

# **DRAFT CODE OF CONDUCT**

**Reported to Council  
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## PART 1: CONTEXT

This Part of the Code establishes the purpose and principles that are used to interpret the standards in the Code. This Part does not constitute separate enforceable standards of conduct.

### 1 INTRODUCTION

The *Local Government Act 1993* Section 440 requires every council to adopt a code of conduct that incorporates the provisions of The Model Code of Conduct for Local Councils in NSW. For the purposes of section 440 of the Act, the Model Code of Conduct comprises the minimum requirements of conduct for council officials.

The Code is made in three Parts: Context, Standards of Conduct and Procedures.

- Part 1: Context, establishes the purpose and principles that are used to interpret the standards in the Code. This Part does not constitute separate enforceable standards of conduct.
- Part 2: Standards of Conduct, set out the conduct obligations required of council officials. These are the enforceable standards of conduct.
- Part 3: Procedures, contains the complaint handling procedures, complaint assessment criteria and the operating guidelines for the conduct review committee/reviewer. This Part should be used to guide the management of complaints about breaches of the Code.

Councillors have two distinct roles under the *Local Government Act 1993*: as a member of the governing body of the council; and as an elected person. Councillors, as members of the governing body, should work as part of a team to make decisions and policies that guide the activities of the council. The role as an elected person requires councillors to represent the interests of the community and provide leadership. The Code sets the standard of conduct that is expected when council officials exercise these roles.

Councillors, administrators, members of staff of council, independent conduct reviewers, members of council committees including the conduct review committee and delegates of the council must comply with the applicable provisions of council's code of conduct in carrying out their functions as council officials. It is the personal responsibility of council officials to comply with the standards in the code and regularly review their personal circumstances with this in mind. Council contractors and volunteers will also be required to observe the relevant provisions of council's code of conduct.

Failure by a councillor to comply with Part 2, the standards of conduct, of council's code of conduct constitutes misbehaviour. The *Local Government Act 1993* provides for suspension of councillors from civic office for up to six months for proven misbehaviour. For further information on misbehaviour refer to Sections 11 and 12 of this Code.

Failure by a member of staff to comply with council's code of conduct may give rise to disciplinary action.

The Department of Local Government has developed a set of guidelines to assist councils to review and enhance their codes of conduct. The guidelines support this Code and provide further information and examples on the provisions in this Code.

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## DEFINITIONS

In this Code of Conduct the following definitions apply:

the Act	the Local Government Act 1993
act of disorder	see the definition in clause 256 of the <i>Local Government (General) Regulation 2005</i>
conduct review committee	a committee of three or more persons independent of council who are selected from those appointed by council to review allegations of breaches of the code of conduct by councillors or the general manager in accordance with the procedures set out in Sections 12, 13 and 14.
conduct reviewer	a person independent of council who is solely selected from those appointed by council to review allegations of breaches of the code of conduct by councillors or the general manager in accordance with the procedures set out in Sections 12, 13 and 14.
conflict of interests	a conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty.
council official	includes councillors, members of staff of council, administrators appointed under section 256 of the Act, members of council committees, conduct reviewers and delegates of council
delegate of council	a person or body, and the individual members of that body, to whom a function of council is delegated
designated person	see the definition in section 441 of the Act
misbehaviour	see the definition in section 440F of the Act
personal information	information or an opinion about a person whose identity is apparent, or can be determined from the information or opinion
person independent of council	a person who is not an employee of the council, has no current or ongoing contractual relationship with council in the nature of a contract for services, retainer or contract for the provision of goods of any kind, or is not an employee of any entity with such a contractual relationship.

The term “you” used in this Code of Conduct refers to council officials.

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## **PURPOSE OF THE CODE OF CONDUCT**

The Code sets the minimum requirements of conduct for council officials in carrying out their functions. It incorporates the provisions contained in the Model Code of Conduct referred to in Section 440 of the Local Government Act, and has been developed to assist you as council officials to:

- understand the standards of conduct that are expected of them
- enable them to fulfil their statutory duty to act honestly and exercise a reasonable degree of care and diligence (section 439)
- act in a way that enhances public confidence in the integrity of local government.

## **4 KEY PRINCIPLES**

This Code is based on a number of key principles. It sets out standards of conduct that meets these principles and statutory provisions applicable to local government activities. The principles underpin and guide these standards and may be used as an aid in interpreting the substantive provisions of the Code, but do not themselves constitute separate enforceable standards of conduct.

### **4.1 Integrity**

You must not place yourself under any financial or other obligation to any individual or organisation that might reasonably be thought to influence you in the performance of your duties.

### **4.2 Leadership**

You have a duty to promote and support the key principles by leadership and example and to maintain and strengthen the public's trust and confidence in the integrity of the council. *This means promoting public duty to others in the council and outside, by your own ethical behaviour.*

### **4.3 Selflessness**

You have a duty to make decisions in the public interest. You must not act in order to gain financial or other benefits for yourself, your family, friends or business interests. *This means making decisions because they benefit the public, not because they benefit the decision maker.*

### **4.4 Impartiality**

You should make decisions on merit and in accordance with your statutory obligations when carrying out public business. This includes the making of appointments, awarding of contracts or recommending individuals for rewards or benefits. *This means fairness to all; impartial assessment; merit selection in recruitment and in purchase and sale of council's resources; considering only relevant matters.*

### **4.5 Accountability**

You are accountable to the public for your decisions and actions and should consider issues on their merits, taking into account the views of others. *This means recording reasons for decisions; submitting to scrutiny; keeping proper records; establishing audit trails.*

#### 4.6 Openness

You have a duty to be as open as possible about your decisions and actions, giving reasons for decisions and restricting information only when the wider public interest clearly demands. *This means recording, giving and revealing reasons for decisions; revealing other avenues available to the client or business; when authorised, offering all information; communicating clearly.*

#### 4.7 Honesty

You have a duty to act honestly. You must declare any private interests relating to your public duties and take steps to resolve any conflicts arising in such a way that protects the public interest. *This means obeying the law; following the letter and spirit of policies and procedures; observing the code of conduct; fully disclosing actual or potential conflict of interests and exercising any conferred power strictly for the purpose for which the power was conferred.*

#### 4.8 Respect

You must treat others with respect at all times. *This means not using derogatory terms towards others, observing the rights of other people, treating people with courtesy and recognising the different roles others play in local government decision-making.*

## 5 **GUIDE TO ETHICAL DECISION MAKING**

5.1 If you are unsure about the ethical issues around an action or decision you are about to take, you should consider these five points:

- Is the decision or conduct lawful?
- Is the decision or conduct consistent with council's policy and with council's objectives and the code of conduct?
- What will the outcome be for the employee or councillor, work colleagues, the council, persons with whom you are associated and any other parties?
- Do these outcomes raise a conflict of interest or lead to private gain or loss at public expense?
- Can the decision or conduct be justified in terms of the public interest and would it withstand public scrutiny?

**Conflict of interests**

5.2 If you are unsure as to whether or not you have a conflict of interests in relation to a matter, you should consider these six points:

- Do you have a personal interest in a matter you are officially involved with?
- Is it likely you could be influenced by a personal interest in carrying out your public duty?
- Would a reasonable person believe you could be so influenced?
- What would be the public perception of whether or not you have a conflict of interests?
- Do your personal interests conflict with your official role?
- What steps do you need to take and that a reasonable person would expect you to take to appropriately manage any conflict of interests?

**Political donations and conflict of interests**

5.3 Councillors should take all reasonable steps to identify circumstances where political contributions may give rise to a reasonable perception of influence in relation to their vote or support.

**Seeking advice**

5.4 Remember – you have the right to question any instruction or direction given to you that you think may be unethical or unlawful. If you are uncertain about an action or decision, you may need to seek advice from other people. This may include your supervisor or trusted senior officer, your union representatives, the Department of Local Government, the Ombudsman's Office and the Independent Commission Against Corruption.

Independent Commission Against Corruption	8281 5999
NSW Ombudsman	9286 1000
NSW Department of Local Government	4428 4100



## PART 2: STANDARDS OF CONDUCT

*This part of the Code sets out the conduct obligations required of council officials. These are the enforceable standards of conduct.*

*Failure by a councillor to comply with Part 2, the standards of conduct, of council's code of conduct constitutes misbehaviour and may constitute a substantial breach for the purposes of section 9 of the ICAC Act 1988. The Local Government Act 1993 provides for suspension of councillors from civic office for up to six months for proven misbehaviour. For further information on misbehaviour refer to Sections 11 and 12 of this Code.*

*Failure by a member of staff to comply with council's code of conduct may give rise to disciplinary action.*

### 6 GENERAL CONDUCT OBLIGATIONS

#### **General conduct**

- 6.1 You must not conduct yourself in carrying out your functions in a manner that is likely to bring the council or holders of civic office into disrepute. Specifically, you must not act in a way that:
- a contravenes the Act, associated regulations, council's relevant administrative requirements and policies
  - b is detrimental to the pursuit of the charter of a council
  - c is improper or unethical
  - d is an abuse of power or otherwise amounts to misconduct
  - e causes, comprises or involves intimidation, harassment or verbal abuse
  - f causes, comprises or involves discrimination, disadvantage or adverse treatment in relation to employment
  - g causes, comprises or involves prejudice in the provision of a service to the community. (*Schedule 6A*)
- 6.2 You must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions under the Act or any other Act. (*section 439*)
- 6.3 You must treat others with respect at all times.
- 6.4 Where you are a councillor and have been found in breach of the code of conduct, you must comply with any council resolution requiring you to take action as a result of that breach.

***Fairness and equity***

- 6.5 You must consider issues consistently, promptly and fairly. You must deal with matters in accordance with established procedures, in a non-discriminatory manner.
- 6.6 You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case. You must not take irrelevant matters or circumstances into consideration when making decisions.

***Harassment and discrimination***

- 6.7 You must not harass, discriminate against, or support others who harass and discriminate against colleagues or members of the public. This includes, but is not limited to harassment and discrimination on the grounds of sex, pregnancy, age, race, responsibilities as a carer, marital status, disability, homosexuality, transgender grounds or if a person has an infectious disease.

***Development decisions***

- 6.8 You must ensure that development decisions are properly made and that parties involved in the development process are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the development assessment process.
- 6.9 In determining development applications, you must ensure that no action, statement or communication between yourself and applicants or objectors conveys any suggestion of willingness to provide improper concessions or preferential treatment.

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## **CONFLICT OF INTERESTS**

- 7.1 A conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty.
- 7.2 You must avoid or appropriately manage any conflict of interests. The onus is on you to identify a conflict of interests and take the appropriate action to manage the conflict in favour of your public duty.
- 7.3 Any conflict of interests must be managed to uphold the probity of council decision-making. When considering whether or not you have a conflict of interests, it is always important to think about how others would view your situation.
- 7.4 Private interests can be of two types: pecuniary or non-pecuniary.

### ***What is a pecuniary interest?***

- 7.5 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. (*section 442*)
- 7.6 A person will also be taken to have a pecuniary interest in a matter if that person's spouse or de facto partner or a relative of the person or a partner or employer of the person, or a company or other body of which the person, or a nominee, partner or employer of the person is a member, has a pecuniary interest in the matter. (*section 443*)
- 7.7 Pecuniary interests are regulated by Chapter 14, Part 2 of the Act. The Act requires that:
- a councillors and designated persons lodge an initial and an annual written disclosure of interests that could potentially be in conflict with their public or professional duties (*section 449*)
  - b councillors and members of council committees disclose an interest and the nature of that interest at a meeting, leave the meeting and be out of sight of the meeting and not participate in discussions or voting on the matter (*section 451*)
  - c designated persons immediately declare, in writing, any pecuniary interest. (*section 459*)
- 7.8 Designated persons are defined at section 441 of the Act, and include, but are not limited to, the general manager and other senior staff of the council.
- 7.9 Where you are a member of staff of council, other than a designated person (as defined by section 441), you must disclose in writing to your supervisor or the general manager, the nature of any pecuniary interest you have in a matter you are dealing with as soon as practicable.

***What is a non-pecuniary conflict of interests?***

- 7.10 Non-pecuniary interests are private or personal interests the council official has that do not amount to a pecuniary interest as defined in the Act. These commonly arise out of family, or personal relationships, or involvement in sporting, social or other cultural groups and associations and may include an interest of a financial nature.
- 7.11 The matter of a report to council from the conduct review committee/reviewer relates to the public duty of a councillor or the general manager. Therefore, there is no requirement for councillors or the general manager to disclose a conflict of interests in such a matter.
- 7.12 The political views of a councillor do not constitute a private interest.

***Managing non-pecuniary conflict of interests***

- 7.13 Where you have a non-pecuniary interest that conflicts with your public duty, you must disclose the interest fully and in writing, even if the conflict is not significant. You must do this as soon as practicable.
- 7.14 If a disclosure is made at a council or committee meeting, both the disclosure and the nature of the interest must be recorded in the minutes. This disclosure constitutes disclosure in writing for the purposes of clause 7.13.
- 7.15 How you manage a non-pecuniary conflict of interests will depend on whether or not it is significant.
- 7.16 As a general rule, a non-pecuniary conflict of interests will be significant where a matter does not raise a pecuniary interest but it involves:
- a a relationship between a council official and another person that is particularly close, for example, parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse, current or former spouse or partner, de facto or other person living in the same household
  - b other relationships that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship
  - c an affiliation between the council official and an organisation, sporting body, club, corporation or association that is particularly strong.
- 7.17 If you are a council official, other than a member of staff of council, and you have disclosed that a significant non-pecuniary conflict of interests exists, you must manage it in one of two ways:
- a remove the source of the conflict, by relinquishing or divesting the interest that creates the conflict, or reallocating the conflicting duties to another council official
  - b have no involvement in the matter, by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in section 451(2) of the Act apply

- 7.18 If you determine that a non-pecuniary conflict of interests is less than significant and does not require further action, you must provide an explanation of why you consider that the conflict does not require further action in the circumstances.
- 7.19 If you are a member of staff of council, the decision on which option should be taken to manage a non-pecuniary conflict of interests must be made in consultation with your manager.
- 7.20 Despite clause 7.17(b), a councillor who has disclosed that a significant non-pecuniary conflict of interests exists may participate in a decision to delegate council's decision-making role to council staff, or appoint another person or body to make the decision in accordance with the law. This applies whether or not council would be deprived of a quorum if one or more councillors were to manage their conflict of interests by not voting on a matter in accordance with clause 7.17(b) above.

***Political donations exceeding \$1,000***

- 7.21 Councillors should note that matters before council involving political or campaign donors may give rise to a non-pecuniary conflict of interests.
- 7.22 Councillors should take all reasonable steps to ascertain the source of any political contributions that directly benefit their election campaigns. For example, councillors should have reasonable knowledge of contributions received by them or their "official agent" (within the meaning of the *Election Funding Act 1981*) that directly benefit their election campaign.
- 7.23 Where a councillor or the councillor's "official agent" has received "political contributions" or "political donations", as the case may be, within the meaning of the *Election Funding Act 1981* exceeding \$1,000 which directly benefit their campaign:
- a from a political or campaign donor or related entity in the previous four years; and
  - b where the political or campaign donor or related entity has a matter before council,
- then the councillor must declare a non-pecuniary conflict of interests, disclose the nature of the interest, and manage the conflict of interests in accordance with clause 7.17(b).
- 7.24 Councillors should note that political contributions below \$1,000, or political contributions to a registered political party or group by which a councillor is endorsed, may still give rise to a non-pecuniary conflict of interests. Councillors should determine whether or not such conflicts are significant and take the appropriate action to manage them.
- 7.25 If a councillor has received a donation of the kind referred to in clause 7.23, that councillor is not prevented from participating in a decision to delegate council's decision-making role to council staff or appointing another person or body to make the decision in accordance with the law (see clause 7.20 above).

***Other business or employment***

- 7.26 If you are a member of staff of council considering outside employment or contract work that relates to the business of the council or that might conflict with your council duties, you must notify and seek the approval of the general manager in writing. (*section 353*)
- 7.27 As a member of staff, you must ensure that any outside employment or business you engage in will not:
- a conflict with your official duties
  - b involve using confidential information or council resources obtained through your work with the council
  - c require you to work while on council duty
  - d discredit or disadvantage the council.

***Person dealings with council***

- 7.28 You may have reason to deal with your council in your personal capacity (for example, as a ratepayer, recipient of a council service or applicant for a consent granted by council). You must not expect or request preferential treatment in relation to any matter in which you have a private interest because of your position. You must avoid any action that could lead members of the public to believe that you are seeking preferential treatment.

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## **PERSONAL BENEFIT**

For the purposes of this section, a reference to a gift or benefit does not include a political donation or contribution to an election fund that is subject to the provisions of the relevant election funding legislation.

