 (Cth)
- Australian Standards:
 - AS3547:1997 and any subsequent editions – breath alcohol testing devices for personal use
 - AS4760:2006 and any subsequent editions – procedures for specimen collection and the detection and quantitation of drugs in oral fluid

Consultations

- Internal – councillors, Human Resources, Governance, Risk Team. External – LS NSW, public exhibition

Definitions

Term	Definition
Alcohol	Includes all food, beverages, medications and any other product containing alcohol
Authorised function	A Mayor approved social event or function
Authorised organisation	An appointed organisation that can demonstrate it meets the Australian Standard requirements for collectors who will be used for the collection of specimens for alcohol and other drug testing and further analysis of results will require an independent National Association of Testing Authorities (NATA) certified collection agency
Chain of custody	The chronological documentation or paper trail, showing the collection, transfer, receipt, analysis, storage and disposal of the sample taken
Delegated Responsible Person	A person who is appropriately trained in the Alcohol and Other Drugs Policy and Procedure for Councillors and in the assessment of fitness for work.
Drug	Every substance or article which is a dangerous drug under and within the meaning of the <i>Narcotics Drugs Act 1967</i> (Cth) or any other substance, article, preparation or mixture (with the exception of alcohol) whether gaseous, liquid, solid or in any other form which may alter the fitness for work of a person
Negative	The result at or below the nominated or target concentration used for initial testing
Non-negative	The initial positive test as yet unconfirmed by confirmatory testing by a designated collector
Over the counter medication	Medicines available through a pharmacy without prescription
Social events	Any endorsed event by the Mayor, Chief Executive Officer or Council, including Council meetings.
Suitably qualified person	A person from the authorised organisation who has been trained and assessed as competent in the use of alcohol and/ or drug testing equipment in accordance with the Australian Quality Training Framework (AQTF) requirements. For drug screening a designated collector also needs to hold NATA certification.
Workers	Mayor, Councillors, Chief Executive Officer undertaking work for, with, or on behalf of Council. This excludes any person, volunteer, contractor undertaking work for, with or on behalf of Council. Please refer to Alcohol and Other Drugs Protocol and Procedure.

Variation and review

This Procedure was formally adopted by Council on 26 June 2019 and reviewed in November 2019.

An administrative review of this procedure was undertaken in April 2024 and endorsed by Council.

Council reserves the right to review or vary this Procedure in consultation with the representatives of workers affected by this Procedure.

Review History

Date reviewed	Date approved	Brief detail of amendments
	25 June 2019	New Policy adopted (version 1)
7 August 2019	20 August 2019	Administrative changes to 8.1.3 (additional delegations included), 9.0 i) (definition of “refused test” added) and 19.0 (definition of Delegated Responsible Person added) – no Council adoption required (version 2)
7 November 2019	19 November 2019	Administrative changes to clause 4h(i) and 4h(ii) with the addition of the words “and any subsequent editions” to follow the reference to AS3547:1997 and AS4760:2006; and throughout the document removal of the year reference for the Australian Standards so that the document only refers to AS3547 and AS4760 (version 3)
1 August 2021	19 October 2021	Administrative changes to clauses 4(a), 4(d), 4(e), 4(f), 4(h), 5.0, 5.1(c), 6.2(a), 6.2(b), 6.2(c), 6.2(d), 7.2(f), 10.0(h), 11(d), 19.0 and Appendix 1, 3, 4 and 5. Replacement of reference to General Manager with Chief Executive Officer to reflect correct title. (version 4)
19 March 2024	XXXX	Administrative changes made – new template with different numbering and layout between Procedure and Policy

PROCEDURE

1. Testing Procedure – Alcohol

- a) Workers identified to participate in alcohol testing will be required to carry out a supervised alcohol test using a calibrated breath testing device in accordance with AS3547: Breath Alcohol Devices for Personal Use.
- b) Testing will be administered by a suitably qualified person.
- c) An alcohol test will be conducted at a suitable private location in the workplace. The worker has the right to have a nominated representative present during the test and a right to change their mind and refuse the alcohol test.
- d) Unless medically required, no food or drink is to be consumed for fifteen (15) minutes prior to the test. Smoking shall also not be permitted as it may distort the results.

