



KIAMA MUNICIPAL COUNCIL
your council, your community

CODE OF CONDUCT

August 2010

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FOREWORD

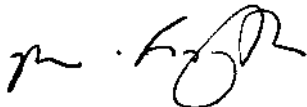
Kiama Council has a long established reputation of honesty, fairness and integrity and customer service excellence. In adopting this Code of Conduct we are seeking to maintain our high standards and continue our commitment to our community.

Our Code of Conduct is a very important statement about our commitment to these standards which apply equally to all councillors, employees and delegates of Council. Acting in accordance with the Code offers us a level of protection from allegations of inappropriate action.

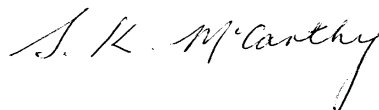
In our work with Council we may be faced with situations which require us to make difficult decisions about the most appropriate course of action. Our Code has been reviewed with the assistance of a representative group of employees and it incorporates all the provisions of the Model Code of Conduct for Local Councils in NSW. The revision of our Code will help to ensure that it remains relevant and continues to assist us to make decisions that reflect the high standards expected by our community and ourselves.

Our Code of Conduct sets standards that go well above the law and act as guidelines as well as standards.

Each of us continues to have a responsibility to foster an ethical and equitable environment by abiding by the standards set in this Code. This is an expectation we should have of ourselves and of each other and will assist us to maintain our strong reputation.



Michael Forsyth
General Manager



Sandra McCarthy
Mayor

24 August 2010

HOW TO READ THIS DOCUMENT

The Code is in three parts:

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 - sets 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.

References to 'the Act' are to the appropriate Section of the Local Government Act (NSW) 1993 and are generally shown in italics and brackets. For example (Schedule 6A) refers to Schedule 6A of the Local Government Act.

TO WHOM DOES THIS CODE APPLY?

The Code of Conduct applies to all –

- Councillors and/or administrators of Kiama Municipal Council
- Employees of Kiama Municipal Council
- delegates of Kiama Municipal Council including contractors, volunteers, students and work experience participants
- independent conduct reviewers and
- members of the conduct review committee.

Delegates of Council should refer to the Statement of Business Ethics which is available from Council's Public Officer or the Customer Service Desk. For specific inquiries contact the Public Officer.

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 Model Code of Conduct for Local Councils in NSW (“the Model Code of Conduct”) is made for the purposes of section 440 of the Local Government Act 1993 (“the Act”). Section 440 of the Act requires every council to adopt a Code of Conduct that incorporates the provisions of the Model Code. For the purposes of section 440 of the Act Council’s Code of Conduct comprises all Parts of this document.

Kiama Municipal Council’s Code is not inconsistent with the Model Code of Conduct however it contains provisions that supplement the Model Code and more detailed information to clarify Council’s requirements.

2. ROLES OF COUNCILLORS

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 Model Code sets the standard of conduct that is expected when council officials exercise these roles.

3. ROLES OF COUNCIL OFFICIALS & DELEGATES

Councillors, administrators, employees, independent conduct reviewers, member of Council committees including the conduct review committee and delegates of 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 are also required to observe the relevant provisions of Council’s Code of Conduct.

4. BREACHES OF THE CODE

Failure by a councillor to comply with Part 2 of Council's Code of Conduct (The Standards 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 14 and 15 of this Code.

Failure by an employee to comply with Council's Code of Conduct may give rise to disciplinary action. Failure by a delegate may result in termination of the contract or the agreement under which they have been engaged.

A set of guidelines has also been developed 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. A copy of the guidelines is available from the Department of Local Government.

5. DEFINITIONS

The following definitions apply to this document:

the Act	the Local Government Act 1993
act of disorder	see the definition in clause 256 of the Local Government (General) Regulation 2005
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 15, 16 and 17.
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 15, 16 and 17.
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, employees of council, administrators appointed under section 256 of the Act, members of council committees, conduct reviewers and delegates of council
Contact Officers	Contact Officers provide a first point of contact for people who may be experiencing harassment, bullying or discrimination in the workplace. They provide confidential advice and moral support to help people work out what steps to take next. They are not responsible for managing issues reportable as Protected Disclosures. These issues should be reported to the Disclosure Coordinator who is Council's Human Resources Officer.
delegate of council	a person or body, and the individual members of that body, to whom a function of council is delegated
designated person	As defined by section 441 of the Act.
Disclosure Coordinator	Council's Disclosure Coordinator ensures the appropriate handling of matters reported in accordance with the NSW Protected Disclosures Act. At Kiama Council this is the Human Resources Officer.
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.
Privacy Contact Officer	The Privacy Contact Officer is the first point of contact for advice on matters relating to the Privacy and Personal Information Protection Act; the Health Records and Information Privacy Act, the Privacy Code of Practice for Local Government and the Model Privacy Management Plan.

Public Officer	Council is required to appoint a Public Officer under Section 343 of the Local Government Act. The Public Officer may deal with requests from the public concerning Council's affairs and has responsibility for assisting people to gain access to Council's public documents. Council's Public Officer is the Human Resources Officer.
'You'	The term "you" used in this Code of Conduct refers to council officials.

6. PURPOSE OF THE CODE OF CONDUCT

The Model Code of Conduct sets the minimum requirements of conduct for council officials in carrying out their functions. The Model Code is prescribed by regulation.

The Model Code of Conduct has been developed to assist council officials and delegates 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.

7. KEY PRINCIPLES

This Code of Conduct is based on a number of key principles most of which have been taken directly from the Model Code of Conduct. The Code 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 they do not themselves constitute separate enforceable standards of conduct.

7.1. 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.