### ***Token gifts and benefits***

8.1 Generally speaking, token gifts and benefits include:

- a free or subsidised meals, beverages or refreshments provided in conjunction with:
  - i the discussion of official business
  - ii council work related events such as training, education sessions, workshops
  - iii conferences
  - iv council functions or events
  - v social functions organised by groups, such as council committees and community organisations.
- b invitations to and attendance at local social, cultural or sporting events
- c gifts of single bottles of reasonably priced alcohol to individual council officials at end of year functions, public occasions or in recognition of work done (such as providing a lecture/training session/address)
- d ties, scarves, coasters, tie pins, diaries, chocolates or flowers.

### ***Gifts and benefits of value***

8.2 Notwithstanding clause 8.1, gifts and benefits that have more than a token value include, but are not limited to, tickets to major sporting events (such as state or international cricket matches or matches in other national sporting codes (including the NRL, AFL, FFA, NBL)), corporate hospitality at a corporate facility at major sporting events, discounted products for personal use, the frequent use of facilities such as gyms, use of holiday homes, free or discounted travel.

### ***Gifts and benefits***

8.3 You must not:

- a seek or accept a bribe or other improper inducement
- b seek gifts or benefits of any kind
- c accept any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your public duty
- d accept any gift or benefit of more than token value
- e accept an offer of money, regardless of the amount.

8.4

Where you receive a gift or benefit of more than token value that cannot reasonably be refused or returned, this must be disclosed promptly to your supervisor, the Mayor or the general manager. The recipient, supervisor, Mayor or general manager must ensure that any gifts or benefits of more than token value that are received are recorded in a Gifts Register. The gift or benefit must be surrendered to council, unless the nature of the gift or benefit makes this impractical.

- 8.5 You must avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to secure favourable treatment from you or from the council.
- 8.6 You must take all reasonable steps to ensure that your immediate family members do not receive gifts or benefits that give rise to the appearance of being an attempt to secure favourable treatment. Immediate family members ordinarily include parents, spouses, children and siblings.

### ***Improper and undue influence***

- 8.7 You must not use your position to influence other council officials in the performance of their public or professional duties to obtain a private benefit for yourself or for somebody else. A councillor will not be in breach of this clause where they seek to influence other council officials through the appropriate exercise of their representative functions.
- 8.8 You must not take advantage (or seek to take advantage) of your status or position with or of functions you perform for council in order to obtain a private benefit for yourself or for any other person or body.

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## **RELATIONSHIP BETWEEN COUNCIL OFFICIALS**

### ***Obligations of councillors and administrators***

- 9.1 Each council is a body corporate. The councillors or administrator/s are the governing body of the council. The governing body has the responsibility of directing and controlling the affairs of the council in accordance with the Act and is responsible for policy determinations, for example, those relating to industrial relations policy.
- 9.2 Councillors or administrators must not:
- a direct council staff other than by giving appropriate direction to the general manager in the performance of council's functions by way of council or committee resolution, or by the Mayor or administrator exercising their power under section 226 of the Act (*section 352*)
  - b in any public or private forum, direct or influence or attempt to direct or influence, any other member of the staff of the council or a delegate of the council in the exercise of the functions of the member or delegate (*Schedule 6A of the Act*)
  - c contact a member of the staff of the council on council related business unless in accordance with the policy and procedures governing the interaction of councillors and council staff that have been authorised by the council and the general manager
  - d contact or issue instructions to any of council's contractors or tenderers, including council's legal advisers, unless by the Mayor or administrator exercising their power under section 226 of the Act. This does not apply to council's external auditors who, in the course of their work, may be provided with information by individual councillors.

### ***Obligations of staff***

- 9.3 The general manager is responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation of the decisions of the council without delay.
- 9.4 Members of staff of council must:
- a give their attention to the business of council while on duty
  - b ensure that their work is carried out efficiently, economically and effectively
  - c carry out lawful directions given by any person having authority to give such directions
  - d give effect to the lawful decisions, policies, and procedures of the council, whether or not the staff member agrees with or approves of them.

**Obligations during meetings**

- 9.5 You must act in accordance with council's Code of Meeting Practice and the *Local Government (General) Regulation 2005* during council and committee meetings.
- 9.6 You must show respect to the chair, other council officials and any members of the public present during council and committee meetings or other formal proceedings of the council.

**Inappropriate interactions**

- 9.7 You must not engage in any of the following inappropriate interactions:
- a Councillors and administrators approaching staff and staff organisations to discuss individual staff matters and not broader industrial policy issues.
  - b Council staff approaching councillors and administrators to discuss individual staff matters and not broader industrial policy issues.
  - c Council staff refusing to give information that is available to other councillors to a particular councillor.
  - d Councillors and administrators who have lodged a development application with council, discussing the matter with council staff in staff-only areas of the council.
  - e Councillors and administrators being overbearing or threatening to council staff.
  - f Councillors and administrators making personal attacks on council staff in a public forum.
  - g Councillors and administrators directing or pressuring council staff in the performance of their work, or recommendations they should make.
  - h Council staff providing ad hoc advice to councillors and administrators without recording or documenting the interaction as they would if the advice was provided to a member of the community.
  - i Council staff meeting with developers alone AND outside office hours to discuss development applications or proposals.
  - j Councillors attending on-site inspection meetings with lawyers and/or consultants engaged by council associated with current or proposed legal proceedings unless permitted to do so by council's general manager or, in the case of the Mayor or administrator, exercising their power under section 226 of the Act.
- 9.8 It is appropriate that staff and staff organisations have discussions with councillors in relation to matters of industrial policy.

## **ACCESS TO INFORMATION AND COUNCIL RESOURCES**

### ***Councillor and administrator access to information***

- 10.1 The general manager and public officer are responsible for ensuring that members of the public, councillors and administrators can gain access to the documents available under section 12 of the *Local Government Act 1993*.
- 10.2 The general manager must provide councillors and administrators with information sufficient to enable them to carry out their civic office functions.
- 10.3 Members of staff of council must provide full and timely information to councillors and administrators sufficient to enable them to carry out their civic office functions and in accordance with council procedures.
- 10.4 Members of staff of council who provide any information to a particular councillor in the performance of their civic duties must also make it available to any other councillor who requests it and in accordance with council procedures.
- 10.5 Councillors and administrators who have a private (as distinct from civic) interest in a document of council have the same rights of access as any member of the public.

### ***Councillors and administrators to properly examine and consider information***

- 10.6 Councillors and administrators must properly examine and consider all the information provided to them relating to matters that they are dealing with to enable them to make a decision on the matter in accordance with council's charter.

### ***Refusal of access to documents***

- 10.7 Where the general manager and public officer determine to refuse access to a document sought by a councillor or administrator they must act reasonably. In reaching this decision they must take into account whether or not the document sought is required for the councillor or administrator to perform their civic duty (see clause 10.2). The general manager or public officer must state the reasons for the decision if access is refused.

### ***Use of certain council information***

- 10.8 In regard to information obtained in your capacity as a council official, you must:
- a only access council information needed for council business
  - b not use that council information for private purposes
  - c not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for yourself, or any other person or body, from any information to which you have by virtue of your office or position with council
  - d only release council information in accordance with established council policies and procedures and in compliance with relevant legislation.

**Use and security of confidential information**

- 10.9 You must maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible.
- 10.10 In addition to your general obligations relating to the use of council information, you must:
- a protect confidential information
  - b only release confidential information if you have authority to do so
  - c only use confidential information for the purpose it is intended to be used
  - d not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person
  - e not use confidential information with the intention to cause harm or detriment to your council or any other person or body
  - f not disclose any information discussed during a confidential session of a council meeting.

**Personal information**

- 10.11 When dealing with personal information you must comply with:
- a the *Privacy and Personal Information Protection Act 1998*,
  - b the *Health Records and Information Privacy Act 2002*,
  - c the Information Protection Principles and Health Privacy Principles,
  - d council's privacy management plan,
  - e the Privacy Code of Practice for Local Government

**Use of council resources**

- 10.12 You must use council resources ethically, effectively, efficiently and carefully in the course of your official duties, and must not use them for private purposes (except when supplied as part of a contract of employment) unless this use is lawfully authorised and proper payment is made where appropriate.
- 10.13 Union delegates and consultative committee members may have reasonable access to council resources for the purposes of carrying out their industrial responsibilities, including but not limited to:
- a the representation of members with respect to disciplinary matters
  - b the representation of employees with respect to grievances and disputes
  - c functions associated with the role of the local consultative committee.
- 10.14 You must be scrupulous in your use of council property, including intellectual property, official services and facilities, and must not permit their misuse by any other person or body.
- 10.15 You must avoid any action or situation that could create the appearance that council property, official services or public facilities are being improperly used for your benefit or the benefit of any other person or body.

- 10.16 The interests of a councillor in their re-election is considered to be a private interest and as such the reimbursement of travel expenses incurred on election matters is not appropriate. You must not use council letterhead, council crests and other information that could give the appearance it is official council material for these purposes.
- 10.17 You must not convert any property of the council to your own use unless properly authorised.
- 10.18 You must not use council's computer resources to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature.

### ***Councillor access to council buildings***

- 10.19 Councillors and administrators are entitled to have access to the council chamber, committee room, mayor's office (subject to availability), councillors' rooms, and public areas of council's buildings during normal business hours and for meetings. Councillors and administrators needing access to these facilities at other times must obtain authority from the general manager.
- 10.20 Councillors and administrators must not enter staff-only areas of council buildings without the approval of the general manager (or delegate) or as provided in the procedures governing the interaction of councillors and council staff.
- 10.21 Councillors and administrators must ensure that when they are within a staff area they avoid giving rise to the appearance that they may improperly influence council staff decisions.

## **REPORTING BREACHES**

- 11.1 Any person, whether or not a council official, may make a complaint alleging a breach of the code of conduct.
- 11.2 For the purposes of Chapter 14, Part 1, Division 3 of the Act, failure by a councillor to comply with an applicable requirement of this code of conduct constitutes misbehaviour. (*section 440F*)

### **Protected disclosures**

- 11.3 The *Protected Disclosures Act 1994* aims to encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration and serious and substantial waste in the public sector.
- 11.4 The purpose of that Act is to ensure that public officials who wish to make disclosures under the legislation receive protection from reprisals, and that matters raised in the disclosures are properly investigated.<sup>1</sup>
- 11.5 If a complaint under this code is or could be a protected disclosure, you must ensure that in dealing with the complaint, you comply with the confidentiality provisions of the Protected Disclosures Act set out in section 22:

*'An investigating authority or public authority (or officer of an investigating authority or public authority) or public official to whom a protected disclosure is made or referred is not to disclose information that might identify or tend to identify a person who has made the protected disclosure unless:*

- (a) the person consents in writing to the disclosure of that information, or*
- (b) it is essential, having regard to the principles of natural justice, that the identifying information be disclosed to a person whom the information provided by the disclosure may concern, or*
- (c) the investigating authority, public authority, officer or public official is of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively or it is otherwise in the public interest to do so.'*

### **Reporting breaches of the code of conduct**

- 11.6 You should report suspected breaches of the code of conduct by councillors, members of staff of council (excluding the general manager) or delegates to the general manager in writing.
- 11.7 Where you believe that the general manager has breached the code of conduct, you should report the matter to the Mayor in writing.
- 11.8 Where you believe that an administrator has breached the code of conduct, you should report the matter to the Minister for Local Government in writing.
- 11.9 Councillors should not make allegations of suspected breaches of the code at council meetings or in other public forums.

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<sup>1</sup> Protected Disclosures Guidelines, 5<sup>th</sup> Edition, NSW Ombudsman, May 2004, Annexure 2.

## PART 3: PROCEDURES

This part of the Code contains the complaint handling procedures, complaint assessment criteria and the operating guidelines for the conduct review committee/reviewer. This Part should be used to guide the management of complaints about breaches of the Code.

### **12 COMPLAINT HANDLING PROCEDURES & SANCTIONS**

- 12.1 Complaints about the conduct of councillors, members of staff of council, members of council committees and delegates of council should be addressed in writing to the general manager.
- 12.2 Complaints about the conduct of the general manager should be addressed in writing to the Mayor.

#### ***Complaint handling procedures – staff, delegate and council committee member conduct (excluding the general manager)***

- 12.3 The general manager is responsible for making enquiries, or causing enquiries to be made, into complaints alleging breach of the code of conduct regarding members of staff of council, delegates of council and/or members of council committees (other than councillors), and will determine such matters.
- 12.4 Where the general manager has determined not to enquire into the matter, the general manager will give the complainant the reason/s in writing as provided in clause 13.1 of this Code, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith.
- 12.5 Enquiries made into staff conduct that might give rise to disciplinary action must occur in accordance with the relevant industrial instrument and make provision for procedural fairness including the right of an employee to be represented by their union.
- 12.6 Sanctions for staff depend on the severity, scale and importance of the breach and must be determined in accordance with any relevant industrial instruments or contracts.
- 12.7 Sanctions for delegates and/or members of council committees depend on the severity, scale and importance of the breach and may include:
- a censure
  - b requiring the person to apologise to any person adversely affected by the breach
  - c counselling
  - d prosecution for any breach of the law
  - e removing or restricting the person's delegation
  - f removing the person from membership of the relevant council committee
  - g revising any of council's policies, procedures and/or the code of conduct.

**Complaint handling procedures – councillor conduct**

- 12.8 The general manager is responsible for assessing complaints, made under Section 11.1, alleging breaches of the code of conduct by councillors, in accordance with the assessment criteria provided at Section 13 of this Code, in order to determine whether to refer the matter to the conduct review committee/reviewer.
- 12.9 The general manager must determine either to:
- a take no further action and give the complainant the reason/s in writing as provided in clause 13.1 of this Code, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith, or
  - b resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing, or
  - c discontinue the assessment in the circumstances where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing, or
  - d refer the matter to the conduct review committee/reviewer.

**Complaint handling procedures – general manager conduct**

- 12.10 The Mayor is responsible for assessing complaints, made under clause 11.1, alleging breaches of the code of conduct by the general manager, in accordance with the assessment criteria provided at Section 13 of this Code, in order to determine whether to refer the matter to the conduct review committee/reviewer.
- 12.11 The Mayor must determine either to:
- a take no further action and give the complainant the reason/s in writing as provided in clause 13.1 of this Code, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith, or
  - b resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing, or
  - c discontinue the assessment in the circumstances where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing, or
  - d refer the matter to the conduct review committee/reviewer.

**Conduct review committee/reviewer**

- 12.12 Council must resolve to appoint persons independent of council to comprise the members of a conduct review committee and/or to act as sole conduct reviewers.
- 12.13 The members of the conduct review committee and/or the persons acting as sole conduct reviewers should be appropriately qualified persons of high standing in the community. These persons do not need to be residents of the local government area of the council that has appointed them.



- 12.14 The conduct review committee, members of such committee and sole conduct reviewers may act in that role for more than one council.
- 12.15 The general manager, or in the case of complaints about the general manager, the Mayor, will undertake the following functions in relation to the conduct review committee/reviewer:
- provide procedural advice when requested
  - ensure adequate resources are provided, including providing secretariat support
  - attend meetings of the conduct review committee if so requested by the committee, and then in an advisory capacity only
  - provide advice about council processes if requested to do so but not so as to take part in the decision making process
  - if attending the conduct review committee meeting to provide advice, must not be present at, or in sight of, the meeting when a decision is taken.
- 12.16 Where a matter is to be considered by the conduct review committee/reviewer, then in each case, the general manager, or Mayor in the case of complaints about the general manager, acting in their capacity as advisor, will either convene a conduct review committee and select its members from those appointed by council or alternatively select a sole conduct reviewer from those appointed by council.
- 12.17 The conduct review committee/reviewer will operate in accordance with the operating guidelines at Section 14 of this code.
- 12.18 The conduct review committee/reviewer operating guidelines (Section 14) are the minimum requirements for the operation of conduct review committees/reviewers. Council may supplement the guidelines, but any additional provisions should not be inconsistent with the guidelines.
- 12.19 The conduct review committee/reviewer is responsible for making enquiries into complaints made under clause 11.1 alleging breaches of the code of conduct by councillors and/or the general manager and must determine either to:
- a not make enquiries into the complaint and give the complainant the reason/s in writing as provided in clause 13.1 of this Code, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith, or
  - b resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, making recommendations to the general manager, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing, or
  - c make enquiries into the complaint, or
  - d engage another appropriately qualified person to make enquiries into the complaint, or
  - e not make enquiries or discontinue making enquiries where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing. Despite any other provision of this code, this will constitute finalisation of such matters and no further action is required.
- 12.20

Where the conduct review committee/reviewer conducts enquiries or causes enquiries to be conducted, the conduct review committee/reviewer must make findings on whether, in its view, the conduct referred to it comprises a breach of the code of conduct.