- e) In the event that a non-negative result is registered, a subsequent test will be carried out fifteen (15) minutes after the initial test. During this period, the worker is to be supervised continually at all times by the person conducting the tests.
- f) Workers with a non-negative second breath analysis test result will be presumed unfit for work until arrangements will be made to transport the person to their home.
- g) Workers with a non-negative second breath analysis will then be required to submit for a further test at the first available opportunity on the next working day before being able to resume normal working duties.
- h) If the worker does not wish to have the initial and/or second test, it will be presumed to be treated as though a second non-negative result was achieved and it may invoke disciplinary action in accordance with Council's Code of Conduct Policy and Procedure
- i) Refusal to undertake a test will be recorded as a "refused test". It will be presumed to be treated as a non-negative result. Repeated refusal to undertake a test may be referred to the Office of Local Government.
- j) *Refer to Appendix 1: Alcohol Testing Flowchart*
- k) A confirmatory breath test result is equal to the limits set in prescribed concentration levels of alcohol.

1.1. Prescribed concentration levels of alcohol

Council's acceptable Prescribed Concentration of Alcohol levels (based on the NSW Governments blood alcohol concentration levels) are as follows:

1.1.1. 0.00% applies to:

- a) Learner drivers;
- b) Provisional 1 drivers;
- c) Provisional 2 drivers; or
- d) Visitor drivers holding an overseas or interstate learner, provisional or equivalent licence.

1.1.2. Under 0.02% applies to:

- a) Drivers of vehicles of 'gross vehicle mass' greater than 13.9 tonnes;
- b) Drivers of vehicles carrying dangerous goods;
- c) Drivers of public vehicles such as taxi or bus drivers;
- d) Workers engaged in the operation of major and/ or minor plant; and/or
- e) Workers undertaking activities specified as hazardous under *Work Health and Safety Act 2011* and *Work Health and Safety Regulations 2011*.

1.1.3. Under 0.05% applies to:

- a) All other workers who do not meet any of the above criteria including those who are not required to drive as a part of their employment or who are unlicensed.

2. Testing procedure – other drugs

- a) Workers identified to participate in a drug test will be required to undergo an oral swab test as per the Australian Standard AS4760 – Procedures for specimen collection and the detection quantitation of drugs in oral fluid.

- b) This test will be administered by a suitably qualified person.
- c) Where practicable the tester shall provide a list of medications which may provide a false positive result.
- d) Any worker required to undertake drug testing can choose to declare any medication taken immediately prior to the test being conducted or can declare following the test if an initial non-negative result is obtained. Such information is to be kept confidential and only to be used in determining if such medication has contributed to or caused a false positive.
- e) If the worker declares the medication prior to any testing being conducted and the drug class(es) declared is consistent with the drug class(es) detected at the initial screening test, then no disciplinary action is to be taken.
- f) If the worker did not declare the medication prior to the testing being conducted, or if the drug class(es) declared is inconsistent with the drug class(es) detected or there are methamphetamines present, then the person will be assessed as unfit for work and arrangements will be made to transport the person to their home or a safe place.
- g) *Refer to Appendix 2: Other Drugs Flowchart.*
- h) Refusal to undertake a test will be recorded as a “refused test”. Repeated refusal to undertake a test will be managed by Council in accordance with the Code of Conduct Policy for Councillors and the Procedures for the Administration of the Code of Conduct. Repeated offences may be referred to the Office of Local Government.