- 12.21 Where the conduct review committee/reviewer makes findings, the conduct review committee/reviewer may recommend that council take any actions provided for in this code of conduct that it considers reasonable in the circumstances.
- 12.22 Where the conduct review committee/reviewer makes findings, the conduct review committee/reviewer will report its findings, and the reasons for those findings, in writing to the council, the complainant and the person subject of the complaint.
- 12.23 The conduct review committee/reviewer will report its findings and any recommendations to council only when it has completed its deliberations.

### **Sanctions**

- 12.24 Before a council can impose a sanction it must make a determination that a councillor or the general manager has breached the code of conduct.
- 12.25 Where the council finds that a councillor or general manager has breached the code, it may decide by resolution to:
- a censure the councillor for misbehaviour in accordance with section 440G of the Act
  - b require the councillor or general manager to apologise to any person adversely affected by the breach
  - c counsel the councillor or general manager
  - d make public findings of inappropriate conduct
  - e prosecute for any breach of law.

### **Councillor misbehaviour**

- 12.26 Under section 440G a council may by resolution at a meeting formally censure a councillor for misbehaviour.
- 12.27 Under section 440H, the process for the suspension of a councillor from civic office can be initiated by a request made by council to the Director General of the Department of Local Government.
- 12.28 The first ground on which a councillor may be suspended from civic office is where the councillor's behaviour has been disruptive over a period, involving more than one incident of misbehaviour during that period, and the pattern of behaviour during that period is of such a sufficiently serious nature as to warrant the councillor's suspension.
- 12.29 Council cannot request suspension on this ground unless during the period concerned the councillor has been:
- formally censured for incidents of misbehaviour on two or more occasions, or
  - expelled from a meeting of the council or a committee of the council for an incident of misbehaviour on at least one occasion.

- 12.30 The second ground on which a councillor may be suspended from civic office is where the councillor's behaviour has involved one incident of misbehaviour that is of such a sufficiently serious nature as to warrant the councillor's suspension.
- 12.31 Council cannot request suspension on this ground unless the councillor has been:
- formally censured for the incident of misbehaviour concerned, or
  - expelled from a meeting of the council or a committee of the council for the incident of misbehaviour concerned.
- 12.32 Under section 440H, the process for the suspension of a councillor can also be initiated by the Department of Local Government, the Independent Commission Against Corruption or the NSW Ombudsman.

### ***Reporting on complaints***

- 12.33 The general manager must report annually to council on code of conduct complaints. This report should include, as a minimum, a summary of the:
- 12.34 number of complaints received,
- 12.35 nature of the issues raised by complainants, and
- 12.36 outcomes of complaints.

## **13**

## **COMPLAINT ASSESSMENT CRITERIA**

- 13.1 The general manager or Mayor, in the case of a complaint about the general manager, will assess a complaint alleging a breach of the code of conduct to determine if the matter should be referred to the conduct review committee/reviewer. In assessing the complaint, the general manager and Mayor will have regard to the following grounds:
- a whether there is any prima facie evidence of a breach of the code of conduct
  - b whether the subject matter of the complaint relates to conduct that is associated with the carrying out of the functions of civic office or duties as general manager
  - c whether the complaint is trivial, frivolous, vexatious or not made in good faith
  - d whether the conduct the subject of the complaint could reasonably constitute a breach of the code of conduct
  - e whether the complaint raises issues that require investigation by another person or body, such as referring the matter to the Department of Local Government, the NSW Ombudsman, the Independent Commission Against Corruption or the NSW Police
  - f whether there is an alternative and satisfactory means of redress
  - g how much time has elapsed since the events the subject of the complaint took place
  - h how serious the complaint is and the significance it has for council
  - i whether the complaint is one of a series indicating a pattern of conduct.
- 13.2 Complaints that are assessed as not having sufficient grounds to warrant referral to the conduct review committee/reviewer or that are to be referred to a more appropriate person or body can be finalised by the general manager or the Mayor, in the case of complaints about the general manager.
- 13.3 If a matter is referred to the conduct review committee/reviewer, then the conduct review committee/reviewer should use the above criteria in clause 13.1 for its initial assessment of the complaint and determination of the course to follow in dealing with the complaint.

## **CONDUCT REVIEW COMMITTEE/REVIEWER OPERATING GUIDELINES<sup>2</sup>**

### 14.1 Jurisdiction of the conduct review committee/reviewer

The complaint handling function of the conduct review committee/reviewer is limited to consideration of, making enquiries into and reporting on complaints made under clause 11.1, about councillors and/or the general manager.

Complaints regarding pecuniary interest matters should be reported to the Director General of the Department of Local Government and will not be dealt with by the conduct review committee/reviewer.

Sole reviewers and members of the conduct review committee are subject to the provisions of this code of conduct.

### 14.2 Role of the General Manager and Mayor

The general manager, or in the case of complaints about the general manager, the Mayor, will undertake the following functions in relation to the conduct review committee/reviewer:

- provide procedural advice when requested
- ensure adequate resources are provided, including providing secretariat support
- attend meetings of the conduct review committee if so requested by the committee, and then in an advisory capacity only
- provide advice about council processes if requested to do so but not so as to take part in the decision making process
- if attending the conduct review committee meeting to provide advice, must not be present at, or in sight of, the meeting when a decision is taken.

Where the general manager, or in the case of complaints about the general manager, the Mayor, is unable to act as advisor to the conduct review committee/reviewer due to a conflict of interests in relation to a complaint, they are to nominate a senior council officer or councillor (in the case of complaints about the general manager) to perform this role.

### 14.3 Composition of the conduct review committee

Where council has a conduct review committee it will comprise three or more appropriately qualified persons of high standing in the community who are independent of the council, convened and selected as provided in clause 12.16.

In the circumstances where a member of the conduct review committee cannot participate in a matter, the general manager, or Mayor in the case of complaints about the general manager, should select another person as provided in clause 12.16.

The chairperson is to be elected by the members of the conduct review committee.

The general manager, or in the case of complaints about the general manager, the Mayor, will act in an advisory capacity to the committee when requested.

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<sup>2</sup> The operating guidelines have been adapted from the Ku-ring-gai Council Conduct Committee Guidelines – 25 October 2006

14.4

#### Quorum of the conduct review committee

A quorum for a meeting of the conduct review committee is the majority of the members of the conduct review committee.

If a quorum is not present at a meeting of the conduct review committee it must be adjourned to a time and date that is specified.

Business is not to be conducted at any meeting of the conduct review committee unless a quorum is present.

Business may be conducted by video-conference or teleconference.

#### 14.5 Voting of the conduct review committee

Each member of the conduct review committee shall be entitled to one vote in respect of any matter. In the event of equality of votes being cast, the chairperson shall have the casting vote.

If the vote on a matter is not unanimous, then this should be noted in any report to council on its findings.

In relation to any procedural matters relating to the operation of the conduct review committee, the ruling of the chairperson shall be final.

#### 14.6 Procedures of the conduct review committee/reviewer

The general manager or Mayor, in the case of a complaint about the general manager, will be responsible for convening the initial meeting of the conduct review committee when there is a complaint to be referred to it.

The conduct review committee/reviewer will conduct business in the absence of the public.

The conduct review committee/reviewer will keep proper records of deliberations.

The conduct review committee shall determine the procedures governing the conduct of its meetings provided such procedures are consistent with these operating guidelines.

#### 14.7 Procedural fairness

In conducting enquiries, the conduct review committee/reviewer or the person engaged to do so should follow the rules of procedural fairness and must -

- a provide the person the subject of the complaint with a reasonable opportunity to respond to the substance of the allegation
- b provide the person the subject of the complaint with an opportunity to place before the conduct review committee/reviewer or person undertaking the enquiry any information the person considers relevant to the enquiry
- c provide the person the subject of the complaint with an opportunity to address the conduct review committee/reviewer in person
- d hear all parties to a matter and consider submissions before deciding the substance of any complaint

- e make reasonable enquiries before making any recommendations
- f act fairly and without prejudice or bias
- g ensure that no person decides a case in which they have a conflict of interests
- h conduct the enquiries without undue delay.<sup>3</sup>

Where the person the subject of the complaint declines or fails to take the opportunity provided to respond to the substance of the allegation against them, the conduct review committee/reviewer should proceed to finalise the matter.

#### 14.8 Complaint handling procedures

In addition to complying with these operating guidelines, the conduct review committee/reviewer will ensure it deals with all complaints in accordance with the provisions of Section 12 of this Code.

All persons who are the subject of complaints that are referred to the conduct review committee/reviewer will receive written information about the process being undertaken to deal with the matter.

The conduct review committee/reviewer will only deal with matters that are referred to it by the general manager or the Mayor.

Where the conduct review committee/reviewer determines to make enquiries into the matter, such enquiries should be made without undue delay.

In circumstances where the person the subject of the complaint meets with the conduct review committee/reviewer, they are entitled to bring a support person or legal adviser. That person will act in an advisory and support role to the person affected. They will not speak on behalf of the subject person.

#### 14.9 Findings and recommendations of the conduct review committee/reviewer

Where the conduct review committee/reviewer determines, in its view that the conduct referred to it comprises a breach of this code of conduct it may, in its report to the council, make recommendations, that the council take any of the following actions:

- a censure the councillor for misbehaviour
- b require the councillor or general manager to apologise to any person adversely affected by the breach
- c counsel the councillor or general manager
- d make public findings of inappropriate conduct
- e prosecute for any breach of the law
- f revise any of council's policies, procedures and/or the code of conduct.

Before making any such recommendations, the conduct review committee/reviewer shall have regard to the following:

- a the seriousness of the breach
- b whether the breach can be easily remedied or rectified
- c whether the subject has remedied or rectified their conduct

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<sup>3</sup> NSW Ombudsman, Investigating complaints, A manual for investigators, June 2004.



- d whether the subject has expressed contrition
- e whether the breach is technical or trivial only
- f whether the breach represents repeated conduct
- g the age, physical or mental health or special infirmity of the subject
- h the degree of reckless intention or negligence of the subject
- i the extent to which the breach has affected other parties or the council as a whole
- j the harm or potential harm to the reputation of local government and of the council arising from the conduct
- k whether the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny
- l whether an educative approach would be more appropriate than a punitive approach
- m the relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action
- n what action or remedy would be in the public interest
- o where to comply with a councillor's obligations under this code of conduct would have had the effect of depriving the council of a quorum or otherwise compromise the capacity of council to exercise its functions

#### 14.10 Amendment of the operating guidelines

The conduct review committee/reviewer guidelines may be added to and any additional requirements may be further amended or repealed by resolution of the council.

# Guidelines for the Model Code of Conduct for Local Councils in NSW

October 2008

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Maddocks Lawyers

NSW Ombudsman

Penrith City Council

Shoalhaven City Council

Sutherland Shire Council

Wollondilly Shire Council

## 1 Purpose of these guidelines

The information contained in these guidelines is designed to achieve two objectives:

- a. To assist in the interpretation of the standards in the Model Code in each topic area
- b. To provide councils with suggestions for enhancing their codes of conduct.

The Model Code of Conduct for Local Councils in NSW June 2008 replaces the previous Model Code, dated December 2004. All councils must adopt a code of conduct that incorporates the provisions of the Model Code of Conduct for Local Councils in NSW, June 2008, (Model Code) pursuant to section 440 of the *Local Government Act 1993*.

Councils may include additional provisions in their own codes of conduct that supplement the Model Code. This includes strengthening of the minimum provisions. Any additional provisions in councils' codes of conduct must be consistent with the Model Code provisions or else they will be invalid.

When councils develop and review their codes of conduct they should consider how the document will be integrated into their organisation's culture. Codes of conduct should be developed by each council and its staff to meet their specific needs, and should promote an ethical culture within the council. Codes of conduct should integrate and cross-reference with other council policies; for example, the councillor expenses and facilities policy.

These guidelines contain interpretive information and, in some cases, suggestions for additional information that councils could include in their codes. Where appropriate, case studies, examples and further reference material on the topic are provided.

These guidelines also provide information on the reporting of alleged breaches and dealing with complaints.

## **2 Purpose of a code of conduct**

A code of conduct is a key mechanism to assist council officials to act honestly, ethically, responsibly and with accountability.

A code of conduct assists councils to fulfil their responsibility to serve the community and to effectively meet the requirements of their charter under section 8 of the Act.

Councillors are elected to represent the interests of the residents and ratepayers. As a member of the governing body of the council, councillors play a key role in creating and reviewing the council's policies and objectives.

Staff have the responsibility to serve the council and to implement the decisions of council as their employer. Staff must also know and understand the law relevant to the performance of their official duties.

The community rightly expects councillors and staff to be honest, reasonable and equitable in their dealings with them and to have the public interest at heart.

### **2.1 Who does the code of conduct apply to?**

The code of conduct applies to all local councils in NSW, including county councils.

The code of conduct applies to all council officials. In this guideline the term council official is used to describe councillors, members of staff of council, administrators appointed under section 256 of the Act, members of council committees, conduct reviewers and other delegates of council. It requires them to act honestly, ethically and responsibly in the performance of their duties.

Delegates of council include any person or body, and the individual members of that body, to whom a function of council is delegated e.g. council's contractors, consultants, volunteers, members of advisory and section 355 committees, Independent Hearing Assessment Panels and community representatives.

Not all parts of the code of conduct will apply to all council officials. For example, there are clauses such as secondary employment that only apply to council staff.

However, other persons working with councils, such as contractors, community representatives and volunteers, will be required to observe the provisions of a council's code of conduct that apply to them. In regard to contractors, councils should make provision in contracts to reflect this condition. Councils may wish to develop summaries of their code of conduct that provide only the provisions that are relevant to these persons.

### **2.2 Are council officials obliged to comply with the code of conduct?**

Council officials must observe the applicable provisions within their council's code of conduct. Part 2 of the Model Code sets out a standard of conduct that meets accepted principles and statutory provisions applicable to local government activities. It is the

personal responsibility of all council officials to observe the standards in the code of conduct and regularly review their personal circumstances with this in mind.

### **3 Development, implementation and review**

A council must, within 12 months after each ordinary election, review its adopted code of conduct and make such changes as it considers appropriate and as are consistent with section 440 of the Act. Councils may wish to review their codes of conduct more frequently. Periodic reviews are a good way to ensure their codes remain relevant and are well understood by council officials.

#### **3.1 Using these guidelines**

All councils must include in their codes of conduct the minimum requirements outlined in the Model Code. Councils may consider supplementing their codes with additional topics that reflect the specific needs of council. These additional provisions must be consistent with the Model Code provisions or else they will be invalid.

The topic sections of these guidelines provide additional information on how the principles listed in the Model Code of Conduct should be interpreted and applied in practice. Councils should also consider adopting a number of policies to support their codes of conduct. Some suggestions are given in these guidelines under the relevant topic areas. Where possible, policies that relate to the council's code of conduct should be referenced in the code. This enables council officials to gain further information and guidance in relation to particular topics. Supplementary policies should be consistent with the council's code of conduct.

These guidelines include a number of examples and case studies to illustrate the ethical problems that council officials might encounter and strategies for dealing with them. These examples can be used to assist councils to develop their own examples that are relevant to their circumstances.

#### **3.2 Developing and implementing council's code of conduct**

When councils develop and review their codes of conduct they should consider how the document will be integrated into their organisation's culture. Codes of conduct should be developed by each council and its staff to meet their specific needs, and should promote an ethical culture within the council. Codes of conduct should integrate and cross-reference with other council policies; for example, the councillor expenses and facilities policy.

Engaging council officials in the development and review of council's codes of conduct ensures understanding and ownership.

Selecting the appropriate language and terms in a code of conduct assists council officials to understand the requirements outlined in the code. In the Model Code, the term "you" is used to emphasise the individual obligations of council officials.



Councils may wish to consider developing a summary of their code of conduct that supplements the more detailed code, which can be readily distributed throughout the organisation.

Councils are encouraged to use the ICAC publication, 'Codes of Conduct: The next stage' to assist in developing their code of conduct. This publication includes a checklist as a guide in developing, implementing and reviewing the code.

There is also an Australian Standard (AS 8002-2003) on Organisational Codes of Conduct which may provide additional guidance.

Simply having a code of conduct is not enough. The process used to develop, implement and regularly and systematically review the council's code of conduct is critical in ensuring its effectiveness. Developing a code of conduct is not just a project. It is a process that requires a range of strategies to reinforce the standards of behaviour that are expected from council officials.

**General managers should require all council officials to sign a statement that they have received, read, understood and will abide by their obligations under the code of conduct.**

A code of conduct needs to be an active policy document that is promoted throughout council. Some strategies to promote the code of conduct include:

- providing regular on-going training, awareness-raising and information sessions. This training should be provided and made available to all council officials;
- training tailored to meet the needs of the particular council officials, such as in-depth sessions on matters that relate to the duties of particular staff members and specific training on pecuniary interest for councillors;
- ensuring that the induction process emphasises the importance and relevance of the code of conduct and provides new officials with a thorough understanding of its content and consequences of non-compliance;
- nominating an officer to be responsible for ensuring that training is conducted and the code of conduct is actively promoted throughout the organisation;
- including the code of conduct in information packages sent to job applicants, attached to letters of offer to prospective staff members and referred to during job interviews;
- including regular segments about aspects of the code of conduct in staff circulars and newsletters;
- explicitly considering the code of conduct in the context of policy and procedural reviews;
- ensuring that the code of conduct is readily accessible to all council officials; and
- providing a copy of the code of conduct to prospective councillors on nomination to assist them to understand their obligations

Councils should also promote their codes of conduct to the community by placing them on their websites and making them easily accessible. Councils should ensure that the code of conduct is easy to locate. In this way community awareness is raised about the standards that are expected from council officials.

### 3.3 How the Model Code works

The Model Code is comprised of three parts:

Part 1: **Context.** This part of the Model Code is explanatory and does not contain enforceable standards. It establishes the Code's ***purpose*** and the ***principles*** used to interpret it. It also contains some information that can be used as a guide to making ethical decisions.

Part 2: **Standards of Conduct.** This part of the Model Code sets out the conduct obligations required of council officials. These are the ***enforceable standards of conduct***.

Part 2 of the Model Code contains six key topic areas:

- General conduct obligations
- Conflict of interests (pecuniary and non-pecuniary)
- Personal benefit
- Relationship between council officials
- Access to information and resources
- Reporting breaches

Part 3: **Procedures.** This part of the Model Code contains:

- the complaint handling procedures,
- complaint assessment criteria, and
- the operating guidelines for the conduct review committee/reviewer.

Part 3 should be used to guide the management of complaints about breaches of the Model Code.

## 4 Topics to be addressed

These guidelines relate to Parts 2 and 3 of the Model Code.

Part 2 of the Model Code contains six key topic areas:

- General conduct obligations
- Conflict of interests (pecuniary and non-pecuniary)
- Personal benefit
- Relationship between council officials
- Access to information and resources
- Reporting breaches

These guidelines contain information on each of these topics, as well as complaint handling procedures (Part 3 Model Code sections 12-14)

### **Understanding these guidelines**

The information contained in these guidelines is designed to achieve two objectives:

1. To assist in the interpretation of the standards in the Model Code in each topic area
2. To provide councils with suggestions for enhancing their codes of conduct.

The following information is arranged under the same topic headings that are contained in the Model Code. Information under each topic heading in these guidelines is arranged in the following way:

- A. an introduction to the topic, including relevant interpretive information
- B. examples and case studies relevant to the topic (where applicable)

*Councils' codes of conduct should provide examples and/or case studies to illustrate the ethical problems that council officials might encounter and strategies for dealing with them. These guidelines include some general examples to guide councils in developing their own examples relevant to their council's circumstances.*

- C. examples of good practice suggestions (where applicable)

*Councils' codes of conduct should function as active guides to decision making. Codes of conduct will be more effective if they include information that assists council officials to understand and manage more difficult situations that may arise. Good practice suggestions consist of extra information and resources that help councils with these more difficult situations or that they may include if they wish to enhance or strengthen their codes of conduct.*

D. suggested policy requirements (where applicable)

*Councils' codes of conduct should be consistent with other policies that councils develop. Councils should consider developing policies that provide specific guidance on matters contained in their code of conduct.*

E. the key legislation

F. resources (where applicable).

*The guidelines contain a range of resources under each section heading. The resources are included so that councils may seek additional information specific to the topic at hand, in addition to the information contained in the guidelines.*

## 4.1 General conduct obligations (Part 2 Model Code, section 6)

### 4.1A - Introduction and interpretive information

Council officials must act honestly and responsibly when carrying out their functions. They have a responsibility to adhere to the requirements of the Act, behave professionally at all times and to develop and maintain constructive working relationships.

#### *Lobbying*

Councillors and staff should be aware that they are at some time likely to be lobbied by a wide range of people including individuals, organisations, companies and developers. The Model Code and the Act both recognise that appropriate lobbying of councillors is a normal part of the democratic system, and that councillors have a representative role in considering the views of their constituents and communicating with them (see Section 232(2) of the *Local Government Act 1993*).

‘Generally, inappropriate and unlawful conduct on the part of someone lobbying a councillor usually involves an attempt to obtain preferential consideration or treatment based on factors other than the merits of a matter.’ (ICAC, 2006, *Lobbying local government councillors*)

Lobbying is a two way process between councillors and lobbyists. It is essential that they understand the difference between appropriate and inappropriate lobbying, that they demonstrate transparency in all decision-making processes, and that they do not undermine the public’s confidence by engaging in any way in lobbying which could be considered inappropriate or unlawful.

‘Councillors should exercise judgement when deciding whether to be involved in private meetings with people seeking to influence a council decision. Suspicions of inappropriate lobbying can occur when lobbying is not open to public scrutiny.’ (ICAC, 2006, *Lobbying local government councillors*)

Councillors can ensure transparency when being lobbied by:

- keeping records of meetings
- holding meetings in locations such as council offices
- ensuring other people are present
- making sure that any information obtained when being lobbied is available to council staff and other councillors.

To avoid placing themselves in an inappropriate or unlawful situation and if they have any doubts about the appropriateness of any request being made of them, councillors should require that the request be written to the general manager who can then ensure that it is evaluated by council staff and can then report to council the consequences of granting the request.

Examples of inappropriate and/or unlawful councillor conduct that could occur during lobbying include:

- Disclosing confidential information, including legal advice, while being lobbied
- Accepting a political donation in return for a favourable exercise of discretion during decision making
- Giving undertakings to an interested party prior to consideration of all the information relevant to a decision

ICAC has produced a brochure that contains specific information about all aspects of lobbying local government councillors. (see *Lobbying local government councillors*, ICAC, August 2006)

Councils may wish to consider including information about lobbying in their codes of conduct. A suggestion is included in the good practice section following.

## 4.1B - Case studies/examples

### Example 1 - Lobbying on development decisions

A council comprising seven councillors is dealing with a rezoning proposal from a developer. The rezoning, if supported, will result in the value of the land in question increasing by several million dollars. The developer approaches four councillors in the week before the proposal comes before council and provides them with some written material and verbal argument in support of the rezoning. The material addresses issues that have not been canvassed by council staff in their report to council. The developer tells the councillors that if they vote for the rezoning he will provide some funds to support the councillors' favourite local charities.

However, the material in question is not made available to the other three councillors nor is it submitted to council staff as material supporting the rezoning proposal. The proposal is opposed by groups in the community who have responded by way of written submission to council's public advertising of the proposal. These groups are also actively lobbying in support of their written submissions.

At the council meeting some councillors verbally refer to the information they have received from the applicant. However, this material is never tabled, is not put out for public comment, and is not subjected to analysis by council's professional staff. The submissions received from community groups are tabled, are analysed by council staff, and form part of the public record, which is available for scrutiny by any person. The councillors do not disclose that they were offered funds in support of a local charity if they supported the rezoning.

*The four councillors who responded to the developer's lobbying without ensuring the material provided is formally submitted to council have potentially invited suspicions of partial decision making. They should have encouraged the developer to formally submit the material to council and then require council to put it out for public comment. At the end of this process council professional staff would be able to provide, as part of open accountable processing of the proposal, an analysis of the developer's material and the public responses to it.*

*Although some delay would result in the processing of the proposal this delay is the direct result of the developer introducing new material into the issue. Lobbying in this matter has, in practical terms, introduced an element of preferential treatment and potentially denied other stakeholders their right to also make a submission on relevant material. The fact that only four councillors were provided with the material suggests a manipulative approach in the lobbying process, which should have been seen as such by the four councillors as falling short of best practice. In addition, the developer has offered an inducement for the councillors to vote in a particular way. Regardless of the fact that the offer was in support of local charities, the offer should have been firmly refused and the matter reported to the general manager.*

*The object lesson is that absolute compliance with the principles of ethical decision making is not optional...it is mandatory if council is to meet its charter of open, accountable decision making.*

#### **4.1C - Good practice suggestions**

- **Lobbying**

Councillors and council staff may be lobbied by a wide range of people, including individuals, organisations, companies and developers. As a general rule it is an essential element of the democratic system that any individual should be able to lobby the council or a councillor. However, particular considerations apply when councillors and council staff are dealing with statutory powers such as planning.

Councillors and council staff must consider evidence and arguments put by a wide range of organisations and individuals in order to perform their duties effectively. However, councillors should encourage lobbyists and applicants to put their views in writing to the general manager for evaluation by council staff and reporting to council of all the consequences of granting the request.

- **Appointments to other organisations**

Councillors and council staff may be appointed or nominated by the council as a member of another body or organisation (for example, appointment to a regional organisation of councils.) If so, they will be bound by the rules of conduct of both organisations.

- **Alcohol and other drugs**

Council officials must not be intoxicated or drug affected when performing their official duties.

Intoxication by alcohol or being drug affected is an unsafe personal condition and is proven to be a hindrance to the performance of official duties. A person, so affected, cannot provide the high standard of service required and is impaired in their ability to make decisions. It may also bring into question the validity of decisions made while under the influence of alcohol or other drugs. Such a person could also expose others to an unacceptable level of risk.

- **Health, wellbeing and safety**

Councillors and council staff should ensure that council's premises are adequate to ensure the health, safety and well being of other council officials and members of the public in accordance with their obligations under the *Occupational Health and Safety Act 2000*.



- **Public comment by council officials**

Council staff should understand and comply with council's media/public comment policy and know whether they are permitted to make public comment on behalf of the council. If in doubt, authorisation should be obtained from the general manager.

"Public comment" includes public speaking engagements (including comments on radio and television), expressing views in letters to the press or in books or notices or where it is reasonably foreseeable that publication or circulation will enter the public domain.

For example, as a member of the community, council staff have a right to enter into public debate in their private capacity. However, council staff must take care not to give the impression that their comments are made on behalf of council. Council staff will need to clearly state that such public comment reflects personal opinion. Public comment or statements on council matters should only be made in accordance with council's policy.

Council officials (including councillors) should ensure that they clarify whether or not they are acting on behalf of council and/or in their public capacity when speaking publicly or attending functions to avoid situations where this might be directly implied or indirectly inferred.

- **Child protection code of conduct**

Under the *Ombudsman Act 1974* the head of a designated agency or public authority is responsible for ensuring systems are in place for recording and responding to all allegations of a child protection nature against an employee.

The head of an agency is required to determine which allegations and convictions are to be notified to the Ombudsman as a reportable allegation or conviction and which matters are exempt from notification. These exemptions require a code of conduct which includes details of what behaviour by employees is reasonable for the purpose of the discipline, management or care of children. The code of conduct should also clarify what is acceptable and what is not acceptable behaviour by employees towards children, as well as what will happen if an employee breaches the council's code of conduct.

Councils are encouraged to consider including supplementary information in their code of conduct that relates to child protection matters. Information to assist this process is contained in the NSW Ombudsman's Child Protection in the Workplace Guidelines.

#### **4.1D - Suggested policy requirements**

1. A policy and procedures to be followed for reporting and managing situations related to the effects of drug and alcohol use.
2. A policy and procedures to prevent and deal with harassment and discrimination.
3. A Code of Meeting Practice to meet council's individual circumstances. The Code should incorporate the provisions of the Local Government (General) Regulation 2005 and may supplement that Regulation with provisions that are not inconsistent with it. The Code of Meeting Practice could include examples of situations councillors may face during council meetings and strategies to deal with them.
4. A policy on public comment on council matters.

#### **4.1E - Key legislation**

- *Local Government Act 1993*, including sections 8, 352, 439, 440 – (these sections refer to the council's charter, the independence of staff and the requirement for council officials to act honestly and with care.)
- Local Government (General) Regulation 2005
- *NSW Anti-Discrimination Act 1977*
- Federal Anti-Discrimination legislation
- *Ombudsman Act 1974*

#### **4.1F - Resources**

DLG, 2005, *Meetings practice note*, Practice note no 16.

ICAC, 2006, *Lobbying Local Government Councillors*

NSW Ombudsman, 2004, *Child protection in the workplace*.

## **4.2 Conflict of Interests (Part 2 Model Code, section 7)**

### ***4.2A - Introduction and interpretive information***

The possibility of conflict between public duty and private interest is an ever-present risk for council officials. Sometimes, by virtue of their official status, position, functions or duties, council officials have the power to make decisions or act in ways that can further their own private interests. This may cause a real or perceived conflict between council official's private interests and their public duty.

As a general principle, no person should obtain a private benefit or advantage by virtue of their position as a council official. Additionally, no public official should misuse the power of authority of their position to unfairly influence or decide a matter where they have a real or perceived private interest.

The political views of a councillor do not constitute a private interest. When councillors run for office, they outline their position and views in relation to issues facing the community. These views are essentially public in nature and do not represent private interests. For example, just because a councillor generally supports the concept of environmental protection does not mean that they have a conflict of interests every time a development application comes before council.

A conflict of interests may be of two types:

- A pecuniary conflict of interests
- A non-pecuniary conflict of interests

A pecuniary interest is an interest a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person.

A non-pecuniary conflict of interests can be an actual or a perceived conflict where a reasonable and informed person would perceive a conflict exists. Any conflict of interests negatively impact on public confidence in the integrity of local government. It is always advisable when facing any potential conflict of interests to consider how another person who is reasonable and informed would consider the situation. In this context a reasonable and informed person would mean a person who is generally regarded as reasonable in respect to their judgements and who is in possession of all the relevant facts.

#### *Managing pecuniary conflict of interests*

Where a conflict of interests is pecuniary in nature, you must comply with the requirements of the *Local Government Act 1993*.

### *Managing non-pecuniary conflict of interests*

Most council officials are at some stage likely to experience a situation where they may have a non-pecuniary conflict of interests. This is most likely to arise out of family or personal relationships or perhaps through an association they, or someone close to them, may have through an involvement in a sporting, social or other kind of group or association. The greater their involvement with the club or organisation, the greater likelihood of a real or perceived conflict of interests. It may also involve an interest of a financial nature that does not amount to a pecuniary interest as defined by the Act.

The Model Code now recognises two forms of non-pecuniary conflict of interests:

- significant
- less than significant

As a general rule, clause 7.16 of the Model Code details what is considered to be a significant non-pecuniary conflict of interests. Council officials should make an assessment of the circumstances to help them determine if a conflict is significant. The nature of a friendship or business relationship, the frequency of contact and the duration of the friendship or relationship, the strength of an affiliation with an organisation are all matters that should be considered when assessing whether or not a conflict of interests is significant.

Council officials need to deal with a conflict of interests by disclosing their interest in writing as required by clauses 7.13 and 7.14. If the conflict is less than significant, they need to provide an explanation of why no further action is required in the circumstances (clause 7.18).

However, if a conflict of interests is **significant**, as described in clause 7.16 of the Model Code, in addition to their written disclosure, council officials will need to take further action. This additional action will be to either remove the source of the conflict, or have no involvement in the matter, including not taking any part in a debate or a vote on the matter.

It should be noted that clause 7.20 enables councillors to participate in a decision to delegate council's decision-making role in relation to a matter to another person or body as provided under the Act even though they have a significant non-pecuniary conflict of interests in that matter.

### *Managing political donations*

Clause 7.22 of the Model Code requires councillors to reasonably know the source of any political donations. This means that councillors who are members of a political party or group who have directly benefited from funds from any group or party organisations will need to ascertain the source of the political contributions made to the group or party organisation.

If councillors or their official agents have received, in the previous four years, a political donation exceeding \$1,000 that has directly benefited their campaign, from a donor who has a matter before council, they must disclose this fact and have no involvement in the matter as set out in clause 17.17(b) of the Model Code (see clause 7.23). This applies to all councillors, regardless of whether they are independent councillors or a member of a political group or party.

Where councillors or their official agents have received donations under \$1,000 then this may give rise to a non-pecuniary conflict of interests. This also applies to all councillors, regardless of whether they are independent councillors or a member of a political group or party. Councillors should apply the test for a conflict of interests at clause 7.1 and the test for a political donation at clause 5.3 of the Model Code. Clause 5.3 requires councillors to consider the perception of influence created by any political donations and take reasonable steps to identify circumstances where this may arise.