3. Confirmatory testing

- a) Confirmatory testing is a second analytical test performed to identify the presence of alcohol and/or other drugs in accordance with AS3547 and AS4760.
- b) In instances where confirmatory testing supports the findings of the preliminary test, the worker may be subject to disciplinary action.
- c) Where confirmatory testing is required, it will be undertaken by a suitably qualified person.
- d) If an external party is utilised for confirmatory testing they may require a sample of urine be taken from the worker and screened for alcohol and other drugs.

3.1. Confirmatory testing is non-negative and consistent with medication

- 3.1.1. A confirmatory non-negative test result for other drugs will be determined by the Australian Standard AS4760.
- 3.1.2. The accredited testing laboratory will forward all test results to the Chief Executive Officer in writing, identifying the confirmatory test was positive but consistent with medication declared.
- 3.1.3. If the worker has been stood aside pending the confirmatory tests, the Chief Executive Officer will contact the worker and request that they return to work once the results have been received. On return to work the Mayor in consultation with the Chief Executive Officer will reassess their suitability for duties.

3.2. Confirmatory testing is non-negative and not consistent with medication

- 3.2.1. The accredited testing laboratory will forward all results to the Chief Executive Officer.
- 3.2.2. The worker and the Mayor will be advised in writing that the confirmatory test was non-negative but inconsistent with the medication disclosed by the worker.

- 3.2.3. The letter of confirmation will set out a nominated time and date when the worker and if required, their representative, will discuss further action with the Mayor.
- 3.2.4. As a part of the further actions discussion a worker may request access to leave.

3.3. Confirmatory test is negative

- 3.3.1. The accredited testing laboratory will forward the results to the Chief Executive Officer who will then advise the worker and the Mayor that the confirmatory test was negative.
- 3.3.2. If the worker has been stood down pending the outcome of the confirmatory test, the Chief Executive Officer will contact the worker to arrange the workers return to work.

4. Procedure for non-negative results

- a) The Mayor will afford the worker procedural fairness and discuss the non-negative result with the person. The Mayor will provide an opportunity for the worker to provide any information or comments that may be a mitigating factor when considering the confirmatory test result.
- b) Workers will be advised of counselling services available through the Employee Assistance Program (EAP).
- c) Before returning to work, a worker will be required to provide a negative test result. Whilst this result is being achieved, workers may be asked to leave the workplace.
- d) Council may initiate disciplinary actions in accordance with the Code of Conduct Policy and Procedure.
- e) *Refer to Appendix 3: Disciplinary Action Flowchart*

5. Tampering with samples

Any attempt to tamper with samples and introduce or alter the concentration of alcohol or other drugs in their own or another's saliva or breath will constitute serious misconduct and will be dealt with according to Council's Code of Conduct Policy and Procedure.

6. Dealing with aggressive behaviour

- a) If a worker displays aggressive or violent behaviour when required to undertake an alcohol and/ or other drug test, the Mayor should remain calm and not argue with or mirror the workers behaviour.
- b) Emphasis should be placed on getting the worker to calm down and discussion kept away from personal issues. The worker should be asked to comply with the direction and be informed that the worker will have the opportunity to dispute the decision through the normal grievances process utilised by Council.
- c) If the worker refuses to modify their behaviour, the worker should be advised that the discussion is terminated and they must leave the workplace immediately. The worker should be reminded that acts of aggression or violence in the workplace are in breach of the Code of Conduct and not in line with Council's values.
- d) In the case of actual or apprehended violent behaviour, the worker is to be advised that the police will be called. This will be utilised as a last option.

7. Grievances/ disputes relating to this procedure

Any dispute relating to the application of this Procedure shall be settled in accordance with the Grievance and Dispute Settlement Procedure.