This means that once a councillor has taken reasonable steps to ascertain the source of political donations that have directly benefited their election campaign, as per clause 7.22, and the donation is less than \$1,000, then consideration will need to be given to perceptions of influence that might be created by the donations.

If they determine that a non-pecuniary conflict of interests may exist, then they need to consider whether or not the conflict of interests is significant, as provided for in clause 7.16. Where a close relationship exists with the donor (as described in clause 7.16), then the conflict of interests is likely to be significant, even if the donation is less than \$1,000. If no close relationship exists, (and the donation is under \$1,000) then the conflict of interests is likely to be less than significant. However, it remains open for councillors to take additional steps to manage any perception of a conflict of interests.

#### **4.2B - Case studies/examples**

##### **Example 1: Secondary employment**

A local government building trades overseer prepares a report for his manager on allocating council plumbing work. He has a plumbing company that put in a bid, but was not selected.

*There is a conflict of interests because the overseer responsible for recommending the awarding of contracts is also competing to secure the work. In addition, he has not disclosed that personal interest. Secondary employment, with or without permission, can lead to a conflict of interests.*

*Under the Local Government Act 1993, all council staff must obtain the consent of the general manager for any secondary employment that relates to the business of council or might conflict with their council duties. The general manager in this case would be entitled to refuse consent. To put strict measures in place to prevent the overseer from having any role in contract work may not be enough to prevent the mismanagement of conflicts.*

## Example 2: Pecuniary interests

Note: Where a conflict of interests is pecuniary in nature, you must comply with the disclosure requirements of the Act.

A council has a practice of moving into the committee of the whole to enable councillors to freely discuss issues before them. During one of these times, councillors discuss a matter relating to the purchase of a property. One of the councillors is a property agent whose company is acting for the council in the transaction. The councillor participates in the discussion during the period while council is meeting as a committee.

When the council meeting is resumed, this councillor declares a pecuniary interest and leaves the room. The councillor does not believe that there is a pecuniary interest in the matter until there is a formal debate and vote on the matter.

*If the councillor has a pecuniary interest in the matter, within the meaning of section 442 of the Local Government Act 1993 and no exemption can be relied upon, then a pecuniary interest exists during the entire period the matter is being considered, including during the discussion when council meets as a committee.*

*This applies also to other parts of council meetings e.g. the public forum session held during the meeting.*

*This equally applies to councillor participation on advisory committees. Section 446 of the Act requires that members of a council committee, other than a committee that is wholly advisory, must disclose pecuniary interests in accordance with section 451. However, in PIT No 2/1998, Bennett, Staltare and Zappacosta, Griffith City Council, pages 26-28, the Tribunal found that section 446 of the Act only applies to lay members of wholly advisory committees and as such does not provide councillors with an exemption from disclosing pecuniary interests when participating on wholly advisory committees.*

*Section 451 requires that a councillor not only declare the nature of an interest in a matter before council for consideration, but must also not be present at, or in sight of, the meeting at any time during which the matter is being considered or discussed or voted on by the council or committee. The practice of allowing an affected councillor to make a statement before leaving a room is a breach of the provisions of section 451 of the Act.*

*This applies to committee meetings, advisory committee meetings, closed council and committee meetings.*

## Example 3: Development applications

*From time to time council staff lodge development applications with council. This may create problems, especially if the staff member works in the development assessment or planning areas of council.*

*In these circumstances there are a number of options that may be available to council to manage this situation:*

- *Council could outsource the assessment of the application*
- *A more senior member of staff could assess the application*
- *Council should restrict the staff member's access to information on the matter other than what they are entitled to as an ordinary applicant.*

#### Example 4: Political support

A local ratepayer has made a campaign donation to a group of local councillors through their official agent in the last 2 years. The ratepayer lodges a development application with council to build a block of units on the land she owns. The development is controversial and receives a lot of media attention.

*A potential conflict of interests could arise for a councillor, or group of councillors, when a campaign donor, who contributes financially to their election campaign, has a matter before the council for determination. The conflict of interests arises even when a donation is made through the official agent.*

*Where the donation exceeds \$1,000 and has been donated within the last 4 years, the councillors must declare a non-pecuniary conflict of interests, disclose the nature of the interest and have no further involvement in the matter by absenting themselves and not taking part in any debate or voting on the matter in accordance with section 451(2) of the Act.*

*In the circumstances where a donation is less than \$1,000 or the donation is made over 4 years ago, then the councillors would still need to consider whether or not a reasonable and informed person could perceive that a conflict of interests exists and take the appropriate action.*

*The councillors would also need to consider whether such a political donation gives rise to a reasonable perception of influence in relation to their vote.*

*If there is a conflict of interests then the councillors would need to determine whether or not it is significant. If the councillors had a close relationship with the donor, then it may be a significant non-pecuniary conflict of interests.*

*If the councillors consider that there is a non-pecuniary conflict of interests, but it is minimal, then the councillors would need to disclose the interest and its nature and provide an explanation of why further action is not required.*

#### Example 5: Selection processes

*Examples of appropriate action to resolve or avoid conflicts arising in job selection processes include:*

- If an applicant is a personal friend, or past or present close work colleague of a member of an interview panel, that member should disclose the relationship in writing to the other members of the panel (and in particular the independent member), at the time applications are reviewed.*
- If a person is in a relationship with a party to a dispute or statutory application process over which they have to arbitrate, then that person should disclose the relationship in writing to their supervisor or manager. Those duties should then be reallocated to another person who does not have a conflict.*
- If a relative, personal friend or business partner has an interest in or may benefit from a tender, contract or application that a person is involved in the assessment or approval of, that person should disclose the relationship in writing to their supervisor or manager. The person should then be removed from involvement in the process by reallocating those duties to another person who does not have a conflict.*

### Example 6A: Club membership

A councillor is a member of a club in a small community. The councillor is very active in the running of the club. While not an office holder, he is well known to all club members.

The club has recently submitted a development application to the council for a major extension of its facilities.

*In this instance, there may be a public perception that the councillor's activities with the club would make it difficult for the councillor to view the matter before the council as a representative of residents and ratepayers generally. This may meet the definition of a significant non-pecuniary conflict of interests. If so, the councillor should disclose his conflict of interests in the matter when it comes up for consideration. The councillor must then refrain from participating in council's discussion and voting on the matter. The councillor must leave the room when the vote is being taken to ensure that the vote is not recorded in the negative.*

### Example 6B: Club membership

A councillor is a member of a local registered club. However, she is not active in the club or involved with the management of the club. In this situation, the councillor merely enjoys the facilities of the club as a privilege of membership.

*In this example, should a matter relating to the club arise at council, it is appropriate that the councillor informs the council of her membership (i.e. declares a non-pecuniary conflict of interests that is less than significant). However, it is unlikely that her interest as a club member would influence her role as a councillor representing the view of residents and ratepayers generally. Therefore, she could participate in the decision-making process.*

*In both situations, the councillors have two different interests in the matters. The first is their interest as a councillor representing residents and ratepayers generally; the second is as club members who are keen to see the club prosper and provide better facilities for its members. There is nothing wrong with a councillor having community as well as civic interests, though there are times when these interests may be perceived as a significant conflict of interests.*

*The distinguishing features of examples 6A and 6B are that:*

- *The councillor's interests as a club member in example 6A are likely to influence his role as a representative of residents and ratepayers generally. This would make it difficult for him to be impartial; and*
- *The public perception of a lack of impartiality would be stronger in the first example particularly given the size of the community and the visibility of the councillor in the club's activities.*

*If a councillor is an office holder in a club or other organisation, the interest may constitute a pecuniary interest.*

Further case studies relating to conflict of interests can be found at:

- Case studies and examples, Under Careful Consideration: Key Issues for Local Government, 1997



#### **4.2C - Good practice suggestions**

- **Sponsorships**

Council officials must never ask for or receive any personal benefits from a sponsorship arrangement.

Sponsorships should not limit council's ability to carry out its range of functions fully and impartially or influence a council decision.

- **Caucus votes**

Binding caucus votes on matters is inconsistent with the obligation of each councillor to consider the merits of the matter before them. Political group meetings must not be used to decide how councillors should vote on matters like development applications where there are specific statutory considerations for each decision-maker to consider.

- **Former council officials**

Councillors and council staff must be careful in your dealings with former council officials and make sure that they do not give them, or appear to give them, favourable treatment or access to privileged information. Former council officials must not use, or take advantage of confidential information obtained in the course of their official duties that may lead to gain or profit. At the end of their involvement with council, they must:

- return all council property, documents or items (keys, mobile phones etc)
  - not make public or otherwise use any confidential information gained as a consequence of your involvement with council.
- **Staff political participation**

Council staff must ensure that any participation in political activities does not conflict with their primary duty as an employee to serve the council of the day in a politically neutral manner.

- **Senior adviser on conflicts of interests**

Councils should consider nominating a senior officer, establishing a panel or engaging a suitably qualified person, such as a solicitor or auditor, to provide objective advice to council officials on conflict of interests matters. For example, councils could work through their regional organisations to establish advisory services on a regional basis.

Advice would constitute guidance on the criteria to help make a decision and the range of options available to an individual. This advice should not be considered a legal opinion and council officials may need to obtain their own legal advice on the matter. The onus is on individuals to recognise circumstances where a conflict of interests may arise.

(Refer to the NSW Ombudsman Annual Report 2002-2003, page 38, for information on the establishment of a panel to provide advice on conflict of interests.)

- **Community representatives on council committees**

Councils often invite interested members of the community to join council committees. Usually the reason for their involvement is due to specific knowledge, experience and expertise in the business of the committee. Questions can arise as to whether this knowledge, experience and expertise gives rise to a pecuniary or non-pecuniary conflict of interests. This personal interest in the broad issues is generally well understood and would not need to be disclosed.

If the committee is not “wholly advisory”, that is, it exercises some functions of council, then delegates’ pecuniary interests would need to be dealt with in accordance with section 451 of the Act. If the committee is a “wholly advisory” committee, then in the case of pecuniary interests, delegates are exempt from the pecuniary interest provisions of the Act. (section 446)

If a non-pecuniary conflict of interests arises because a community member has a private interest in a specific item of committee business, community representatives will be expected to comply with the conflict of interest provisions of council’s code of conduct. This requires that, as a minimum, community representatives disclose the nature of any conflict. For example, this may be an item that specifically relates only to the street where they live or a business they are involved in and not to a broader issue.

#### **4.2D - Suggested policy requirements**

1. A policy on secondary employment.
2. A policy on managing private sector sponsorship.

#### **4.2E - Key legislation**

- *Local Government Act 1993*, Chapters 11 and 14 – (these sections refer to how councils are staffed and the honesty and disclosure of interests.)
- *Local Government (General) Regulation 2005*, Part 8

#### **4.2F - Resources**

DLG, June 2006, *Pecuniary Interest Guidelines*.

ICAC, 2007 *Corruption risks in NSW development approval processes*

ICAC, *Practical Guide to Corruption Prevention*.

NSW Ombudsman, 2003, *Fact sheet no 3, Conflict of Interests*.

NSW Ombudsman, 2003, *Good Conduct and Administrative Practice: Guidelines for state and local government*.

NSW Ombudsman, 2004, *Pre-requisites to avoid or manage conflict of interests*.

### **4.3 Personal Benefit (Part 2 Model Code, section 8)**

#### ***4.3A - Introduction and interpretive information***

As a general principle, council officials should not accept any gifts or benefits that give rise to a real or perceived influence in relation to their decision-making role.

Council officials, at some stage in their career may be offered a gift or benefit in the course of their work. The gift or benefit could be offered innocently in good faith or could be an attempt to influence. Feelings of obligation can arise if council officials accept a gift or benefit. Once such a gift is accepted, a council official can be compromised. Individuals attempting to corrupt council officials often start with small inducements that appear to have no improper motive behind them.

Political donations or contributions that are subject to the provisions of the relevant election funding legislation are not considered to be gifts or benefits for the purposes of section 8 of the Model Code.

Within the context of the Model Code gifts and benefits are defined as either *'token'*, or *'gifts and benefits of value'*. Those gifts and benefits that can generally be regarded as *'token'* are set out in section 8.1 of the Model Code.

It is important to recognise that gifts and benefits that have more than a token value include tickets to major sporting events (such as state or international cricket matches or matches in other national sporting codes (including the NRL, AFL, FFA, NBL)), corporate hospitality at a corporate facility at major sporting events, discounted products for personal use, the frequent use of facilities such as gyms, use of holiday homes, free or discounted travel. In addition, council officials should be mindful that tickets to major cultural events may be considered of value, such as, tickets to major musical productions.

Gifts and benefits can create obligations and expectations. Accepting "freebies" comes with a risk that they will corrupt the receiver. In the case of tickets to major events, if the event is worthwhile from a civic leadership perspective, then councils could consider paying for councillors and/or staff to attend. In the case of councillors, this may be a matter that is dealt with in council's expenses and facilities policy made in accordance with section 252 of the Act.

Councils must establish a gifts register for the recording of the receipt of gifts and benefits by councillors and council staff. Ideally, this register should also record the receipt of token gifts and any gifts that are refused.

Where you receive a gift or benefit of more than token value that cannot reasonably be refused or returned, you should promptly disclose this to your supervisor, the Mayor, or the general manager who must record the gift or benefit in council's gift register. The gift or benefit must be surrendered to council, unless the nature of the gift or benefit makes this impractical.

Corruptly receiving a gift or benefit is an offence under both the common law and NSW legislation. The offence extends to the offering or seeking of a gift or benefit. (see section 8 Model Code)

## 4.3B - Case studies/examples

### Example 1: Acceptance of a gift of value

The President of a football club based in the council's area offers two tickets to a councillor and his wife to join him in the President's box to watch the grand final between the club's first grade team and their opponents. The football club is a member of the NRL. The councillor is a keen football fan and it has been years since the team was in the grand final. He accepts the tickets, attends the match and has a pleasant afternoon. Even though no council business is discussed during the night the councillor and his wife were invited because of his public role and the tickets were addressed to him using his title of councillor.

Several weeks later the football club lodges a controversial DA with the Council. The club wants to extend its premises and increase the number of poker machines.

*Tickets to major sporting events, such as an NRL grand final, are considered to be gifts of value (clause 8.2 of the Model Code) and should be refused. Although the councillor was not lobbied at the football game he realises that by accepting the tickets and the President's hospitality he has placed himself in a position where there is the appearance that the football club has attempted to influence him.*

### Example 2: Gifts, benefits and hospitality

A regular supplier offers the council's purchasing officer a free weekend for two at a beach resort.

*The officer's impartiality when dealing with the supplier would be compromised if he or she accepts the offer. Even if this officer personally feels that s/he would not be influenced by the gift, s/he would be in breach of the code of conduct if the offer were accepted.*

Planning and building staff are regularly offered alcohol, food, tickets to major sporting events and free lunches by developers, builders, project managers and suppliers. Staff sometimes accept these gifts without declaring them and argue that they are in return for providing good service and are an accepted way of "doing business".

*Again, this will be perceived to have compromised the impartiality of the staff concerned and breaches the code of conduct.*

*In this situation staff should, in the first instance, refuse any gift offered. If staff cannot reasonably refuse or return the gift, then they should identify whether or not the gift has more than a token value as defined within Section 8 of the code. If so, it must be disclosed promptly to the supervisor or the general manager. The recipient, supervisor, or general manager must then ensure that any gifts or benefits of more than token value that are received are recorded in a Gifts Register. Council may then determine how these gifts are dealt with and could, for example, donate specific items to charity.*

*Some councils have procedures in place that require the recording of the receipt of all gifts in the Gifts Register, even if they are considered token. Information on what happens with these gifts is also recorded in the Gifts Register. This provides a high degree of transparency and can be used to monitor these activities.*

### Example 3: Acceptance of gifts and bribery

A local council employee is involved in a series of inspections on a building site. During the inspections, the developer offers the employee numerous gifts including alcohol and a present for the employee's new born child. The employee accepts the gifts as he feels they are offered as unconditional and genuine tokens of appreciation for his work, especially as the inspection involved a number of lengthy tasks.

The employee believes he is not compromised by the gifts and eventually makes a recommendation that is not in the developer's interests. After the recommendation is made, the developer complains to the council about the employee accepting the gifts.

*Although the employee accepts the gifts in good faith, he nevertheless places himself in a vulnerable position. While each of the gifts is of modest value they could be readily be interpreted as having more than a token value. The developer is able to manipulate the situation to allege the employee has accepted bribes.*

*The employee's acceptance of the gifts without disclosing them to the supervisor, or the general manager could also be used as circumstantial evidence of bribery. The employee could not rely on the fact that he made a decision he would have made, regardless of the gifts, as a defence to bribery.*

### Example 4: Acceptance of gifts and influence

A council's information technology manager attends two meetings with potential suppliers. During the first meeting the suppliers serve tea, coffee and biscuits. The second meeting is held at a restaurant and the suppliers pay for the manager's three course meal.

*Both of the meetings arguably provide the manager's council with a benefit, namely the opportunity to discuss the supplier's products. Despite this, a contrast can be drawn between the meetings.*

*In the first, the refreshments are only modest in nature and consequently do not create the impression that an attempt is being made to gain the manager's favour. In the second, the nature of the lunch creates the impression that an attempt is being made to compromise the manager's impartiality. The damage of this perception far outweighs any benefit associated with the manager's attendance.*

Some additional case studies relating to gifts and benefits can be found at:

- ICAC, 2006, *Managing Gifts and Benefits in the Public Sector – Toolkit*

#### **4.3D - Suggested policy requirements**

1. Councils should develop a policy and procedures to guide and assist council officials in dealing with gifts or benefits. This policy may provide an explanation of what constitutes token value and information on gift registers and the procedure for registering a gift or benefit. An explanation of how to develop a policy is contained in:

ICAC, 2006, *Managing Gifts and Benefits in the Public Sector – Toolkit*

2. Councils should conduct regular reviews of declarations of gifts and benefits in the Gifts Register to identify trends and any other issues. This should form part of the procedures developed by council.

3. A hypothetical case study on the acceptance of gifts is provided in Chapter 4 of the ICAC Practical Guide to Corruption Prevention Manual and is a useful exercise to consider using in conjunction with training programs.

#### **4.3E - Key legislation**

- *Crimes Act 1900* (NSW), sections 249B and 249J
- Local Government (General) Regulation 2005, clause 184

#### **4.3F - Resources**

ICAC, 2006, *Managing Gifts and Benefits in the Public Sector – Toolkit*

ICAC, *Practical Guide to Corruption Prevention*.

## **4.4 Relationship between council officials (Part 2 Model Code, section 9)**

### ***4.4A - Introduction and interpretive information***

All councillors should be aware of the importance of effectively managing the interaction between councillors and staff in accordance with the requirements of the Local Government Act.

Councillors have a dual role:

- one as a member of council's governing body
- one as an elected representative.

The councillors' role is a strategic one. They are responsible for making policy decisions that relate to the exercise of the Council's regulatory functions, strategic direction, optimum allocation of resources and monitoring the compliance and performance of council.

The role of the general manager and staff is operational. They are responsible for the implementation of the policies and programs set by the governing body that relate to the exercise of council's regulatory functions, strategic direction or allocation of resources. The general manager (or staff with delegated authority) is also responsible for determining and implementing policies that relate to the day to day management of council (eg disciplinary policies and leave policies).

There needs to be personal interaction between councillors and relevant staff, particularly regarding access to and provision of information, to effectively integrate policy-making and service delivery. However, in general, communication between councillors and staff should be restricted to matters of policy and not day to day management which is the responsibility of the general manager. Normally, such communication should be through the general manager or staff approved by the general manager.

The Model Code recognises that it is appropriate for councillors and staff to discuss policy issues that relate to the exercise of a council's regulatory functions, strategic direction or allocation of resources. Industrial policy is one example of a policy area that might be discussed. In this context, it may also be appropriate for councillors to discuss policies with staff organisations.

The Model Code does not prevent councillors and staff communicating. It is a normal part of community life that council staff and councillors would be, from time to time, present at the same social or community events. The Model Code does not prevent this. The Model Code governs the interactions relating to council business while councillors and staff are undertaking their public duties.

At clause 9.7, the Model Code lists interactions between councillors and council staff that are considered inappropriate.

In order to effectively manage these interactions, it is suggested that councils develop a policy to provide guidance on the interactions between council officials.

Council may appoint a councillor liaison officer, or put in place a formal system, to facilitate and co-ordinate councillor requests for information or action.

#### **4.4B - Case studies/examples**

##### **Example 1: Attempting to improperly direct/influence staff**

A councillor is a friend of a local surveyor who has a number of clients with development applications that are dealt with by council through its Development Approval Committee. Councillors rarely make decisions on development application matters. The councillor and surveyor often discuss the development applications currently being managed by the surveyor's agency. On many occasions the councillor rings the council staff member dealing with his friend's application to express a view on how it should be assessed. The councillor is often quite insistent that matters be dealt with more quickly. The staff members feel intimidated and pressured to support the applications.

The councillor believes that this action is appropriate as the councillor does not direct staff as to the outcome of the application assessment process. Council staff are obliged to assess development applications in accordance with the applicable legislation. For example, section 79C of the *Environmental Planning and Assessment Act 1979* provides a list of matters for consideration in determining a development application.

*The actions of the councillor are inappropriate. Section 352 of the Local Government Act provides that councillors must not direct or influence or attempt to direct or influence staff in the performance of their duties. The fact that the councillor rings the staff member who is dealing with his friend's applications to discuss the progress on these applications is also inappropriate. Contact with staff on day to day matters must be in accordance with the policy and procedures that are established by council to govern these interactions.*

*The staff member should advise the general manager. The general manager should intervene to stop the councillor from contacting staff members directly where this is inappropriate. The general manager should encourage staff to report such approaches.*

#### **4.4C - Good practice suggestions**

There are some questions council officials can ask to help decide whether or not contact between councillors and council staff is appropriate. A list of these questions can be found at:

Councillors' access to information and their interaction with staff, page 23 Under Careful Consideration: Key Issues for Local Government, March 1997, ICAC/Department of Local Government.



#### **4.4D - Suggested policy requirements**

1. Councils could maintain a register of contacts. This information can be used to monitor councillor staff contacts. Maintaining a contacts register can be helpful for staff and councillors, it can also assist in determining whether further controls are needed.
2. Councils should develop more detailed policy and procedures to govern the interaction of staff and councillors.

#### **4.4E - Key legislation**

- *Local Government Act 1993*, Chapter 9 Part 2, Chapter 11, particularly section 352, and Chapter 12 Part 2 (these sections of the Act relate to how councils are established, how councils are staffed and how councils operate.)
- *Local Government (General) Regulation 2005*

## **4.5 Access to information and council resources (Part 2 Model Code, section 10)**

### **4.5A - Introduction and interpretive information**

As a general principle, council officials should only use information for the purposes of undertaking their public duties. Any misuse of official information for personal gain or benefit is a serious matter. This type of misuse of information may constitute corruption.

The general manager and public officer are responsible for ensuring that members of the public, councillors and administrators can gain access to the documents available under section 12 of the *Local Government Act 1993*.

Councils should encourage public access to information about their activities. A model policy on access to information has been produced by Local Government Managers Australia (NSW) in association with the NSW Ombudsman and Privacy NSW. Access to information could be provided in accordance with these guidelines.

Any information and services that are publicly available should also be available to councillors. In addition, the council should provide councillors with access to sufficient information to enable them to perform their role effectively.

Council officials, including councillors, must be scrupulously honest in the use of all council resources including, but not limited to, human resources, motor vehicles, information, telecommunications equipment, internet, computer facilities, website, stationery and printing facilities. Council resources must not be used for election or re-election purposes.

Councillors need to familiarise themselves with the policy concerning the payment of expenses incurred or to be incurred by, and the provision of facilities to, the mayor, the deputy mayor (if there is one) and the other councillors in relation to discharging the functions of civic office, that is made in accordance with section 252 of the Act.

It is important that the community has confidence that information acquired by the council will only be used for council purposes. Confidential information must only be used for council purposes. The *Privacy and Personal Information Protection Act 1998* ensures that where a public agency such as a council collects information about a person it does so in a manner that is transparent.

### **4.5B - Case studies/examples**

#### **Example 1: Use of council information for personal or business interests**

*Many councillors have business and professional interests in the local government area they represent. Conflicts can arise if their public positions allow them access to information and opportunities that could be used to advance their personal and business interests.*

*For example, a councillor may be tempted to influence an application to set up a new business in the town if his own business could lose custom as a result. The councillor should be careful to manage his personal interest appropriately. In this case, the councillor should ensure that he has no involvement in the matter.*

## Example 2: Use of council equipment

A local resident approaches a councillor with information about his neighbour, who is a council employee. He reports that the previous weekend he saw council equipment being used to dig up his neighbour's driveway.

The councillor reports the matter to the general manager. He discusses the matter with one of the council's internal auditors. The auditor decides to interview the employee, who has worked for council for 20 years and has an excellent work record. At the interview the employee admits that he used the equipment the previous weekend. He says he didn't realise it was wrong to do this as he was only 'borrowing' the equipment to do work on his own property. He did the work in his own time and not as a second job for which he got paid.

The auditor reports back to the general manager and, as this was a one-off offence, recommends that no formal disciplinary action be taken.

*In this case it would be appropriate if the general manager counsels the employee on the use of council resources and gives him a copy of council's code of conduct and policy. The council could also run a series of awareness-raising sessions for staff.*

## Example 3A: Forms of misuse - staff

*Forms of misuse which appear to be relatively common include:*

- *staff using mobile phones excessively for private purposes without re-imbursment of costs*
- *internet services being used extensively for non-work purposes*
- *unauthorised use of minor plant or equipment*
- *"left-over" materials and low value assets being claimed by staff without payment or other proper arrangement for the disposal, re-use or recycling of the materials being in place.*

## Example 3B: Forms of misuse - councillors

*Forms of misuse of council resources by councillors include the use of:*

- *council letterhead for re-election material*
- *council staff to prepare information for re-election*
- *council mobile phones for private calls not related to public duties*
- *internet services provided by council at home or council laptops to access inappropriate websites*
- *council resources to attend political fundraising events.*

#### Example 4: Information security

A staff member goes to lunch leaving sensitive papers about a proposed industrial development on her desk. Another staff member sees the papers as he is returning some folders to her desk. He discusses what he has seen with other staff. One of the other staff members has previously notified that he has a conflict of interest in the development as he may be an objector to the development. His supervisor has been particularly careful to ensure that he did not have access to any information in relation to the development.

*It is important to take appropriate steps to secure confidential or sensitive information. The staff member who was assessing the information should have known that the matter she is dealing with is sensitive and should have taken the necessary steps to secure the information before leaving her desk.*

*The staff member who saw the information should have maintained the confidentiality of the information and not discussed this with other staff members.*

#### 4.5C - Good practice suggestions

- **Contractors**

Contracts with contractors, consultants, agents or advisers should specify that such persons are under an obligation not to use confidential information in ways which are an abuse of their role, function or position, or which put them in a position which is inconsistent with their legal and professional obligations to the council.

- **Business investments**

Council staff should avoid investments or business activities in relation to which their potential access to confidential information might reasonably be perceived as giving them an unfair or improper advantage over other people.

Councillors also need to be aware of this issue and manage their access to confidential or commercially sensitive information appropriately.

#### 4.5D - Suggested policy requirements

1. Councils should consider developing more detailed guidelines and policies on:

- the procedures councillors should use to access council information
- the use of council resources by council officials, including the recovery of costs
- the use of plant by council staff
- the disposal of surplus minor assets
- the use of communication devices (see clause 4 below).

2. The *Privacy and Personal Information Protection Act 1998* provides obligations on councils, including the development of a privacy management plan. In addition, a Privacy Code of Practice for Local Government took effect from 1 July 2000 and councils must comply with this. A copy of this is available on the Department's website at [www.dlg.nsw.gov.au](http://www.dlg.nsw.gov.au)

3. Councils should consider developing a policy to provide guidance on the adequate and timely provision of information to councillors in relation to matters with which they are dealing. This policy could also provide procedures to keep councillors adequately informed of matters that may be the subject of negotiations and actions of committees of council under delegated authority.

The policy should also consider the issue of councillor access to and use of:

- confidential information
- commercial in confidence information
- information on business competitors.

This policy could be based on the information contained in the publications:

- Good Conduct and Administrative Practice: Guidelines for state and local government
- Under Careful Consideration: Key Issues for Local Government.

4. Councils should require council officials to sign an agreement for the use of email and the internet. The ICAC publication '*No Excuse for Misuse*' provides a model policy for the use of communication and information devices in councils. Alternatively, councils can use the NSW Department of Premier and Cabinet 'Policy and Guidelines for use by Staff of Employer Communication Devices' as a guide. This document can be accessed on the Department of Premier and Cabinet website at [www.dpc.nsw.gov.au](http://www.dpc.nsw.gov.au).

5. Under section 252 of the *Local Government Act 1993*, council must adopt a policy concerning the payment of expenses incurred or to be incurred by, and the provision of facilities to, the mayor, the deputy mayor (if there is one) and the other councillors in relation to discharging the functions of civic office. Guidelines to assist councils to prepare such a policy are available on the Department's website. Council's code of conduct and the section 252 policy should be consistent and referenced to each other.

#### **4.5E - Key legislation**

- *Local Government Act 1993*, sections 11, 12, 13, 252, 664, 665 and 666 (these sections of the Act refer to access to information, what expenses and facilities may be paid or provided to councillors and the disclosure and misuse of information.)
- *Freedom of Information Act 1989*
- *Privacy and Personal Information Protection Act 1998*
- *Health Records and Information Privacy Act 2002*
- *State Records Act 1998*

#### **4.5F - Resources**

Daly, M, July 2004, *Liverpool City Council Public Inquiry: Volume 3*.

DLG, 2007, *Guidelines for the payment of expenses and provision of facilities for Mayors and Councillors for Local Councils in NSW*.

DLG, 2000, *Model Privacy Management Plan for Local Government*.

DLG, 2000, *Privacy Code of Practice for Local Government*.

ICAC, 2002, *No Excuse for Misuse: preventing the misuse of council resources*.

ICAC/Department of Local Government, March 1997, *Under Careful Consideration: Key Issues for Local Government*.

LGMA, 2008, *Access to Information policy and guidelines*.

NSW Ombudsman, 2003, *Good Conduct and Administrative Practice: Guidelines for state and local government*.

## 4.6 Reporting breaches (Part 2 Model Code, section 11)

### 4.6A - Introduction and interpretive information

Any person, whether or not a council official, may make a complaint alleging a breach of the code of conduct. As council officials are individually accountable for their acts and omissions in relation to their council duties, it is therefore important that council officials clearly understand all of the requirements of their council's code of conduct in undertaking their work or civic responsibilities.

For a code of conduct to be effective and meaningful it must be supported by appropriate reporting of breaches and appropriate sanctions for breaches. Council officials and the public need to have confidence that the code will be complied with and breaches will be dealt with appropriately.

Breaches of a code of conduct by council officials may result in disciplinary action, legal action or in other sanctions being imposed, depending on the nature and severity of the breach.

The Model Code makes it clear that suspected breaches of the code of conduct should be reported in the following ways:

Officer	Report to
Councillors, members of staff of council (excluding the general manager) or delegates	general manager in writing
general manager	Mayor in writing
Administrator	Minister for Local Government in writing

Councillors are expected to refrain from making allegations at council meetings.

### 4.6D - Suggested policy requirement

1. Councils should develop reporting procedures for dealing with allegations of breaches of the code. This information could be either included in the code of conduct or provided in a separate policy.

The procedures should be consistent with internal reporting procedures under the *Protected Disclosures Act 1994*. The purpose of that Act is to ensure that staff who wish to make disclosures under the legislation receive protection from reprisals, and that the matters raised in the disclosures are properly investigated.

2. Councils should adopt a separate internal reporting policy for the making of protected disclosures. The *Protected Disclosures Act 1994* relates to the reporting of corrupt conduct, maladministration and serious and substantial waste in the public sector. Any such policy should be consistent with the reporting procedures under the council's code of conduct. A model internal reporting policy for councils can be found at:

- NSW Ombudsman, 5<sup>th</sup> Edition, 2004, *Protected Disclosures Guidelines*, Annexure 2.

3. Where council staff agreements do not provide for sanctions for breaches of the code of conduct, then council may consider including the following list of possible sanctions in its code of conduct:

- counselling the staff member
- documentation on the personnel file for a period of time depending on the nature of the breach of the code
- disciplinary action such as demotion, foregoing the capacity to seek promotion, or to act in a higher duty capacity
- dismissal from employment
- prosecution for any breach of law which could lead to dismissal and recovery of costs/damages suffered by council and/or imprisonment.

#### **4.6E - Key legislation**

- *Local Government Act 1993*
- *Protected Disclosures Act 1994*
- *Independent Commission Against Corruption Act 1988*
- *Ombudsman Act 1974*

#### **4.6F - Resources**

ICAC, 2003, Fact-Finder, *A 20-step guide to conducting an inquiry in your organisation*.

NSW Ombudsman, 2nd edn. 2004, *The Complaint Handler's Toolkit*.