Related Forms/Documents

- Alcohol and Other Drugs – Councillors Policy

Attachments

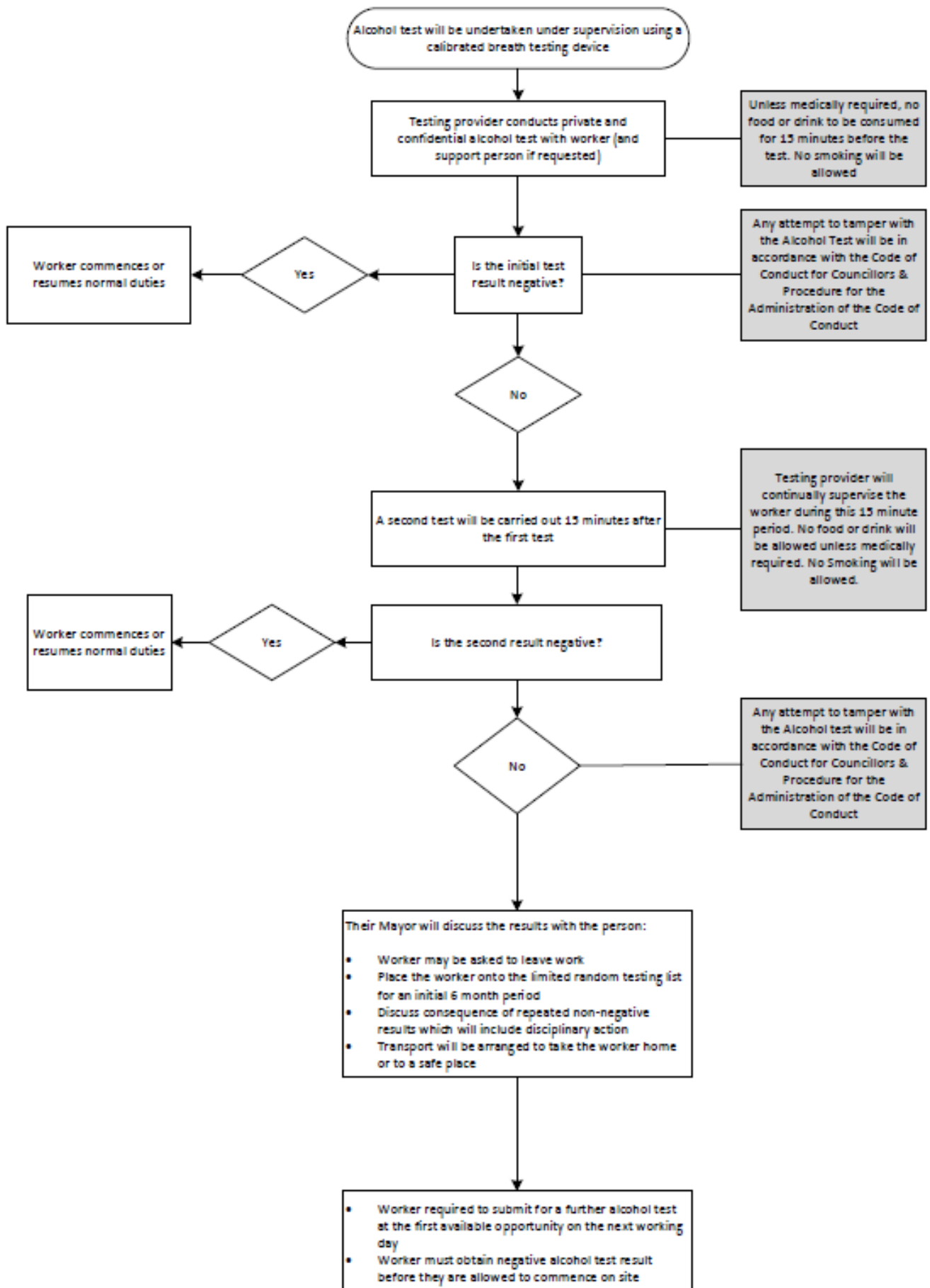
Appendix 1	Alcohol testing flowchart
Appendix 2	Drug testing flowchart
Appendix 3	Disciplinary action flowchart