NSW Ombudsman, 2003, *Good Conduct and Administrative Practice: Guidelines for state and local government*.

NSW Ombudsman, 2004, *Investigating complaints: A manual for investigators*.

NSW Ombudsman, 5th edn. 2004, *Protected Disclosures Guidelines*.



## **5 Complaint handling procedures (Part 3 Model Code, sections 12- 14)**

### **5.1 Handling complaints**

The general manager is the person responsible for receiving complaints alleging a breach of the code of conduct by councillors, council staff, council delegates and council committee members.

The Mayor is the person responsible for receiving complaints alleging a breach of the code of conduct by the general manager.

The Model Code prescribes 3 different complaint handling procedures depending on whether the person the subject of the complaint is a:

- staff member, delegate or member of a council committee
- general manager
- councillor.

All 3 procedures provide for an initial assessment of the complaint. This should be undertaken as soon as practicable. In addition, conduct review committees or sole conduct reviewers are expected to undertake an initial assessment of complaints that are referred to them.

The purpose of the initial assessment is to determine the most appropriate course of action for handling a complaint. The assessment criteria provided at clause 13.1 of the Model Code sets out the grounds that must be taken into account in determining the complaint handling course to be taken.

The complaint handling procedures in section 12 of the Model Code requires that complainants are informed in writing of the outcome of their complaint. Complainants must be advised when:

- enquiries are not to be made into the complaint and why
- the complaint is to be resolved by use of alternative strategies
- the complaint is to be referred to another body or person
- the conduct review committee/sole conduct reviewer has made its findings, the nature and reasons of those findings.

If complaints are to be declined, complainants should be given clear reasons for this.

The Minister for Local Government is the person responsible for receiving complaints alleging a breach of the code of conduct by Administrators. Complaints are then assessed in accordance with the Department's complaint handling procedures, preliminary enquiries undertaken where appropriate and advice provided to the Minister in relation to any further action that may be required. Any sanctions for a breach of the code of conduct will be decided by the Minister, following enquiries made by the Department.

## **5.2 Appointment of conduct reviewers**

The council must appoint at least 3 people who are independent, qualified persons of high standing in the community to act as conduct reviewers. More than 3 people can be appointed if council feels that it is likely that there will be circumstances where one or more conduct reviewers are not available to participate in a matter.

When making decisions to appoint conduct reviewers, councils should consider whether or not these persons are familiar with the requirements of natural justice. Councils should also consider providing conduct reviewers with appropriate training to support their position.

The term of appointment of conduct reviewers should be determined by council. It is up to council to decide whether members of the committee have their out of pocket expenses paid only or they are paid a fee for service.

## **5.3 Referral of complaints to a conduct review committee/sole reviewer**

The Mayor or the general manager makes the determination as to whether a complaint should be reviewed by the Committee or a sole reviewer.

The number of persons who will undertake the review of an allegation of a breach of the code of conduct will depend on the nature, complexity and seriousness of the allegations. For example when a complaint is referred to the general manager, if it is a complex matter, he/she may opt to involve all members of the review committee. If the general manager assesses the alleged breach is a reasonably straightforward matter, the general manager may determine to refer the complaint to a sole conduct reviewer. The general manager then chooses, from the persons appointed by council, a reviewer with expertise in relation to the nature of the conduct complained about.

If a conduct reviewer cannot participate in a matter because of a conflict of interests, or issues of a reasonable apprehension of bias, then the general manager or Mayor selects another person to be a member of the conduct review committee or to act as a sole conduct reviewer from those appointed by council.

Where the general manager is the complainant, the general manager must refer the matter to a conduct review committee, consisting of at least 3 members, as per clause 12.9(c) and (d) of the Model Code.

Where the Mayor is making a complaint about the general manager, the Mayor must refer the matter to a conduct review committee, consisting of at least 3 members, as per clause 12.11(c) and (d) of the Model Code.

It is implicit that, for the general manager or Mayor to make such a complaint, the matter will be significant and/or serious. The conduct review committee is expected to assess the complaint in accordance with the criteria as provided in clauses 13.1 and 13.3 of the Model Code.

#### **5.4 Operations of the conduct review committee/sole reviewer**

The primary role of the conduct review committee/reviewers is to establish the facts of the allegation.

The function of the conduct review committee/reviewer, its composition, operating guidelines, and the criteria it must take into account in determining whether or not to enquire into an allegation, are set out in sections 13 and 14 of the Model Code of Conduct. The relevant parts of the operating guidelines also apply to sole conduct reviewers.

The conduct review committee/sole conduct reviewer must undertake its activities in accordance with the operating guidelines provided in the Model Code (section 14) and complaint handling provisions in section 12.

The general manager or the Mayor (in the case of a complaint against the general manager) attends meetings of the conduct review committee when invited but acts in an advisory capacity only. They do not take part in discussions determining the decisions of the committee.

The operating procedures for conduct review committees/sole reviewers require proper records of deliberations to be kept. This includes, but is not limited to, records of meetings, correspondence and evidence. This information becomes the official records of council. Review committees/reviewers should keep sufficient records to support the process that has been undertaken in handling a complaint should a review of the process be required.

Where the conduct review committee/sole conduct reviewer makes enquiries or causes enquiries to be made into a matter, it must report its findings in writing to the council on completion of these deliberations.

The subject(s) of the complaint must be provided with a reasonable opportunity to respond to the allegations before any findings are made.

The guidelines for the conduct review committee/reviewer identify that allegations of a pecuniary interest should be reported to the Director General of the Department of Local Government and will not be dealt with by conduct reviewers.

#### **5.5 Reports from conduct review committees/sole conduct reviewers**

The conduct review committee/sole conduct reviewer should be mindful that there may be a need to protect the identity of the person making the complaint when preparing the report to council.

The report should be a summary of the enquiries undertaken while providing sufficient information for the council to make a determination as to whether the councillor or the general manager has breached the code of conduct. As a minimum the report should contain:

- The nature of the complaint and the standard of conduct that is alleged to have been breached.
- The process undertaken by the conduct review committee/conduct reviewer in assessing and enquiring into the complaint.
- The facts of the matter.
- The findings and the reasons for those findings.
- Any recommendations to council (this now includes any recommendations for a revision of council's policies, procedures and/or the code of conduct).

The recommendations to council may include that it take action to apply a sanction. The only sanctions that council can apply are:

- censure a councillor for misbehaviour
- require a councillor or general manager to apologise to any person adversely affected by the breach
- counsel the councillor or general manager
- make public findings of inappropriate conduct
- prosecute for any breach of the law.

The report will generally be dealt with in open session of council. Council can only close a meeting to the public if the matter is one that meets the requirements of section 10A(2) of the Act. In most cases, a report from the conduct review committee/sole conduct reviewer will not meet those requirements.

The primary role of the conduct review committee/reviewer is to establish the facts of the allegation. The conduct review committee/reviewer will make findings of fact and may make recommendations that council takes action.

The council is the appropriate body to determine whether or not a breach of the code has occurred and has the discretion as to whether or not a sanction is applied. Councillors need to ensure that there is no re-hearing of the evidence when debating the report from the conduct review committee/reviewer. The debate should focus on the outcome of the reviewers' enquiries and the appropriateness of any sanctions to be applied where there is a finding of a breach of the code of conduct.

## **5.6 Annual reporting of complaints**

The general manager is required to report annually to council on code of conduct complaints.

Clause 12.33 of the Model Code provides the minimum information that should be included in that report.

General managers should be mindful that there may be a need to protect identity of persons making complaints when preparing these reports

## **5.7 Councillor Misbehaviour**

The Act and the Model Code of Conduct outline the actions or omissions that will amount to misbehaviour by a councillor. This includes the failure to comply with

applicable requirements of council's code of conduct, as well as acts of disorder that are committed during council or committee meetings.

The Model Code of Conduct provides for a council to impose sanctions for a breach of the code of conduct, including formal censure of a councillor for misbehaviour. However, this power should not be seen as a way of stifling proper process and debate at council meetings, nor of preventing minority representatives from putting forward their views on matters before council.

The Act requires that a motion for censure must follow the usual notice requirements and to state the grounds on which the council is satisfied that the councillor should be censured. This should follow enquiries into the matter by council's conduct review committee/reviewer and the consideration of the conduct review committee/reviewer's findings and recommendations for action by council.

Councils should ensure that they have complied with the procedures identified in section 440I(2) of the *Local Government Act 1993* before they refer a matter to the Director General.

A council can refer a matter to the Director General only if it has already formally censured the councillor, on one or more occasions depending on the seriousness of the behaviour, or expelled the councillor from a meeting because of the relevant incident of misbehaviour. In its referral to the Director General council must provide the Department with evidence that these requirements have been met together with a copy of any report of council's enquiries into the matter and all other relevant evidence.

If a council is requesting suspension of a councillor for misbehaviour, as provided in section 440H, then it must formally resolve that it believes that grounds may exist that warrant the councillor's suspension and provide a copy of that resolution with its referral.

The Director General of the Department of Local Government may suspend a councillor for a period of up to one month where he finds that a councillor's misbehaviour is of a sufficiently serious nature to warrant suspension. In certain circumstances the Director General may refer the matter to the Local Government Pecuniary Interest and Disciplinary Tribunal which may suspend a councillor for longer periods.

The ICAC, Ombudsman and Director General retain the power to act on misbehaviour allegations including a breach of the council's code of conduct regardless of any council enquiries or finding.

## 6 Statutory Requirements

Section 440 of the *Local Government Act 1993* requires that every council must adopt a code of conduct to be observed by councillors, members of staff of council and delegates of the council. A council must, within 12 months after each ordinary election, review its adopted code of conduct and make such changes as it considers appropriate and are consistent with section 440.

Section 440 states:

1. *The regulations may prescribe a Model Code of Conduct (the **Model Code**) applicable to councillors, members of staff of councils and delegates of councils.*
2. *Without limiting what may be included in the Model Code, the Model Code may:*
  - (a) *relate to any conduct (whether by way of act or omission) of a councillor, member of staff or delegate in carrying out his or her functions that is likely to bring the council or holders of civic office into disrepute, and*
  - (b) *in particular, contain provisions for or with respect to conduct specified in Schedule 6A.*
3. *A council must adopt a code of conduct (the **adopted code**) that incorporates the provisions of the Model Code. The adopted code may include provisions that supplement the Model Code.*
4. *A council's adopted code has no effect to the extent that it is inconsistent with the Model Code as in force for the time being.*
5. *Councillors, members of staff and delegates of a council must comply with the applicable provisions of:*
  - (a) *the council's adopted code, except to the extent of any inconsistency with the Model Code as in force for the time being, and*
  - (b) *the Model Code as in force for the time being, to the extent that:*
    - (i) *the council has not adopted a code of conduct, or*
    - (ii) *the adopted code is inconsistent with the Model Code, or*
    - (iii) *the Model Code contains provisions or requirements not included in the adopted code.*

*6. A provision of a council's adopted code is not inconsistent with the Model Code merely because the provision makes a requirement of the Model Code more onerous for persons required to observe the requirement.*

*7. A council must, within 12 months after each ordinary election, review its adopted code and make such adjustments as it considers appropriate and as are consistent with this section.*

*8. Nothing in this section or such a code gives rise to, or can be taken into account in, any civil cause of action, but nothing in this section affects rights or liabilities arising apart from this section.*

## 7 Definitions

The following definitions are used in these guidelines:

the Act	the <i>Local Government Act 1993</i>
act of disorder	has the same meaning as in clause 256 of the Local Government (General) Regulation 2005
code of conduct	means the relevant council's adopted code of conduct
conduct review committee	a committee of three or more persons independent of council who are selected from those appointed by council to review allegations of breaches of the code of conduct by councillors or the general manager in accordance with the procedures set out in Sections 12, 13 and 14.
conduct reviewer	a person independent of council who is solely selected from those appointed by council to review allegations of breaches of the code of conduct by councillors or the general manager in accordance with the procedures set out in Sections 12, 13 and 14.
conflict of interests	a conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty.
council official	includes councillors, members of staff of council, administrators appointed under section 256 of the Act, members of council committees, conduct reviewers and delegates of council.
delegate of council	a person or body, and the individual members of that body, to whom a function of council is delegated.
designated person	has the same meaning as in section 441 of the Act
misbehaviour	has the same meaning as in section 440F of the Act
Model Code	means the Model Code of Conduct for Local Councils in NSW, June 2008
pecuniary interest	means 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. ( <i>section 442</i> )



non-pecuniary interest	means private or personal interests the council official has that do not amount to a pecuniary interest as defined in the Act. These commonly arise out of family, or personal relationships, or involvement in sporting, social or other cultural groups and associations and may include an interest of a financial nature.
personal information	information or an opinion about a person whose identity is apparent, or can be determined from the information or opinion.
person independent of council	a person who is not an employee of the council, has no current or ongoing contractual relationship with council in the nature of a contract for services, retainer or contract for the provision of goods of any kind, or is not an employee of any entity with such a contractual relationship.
significant non-pecuniary conflict of interests	means where a matter does not raise a pecuniary interests but involves: a. a relationship between a council official and another person that is particularly close, for example, parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse, current or former spouse or partner, de facto or other person living in the same household b. other relationships that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship c. an affiliation between the council official and an organisation, sporting body, club, corporation or association that is particularly strong.

References to legislation sections in the Model Code of Conduct and these Guidelines are references to sections in the *Local Government Act 1993*.

## 8 References

### **NSW Ombudsman resources:**

*Conflict of Interests: Public Sector Agencies fact sheet No 3*, July 2003.

*Good Conduct and Administrative Practice: Guidelines for state and local government*, August 2003.

*Protected Disclosures Guidelines*, 5th Edition, 2004.

*Pre-requisites to avoid or manage conflict of interests*, 2004

*The Complaint Handler's Toolkit*, 2nd Edition, 2004.

Website: [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)

### **Independent Commission Against Corruption resources:**

*Codes of Conduct: The next stage*, March 2002.

*Corruption risks in NSW development approval processes- Position Paper*, September 2007.

*Fact-Finder, A 20-step guide to conducting an inquiry in your organisation*, 2003.

*Lobbying Local Government Councillors*, 2006.

*Managing Gifts and Benefits in the Public Sector - Toolkit*, June 2006.

*No Excuse for Misuse: preventing the misuse of council resources*, 2002.

*Practical Guide to Corruption Prevention*.

*Taking the Devil Out of Development: recommendations for statutory reform, position paper*, December 2002.

Website: [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)

### **Independent Commission Against Corruption & Department of Local**

#### **Government publication:**

*Under Careful Consideration: Key Issues for Local Government*, March 1997.

**DLG Resources:**

*Guidelines for the payment of expenses and provision of facilities for Mayors and Councillors for Local Councils in NSW, 2007.*

*Meetings practice note, Practice note no 16, 2005.*

*Model Privacy Management Plan for Local Government June 2000.*

*Pecuniary Interest Guidelines, June 2006.*

*Privacy Code of Practice for Local Government, June 2000.*

[www.dlg.nsw.gov.au](http://www.dlg.nsw.gov.au)

**Other Resources:**

Daly, M, 2004, *Liverpool City Council Public Inquiry: Volume 3.*

LGMA, 2008, *Access to Information policy and guidelines.*

Premier's Department NSW, 1997, *Code of Conduct for NSW public agencies: policy and guidelines*, Sydney.

Premier's Department NSW, 1999, *Policy and Guidelines for the use by Staff of Employer Communication Devices*, Sydney.

NSW Department of Health, 1998, *Principles and Minimum Standards for Development of Health Service Codes of Conduct.*

Standards Australia, 2003, *Australian Standard Organizational codes of conduct AS 8002-2003*, Standards Australia, Sydney.

# WYONG SHIRE COUNCIL

## EXPRESSIONS OF INTEREST

### CODE OF CONDUCT REVIEW PANEL

Company /	Individual Contacts	Brief Overview	Perceived conflict of interest
Brady, Mark	Mark Brady	A former senior police officer, Mark Brady investigated many serious crimes including murder, abduction, fraud, sexual assault, deaths in custody. He also led investigations into ethical issues involving complaints against police. Now a barrister, Mark is involved in complex investigations and dispute resolution services through Newcastle and Region Mediation and Dispute Resolution Services	No
Fraud Services	Barry Davidow Jeff Williams	<b>Barry</b> joined Fraud Services in 1993. He has undertaken a wide variety of projects in risk management, governance, probity, ethics, corruption control, fraud prevention and detection, policy and procedures and investigation. Barry wrote the <i>Local Government Governance Health Check</i> for LGMA and the ICAC. Barry has conducted a range of investigations for Councils and other organisations and assisted them with conduct review matters. <b>Jeff</b> has extensive experience in local government providing a wide range of services to Councils. He has acted on conduct review committees in local government, including allegations involving Councilors and staff. From 1989 to 1993 he was the Manager of Investigations and Fraud at the NSW Roads and Traffic Authority ... Jeff left the RTA to form Fraud Services with Barry Davidow.	Barry Davidow No  Jeff Williams Yes (Note 1)
Gordon, John	John Gordon	John Gordon is a chartered accountant and until 31 December 2008 was a senior audit partner with PriceWaterhouseCoopers. He has over 25 years experience working with NSW local government and a broad range of private sector commercial organisations. He has served as a lead engagement planner for 35 councils including most of those listed in the EOI. He has significant experience working on special assignments with local government clients / non clients and with industry bodies including the Department of Local Government, LGSA, IMM, Finance Professionals and Local Government Auditors Association	No

Company /	Individual Contacts	Brief Overview	Perceived conflict of interest
(Internal Audit Bureau)	Steve Kent	IAB Services has extensive experience in professionally servicing agencies established under all forms of government structures, sizes and complexity. Having operated in the public sector for in excess of 22 years, they have an in-depth understanding of the State and Local Government environments. IAB Services are one of the main providers of outsourced internal audit, consulting and investigation services to State and Local Government agencies, conducting on average over 850 assignments per year for some 80 public sector agencies. Of these projects, approximately 250 are investigation assignments, with a large number of Councils. IAB Services have proposed the services of their two most senior investigators: Helen Colbey and Peter Mulhall.	No
Insite Social and Economic	James Marshall Colin Cowan	Insite is a multi disciplinary consulting firm providing service to the public and not for profit sectors and development industry in the areas of community consultation and engagement, mediation, conduct reviews, strategic planning, asset management and project management. Over the past three years Insite have completed over 20 code of conduct reviews including reviews for Newcastle, Port Stephens, Great Lakes, Muswellbrook and Singleton Councils. Colin Cowan was General Manager of Cessnock Council from 1988 until 2005.	No
Mallik Rees	Rob Mallik	Rob Mallik is one of NSW's first accredited specialists in local government and planning law... He is a commercial mediator accredited by the Australian Commercial Dispute Centre and was on the Local Court panel of mediators appointed by the Chief Magistrate of NSW and has extensive mediation experience both as a mediator and acting for parties at mediation.... Rob belongs to a group of lawyers known as the Local Government Lawyers Group which meets at 6 weekly intervals.... As a member of that group, Rob met with the consultants employed by the Government in conducting a review of the Model Code of Conduct.... Rob represented the General Manager from Cessnock City Council at the review session (held in Newcastle).	No
McHugh, Brian	Brian McHugh	Brian McHugh became a superintendent in the NSW Police Force in July 1999 and assumed command of the Lachlan Area Local Command which took in 40,000 square kilometres and 13 Police Stations. During his career Mr McHugh conducted numerous investigations, both external and internal and made recommendations on findings and outcomes. He conducted, led and advised on complaint management findings, charges, training issues and system failures. He has a highly developed understanding of the roles and responsibilities of local government generated during many years of close cooperation with the local government sector.	No

Company /	Individual Contacts	Brief Overview	Perceived conflict of interest
Sincolutions	Kath Roach	Kath is Managing Director, SINC Solutions Pty Ltd based in Sydney, Australia. Kath has over 20 years public sector and general management experience. Prior to establishing SINC Solutions, Kath was Executive Director, Governance and Regulation for the NSW Department of Housing. Kath's experience comes from her role as the first Local Government Ombudsman in NSW. Kath has also 13 years experience as a Detective Sergeant with the Australian Federal Police. Kath has facilitated numerous training sessions and seminars in the areas of corruption prevention, whistle-blowing, fraud awareness, local government best practice, ethics and governance.	No

Note : Jeff Williams from Fraud Services has identified a conflict of interest in that he has a contractual relationship to conduct training for Wyong Shire Council and excluded himself from appointment to the Wyong Panel. As Barry Davidow from Fraud Services has no such contractual relationship with Wyong Shire Council he has nominated for appointment to the Wyong Panel.

Mr John Cole from the legal firm HWL Ebsworth also excluded himself from appointment to the Wyong Panel on the basis of a conflict of interest in that he is an external solicitor providing legal services to Wyong Shire Council.

Both Jeff Williams and John Cole nominated for appointment to the other 11 Councils represented in the Hunter Councils Inc. Expression of Interest.

## 12 Wyong Shire Council's additional requirements

### Up-dating of pecuniary interest returns

- 12.1 It is your personal responsibility to ensure that the conflict of interest declarations required of you under Section 449 of the Local Government Act are accurate at all times. You should retain a copy of your current return, and review and amend it whenever necessary to ensure that any conflicts or potential conflicts you might have are accurately reflected.

### Approval of development contrary to staff advice

- 12.2 Whenever Council approves a development application contrary to the advice of staff, the resolution of approval must include a statement of dissent to place on the public record its reasons for departing from the staff advice. (See also Clause 5.7, 5.8 and 12.5)

### Access to council documentation

- 12.3 Any request by a councillor for access to council-held documents (see Clause 9) must be in writing in order to establish an *audit trail*. Similarly, the staff determination of the request must also be in writing. If the determination is to deny the councillor access to any particular document, the matter must be reported to council pursuant to Section 12A of the Local Government Act.

### Participation in workshops and briefings

- 12.4 If you hold a pecuniary interest in a matter, that interest exists during the entire period the matter is under consideration by council. This applies to discussion during periods when standing orders have been suspended, or during discussion by advisory committees.

Section 451 of the Local Government Act requires that you not only declare the nature of your interest in a matter before council for consideration – you must not be present at, or in sight of, the meeting at any time during which the matter is being considered, discussed or voted on by council or the committee. This applies to committee meetings, closed meetings and meetings where standing orders have been suspended. It is also a breach of Section 451 for a councillor who has a pecuniary interest to make a statement to a meeting prior to departing.

If you have declared an interest in a matter, either pecuniary or non-pecuniary, you must refrain from participating in any discussion of that matter by the Council, or be in attendance when that matter is being discussed, at any meeting of council or committee of council, or at any workshop or briefing session conducted by council.

## Development information to be available to all councillors

- 12.5 Development applications and associated documents are public documents under Section 12(1) of the Local Government Act. The public has a right to scrutinise them and to make submissions in this respect. Circumstances sometimes arise when a developer will enlist the support of a councillor to make out a case in support of the development proposal. In the course thereof documentation might be made available which was not included in the application but is later relied upon during the determination of the development application by council.

The problem here is that the document that has been made available and relied upon subsequent to lodgement of the development application is deemed by Section 12(1) to be a document *associated* with the development application, and as such, should have been made available for public scrutiny and comment.

If a councillor is supplied with documentation that relates to a current development application (i.e., has not been determined), the document must be given to the general manager who will make an assessment as to whether the document needs to be placed on, or form part of a public exhibition, and whether the document is such that should be made generally available to all councillors and should be examined and reported on by staff assessing the application.

(See also Clauses 5.7, 5.8 and 12.2).

## Model Code of Conduct guidelines

- 12.6 Guidelines have been issued by the Department of Local Government to assist interpretation of this code and these guidelines should be used to help clarify individual issues. In particular the examples and case studies should be used to help resolve ethical problems that Council officials may encounter.

The following are guidelines that cover some of the more common areas of conflict:-

### 12.6.1 Club/Organisation Membership

If a council official is a member of a club or other organisation (for example, sporting, religious, community group) they should consider whether the membership gives rise to a conflict of interest in council matters that may affect the club or organisation. The greater the involvement with the club or organisation, the greater likelihood of a real or perceived conflict of interest.

### 12.6.2 Personal Relationships

Council officials should consider the depth of a personal relationship in deciding whether or not it gives rise to a conflict of interest.



### 12.6.3 Lobbying

Council officials may be lobbied by a wide range of people, including individuals, organisations, companies and developers. As a general rule it is an essential element of the democratic system that any individual should be able to lobby the council or a councillor. However, particular considerations apply when dealing with statutory powers such as planning.

Council officials must consider evidence and arguments put by a wide range of organisations and individuals in order to perform their duties effectively. However, councillors should not respond to oral requests for concessions and require written applications to be made to the general manager for evaluation by council staff and reporting to council of all the consequences of granting the request.

### 12.6.4 Caucus Votes

Binding caucus votes on matters is inconsistent with the obligation of each councillor to consider the merits of the matter before them. Political group meetings must not be used to decide how councillors should vote on matters like development applications where there are specific statutory considerations for each decision-maker to consider.

### 12.6.5 Former Council Officials

Council officials must be careful in their dealings with former council officials and make sure that they do not give them, or appear to give them, favourable treatment or access to privileged information.

Former council officials must not use, or take advantage of confidential information obtained in the course of their official duties that may lead to gain or profit. At the end of a council official's involvement with council, they must:

- Return all council property, documents or items (keys, mobile phones etc)
- Not make public or otherwise use any confidential information gained as a consequence of their involvement with council.

### 12.6.6 Staff Political Participation

Council staff must ensure that any participation in political activities does not conflict with their primary duty as an employee to serve the council of the day in a politically neutral manner.

#### 12.6.7 Political Support

A potential conflict of interests could arise for a councillor when a campaign donor who contributes financially to the councillor's election campaign has a matter before the council for determination.

In this situation a councillor should consider the public perception of the relationship. Options for the councillor include:

- Declaring an interest and not participating in discussion or voting on the matter.
- Declaring an interest, participating in the discussion on the matter but not voting.
- Declaring an interest in the matter and participating in the discussion and voting as the conflict is deemed to be insignificant.

**NOTE:** Extreme care should be taken if the nature of the relationship may constitute a pecuniary interest (for example, where it could be perceived that a donation will be given on the understanding that the councillor will provide support on a particular matter should he or she be elected). Such an arrangement could also constitute an offence under the Crimes Act.

#### 12.6.8 Sponsorships

"Sponsorship" means a contribution in money or kind, generally by the corporate sector or private individuals, in support of a council sector activity. It does not include the selling of advertising space, joint ventures, consultancies and gifts or donations where the reciprocal benefit provided by the council does not extend beyond some modest acknowledgment.

Sponsorships should not limit council's ability to carry out its range of functions fully and impartially or influence a council decision. Council officials must never ask for or receive benefits from a sponsorship arrangement.

The following guidelines should be followed in considering sponsorship of a Council activity:

- i A sponsorship arrangement should not impose or imply conditions that would limit, or appear to limit, Council's or a department of Council's ability to carry out its functions fully and impartially.

This principle needs to be clearly understood by sponsors. The sponsorship agreement should state positively that the agency's functions will continue to be carried out fully and impartially, notwithstanding the existence of a sponsorship arrangement.

Clear guidelines should describe the process and possible consequences of any sponsorship related impacts on Council's responsibilities (for example, a statement to the effect that any attempted influence of the sponsored Departmental functions will result in an automatic review and/or termination of the sponsorship arrangement).

- ii There should be no real or apparent conflict between the objectives and mission of the sponsored department and those of the sponsor.

Sponsorship agreements should be monitored. Provision should be made for contingencies such as a change in the sponsor's corporate mission or objective.

Be aware of the possibility that the objectives and mission of a sponsor's parent company or subsidiaries might be in conflict with those of the Council.

- iii A Council Department with regulatory or inspectorial responsibilities should neither seek nor accept sponsorship from persons or bodies which are, or are likely to be, subject to regulation or inspection by the agency during the life of the sponsorship.

Accepting sponsorship in such circumstances is a delicate business and one where the manager must exercise some judgement as to who should or should not be an exception to the general rule.

For those exceptional cases where a decision is taken to accept sponsorship in such an environment, all parties should be in no doubt that the sponsorship relationship has absolutely no bearing on the Department's exercise of regulatory or inspectorial functions. This should be made clear in all negotiations and documentation, not only for the benefit of those who are parties to the agreement but also to ensure public confidence in the integrity of the agreement.

Always ensure that a method for dealing with any exercise of the regulatory or inspectorial function is in place and clearly spelt out in the specific sponsorship agreement.

- iv Sponsorship of an activity should not involve explicit endorsement of the sponsor or the sponsor's products.

Care also needs to be taken to avoid strong implicit endorsement of a sponsor's products. Sponsorship agreements should set out the range of uses to which the sponsor can put the relationship (for example, in advertising copy) and perhaps give Council an opportunity to review specific uses prior to release.

- v Where sponsorship takes the form of a provision of a sponsor's product, the product should still be evaluated for its fitness for purpose against objective operational criteria which are relevant to the Council's needs.

Care should be taken not to accept a sponsor's products simply because they are offered free of charge. There could be an implicit endorsement of a sub-standard product.

- vi It is inappropriate for any employee of a Council to receive a personal benefit from a sponsorship.

Where a benefit is provided by a sponsor on a corporate basis (for example, meeting the cost of hospitality at a conference), it is important to ensure there is no perception of a personal benefit being given to a Councillor or staff member as an individual.

Depending on conditions of engagement, contractors and consultants could be regarded as employees of Council and should be considered when assessing the status of personal benefits in a sponsorship agreement.

- vii In most circumstances, the public interest is best served by making sponsorship opportunities widely known. To this end, sponsorships should be sought by calling expressions of interest or using other broadly based mechanisms not limited solely to invited sponsors.

When and in what form a broadly-based process should be used depends on the nature of the market. If there is vigorous interest in sponsorship, the process should be competitive. Alternatively, if interest is restricted to potential sponsors with highly specialised characteristics, then more direct methods would be unlikely to offend. In any case the general willingness to accept sponsorship should be notified as widely as possible. The response could indicate how competitive the race for a specific sponsorship might be.

Where a decision is taken not to offer sponsorship opportunities widely, the reasons for doing so should be clearly documented.

The reasoning behind this principle can be found in the ICAC's Report on Investigation into the Silverwater Filling Operation (1990, pp 26-27). The "Silverwater Principles" as they have become known, recommended that:

- 1 Public property must be utilised so as to maximise public benefit.
- 2 All should have equal opportunities relative to public property.
- 3 Accordingly, tenders should be called whenever large benefits will pass to or costs be incurred by Council.
- 4 If that general rule is departed from, the reasons for so doing should be recorded.

The New South Wales Government Procurement and Disposal Guidelines (1995) also recommend (at point 2.8) that "competition be considered even where no apparent public expense is to be incurred; for example where a firm offers payment or services in exchange for an intangible benefit such as publicity as a sponsor...".

- viii Council should assess sponsorship proposals against predetermined criteria which have been published in advance or which are circulated to organisations which submit an expression of interest.

The assessment should be done by persons who have relevant qualifications and can act, and be seen to act, impartially.

Proposals must be assessed consistently, using predetermined criteria available to all potential sponsors. The criteria should be established and documented prior to calling for expressions of interest. For the process to be fair, the criteria should not be changed midstream unless all potential sponsors are given an equal opportunity to revise their proposals.

The assessment process and reasons for decisions should be fully documented.

A more detailed discussion on managing the tendering process can be found in ICAC publication Contracting for Services: The Probity Perspective (1995).

- ix A sponsorship agreement is a contract and should be described in a written agreement.

The written agreement (an exchange of letters could suffice) should clearly set out:

- the benefits, including economic benefits, available to Council and to the sponsor;
- any personal benefits available to the sponsor's employees and their relatives;
- the form or forms of sponsorship acknowledgment which will be available;
- the scope of uses which the sponsor can make of the sponsorship arrangement;
- the term of the sponsorship and any conditions regarding renewal;
- consequences of changes which may occur over time (for example, a shift in the relationship, new policies, new corporate missions or objectives);
- financial accountability requirements;
- provisions for termination or suspension of the agreement;
- any special conditions which apply.

Staff should be mindful that sponsorship agreements constitute contracts and should be administered by people who are appropriately trained. This training should include basic contract administration and commercial dealings with the private sector.

- x All sponsorship arrangements should be approved by the General Manager or Departmental Director designated and will be detailed in Council's annual report, in a form commensurate with the significance of the sponsorship.

Where boards or volunteer committees are convened by Council, it is important to provide such people with the support necessary to effectively administer sponsorship arrangements.

- xi Council must ensure that sufficient resources are available to enable the promised sponsor benefits to be delivered. Council should provide sufficient information for the sponsor to evaluate the outcomes of the sponsorship.

The benefits which are provided should be commensurate with the level of sponsorship and consistent with other sponsorship arrangements.

### **Stand Down from Role as Councillor under Certain Circumstances**

- 12.7 Any Councillor charged by the Police or other relevant Authority, with an offence pertinent to their role as a Councillor, should immediately stand down from his/her role as a Councillor and take no part in the business of Council until the matter has been determined by a Court or the charge withdrawn.

(Council Resolution January 27 2005)