Authorisation

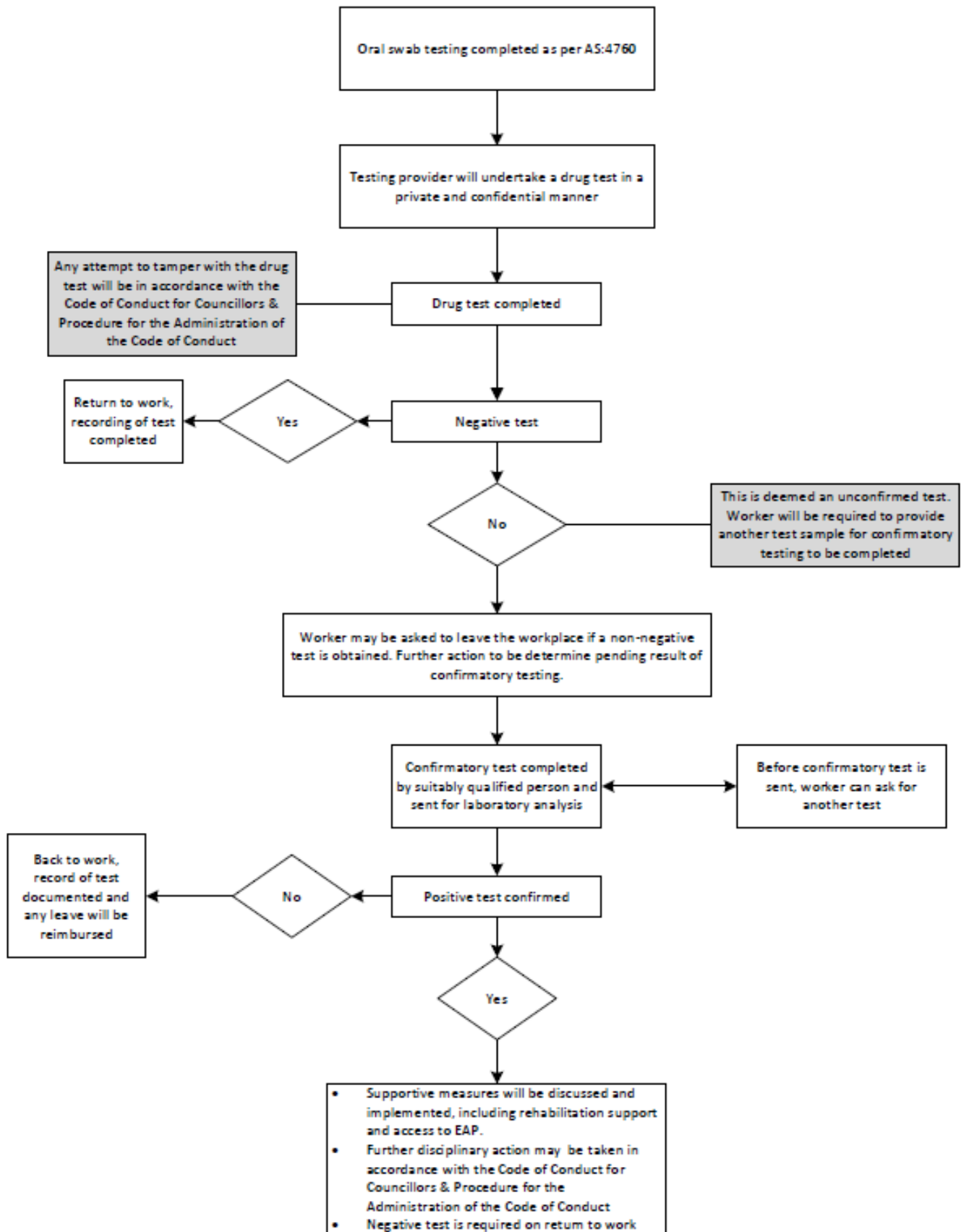
Name: Jane Stroud, Chief Executive Officer

Date: XX May 2024

Appendix 1: Alcohol testing flowchart



Appendix 2: Drug testing flowchart



Appendix 3: Disciplinary action flowchart