7.2. 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 Council and outside, by your own ethical behaviour.

7.3. 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.

7.4. 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.

7.5. 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.

7.6. 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.

7.7. 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.

7.8. 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.

7.9. Sustainability

You must act responsibly and appropriately in regard to resources use. This means ensuring that your actions maximise use of Council's resources, where possible eliminating waste and contributing to environmental sustainability.

7.10. Safety

You must act safely and consider the safety of others at all times. This means ensuring you consider safety as a perspective in all of your decisions and actions.

8. GUIDE TO ETHICAL DECISION MAKING

8.1. 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, 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

8.2. 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

- 8.3.** 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

- 8.4.** 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.

Public Officer (Human Resources Officer)	4232 0481
General Manager	4232 0402
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 of Conduct 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 of Council's Code of Conduct (The Standards 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 14 and 15 of this Code.

Failure by an employee to comply with Council's Code of Conduct may give rise to disciplinary action.

Failure by a delegate to comply with Council's Code of Conduct may lead to termination of the contract or the agreement under which they have been engaged.

9. GENERAL CONDUCT OBLIGATIONS

General conduct

- 9.1.** You must not conduct yourself in carrying out your functions in a manner that is likely to bring 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 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)

- 9.2. 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)
- 9.3. You must treat others with respect at all times.
- 9.4. 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

- 9.5. You must consider issues consistently, promptly and fairly. You must deal with matters in accordance with established procedures, in a non-discriminatory manner.
- 9.6. 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.

*Refer to Council's [Fairness and Equity Policy and Procedures](#).
For specific inquiries contact the EEO Officer/HR Section*

Bullying, harassment and discrimination

- 9.7. 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.
- 9.8. You must not bully others or support others who engage in such behaviour.

*Refer to Council's [Fairness and Equity Policy and Procedures](#).
For specific inquiries contact the EEO Officer/HR Section.
Refer also to Council's [OH&S Policy](#)
For specific inquiries contact the Risk/Safety Officer/HR Section.*

Development decisions

- 9.9. 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.

- 9.10.** 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.

Alcohol and other drugs

- 9.11.** You are responsible for ensuring that you are in full command of your faculties and not impaired by alcohol or other drugs. You are also responsible for ensuring that your actions are in accordance with all legislation, standards and regulations that apply to your position.
- 9.12.** You must not undertake work for Council if you are under the influence of alcohol or other drugs. For health and safety reasons you must advise your manager or supervisor if you are taking prescribed medication that might affect your work performance.
- 9.13.** Consumption of alcohol or other drugs during working hours or attending for duty under the influence of such may result in suspension from duty and further disciplinary action.

Refer to the [Occupational Health and Safety Act \(NSW\) 2000](#)
For specific inquiries contact the HR Section.

10. CONFLICT OF INTERESTS

- 10.1.** 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.
- 10.2.** 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.
- 10.3.** 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.
- 10.4.** Private interests can be of two types: pecuniary or non-pecuniary.

Pecuniary interest

- 10.5.** 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)
- 10.6.** 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)

Managing pecuniary conflict of interests

- 10.7.** 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)
- 10.8.** 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 Council.
- 10.9.** Where you are an employee 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.

Non-pecuniary interest

- 10.10.** 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.
- 10.11.** The matter of a report to Council from the conduct review committee/ reviewer relates to the public duty of 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.

10.12. The political views of a councillor do not constitute a private interest.

Managing non-pecuniary conflict of interests

10.13. 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.

10.14. 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.

10.15. How you manage a non-pecuniary conflict of interests will depend on whether or not it is significant.

10.16. 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.

10.17. If you are a Council official, other than an employee 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

- 10.18.** 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.
- 10.19.** If you are an employee 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.
- 10.20.** 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

- 10.21.** Councillors should note that matters before Council involving political or campaign donors may give rise to a non-pecuniary conflict of interests.
- 10.22.** 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.
- 10.23.** 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).
- 10.24.** 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.

- 10.25.** 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 employees or appointing another person or body to make the decision in accordance with the law (see clause 7.20 above).

Other business or employment

- 10.26.** In accordance with Section 353 of the Local Government Act, if you are an employee of Council considering outside employment or contract work that relates to the business of Council or that might conflict with your Council duties, you must notify and seek the approval of the General Manager in writing.
- 10.27.** To ensure transparency and avoid the perception of conflicts of interest, employees of Kiama Council are required to seek approval for any employment or contract work or business activities outside of Council to the General Manager. Such disclosure will be treated with the utmost confidentiality.
- 10.28.** 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 Council
 - c) require you to work while on Council duty
 - d) discredit or disadvantage Council
 - e) impair your work performance.

*Refer to Council's form, [Request to Undertake Work Outside of Council](#)
For specific inquiries contact the Public Officer/HR Section*

Personal dealings with Council

- 10.29.** You may have reason to deal with 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.

- 10.30.** If an employee wishes to lodge a submission relating to a matter before Council, such as a development application, they should address their submission to the General Manager and clearly indicate in the submission that they are an employee to ensure Council is able to act in way that avoids a real or perceived conflict of interest.

Where there are objections to an application lodged by an employee or where an employee lodges an objection to a development application the matter will be reported to Council for determination.

For specific inquiries contact the Public Officer/HR Section

Liaising with the media/making public comment

- 10.31.** The General Manager and the Mayor are the official spokespersons for Council. Statements to the media about the business of Council can only be made by the General Manager, the Mayor, or the Director relating to issues in their area of responsibility, unless they have authorised otherwise.

- 10.32.** If you are contacted by a member of the media, you should direct them to the Media Liaison Officer who will direct them to the appropriate Council spokesperson.

You should also advise the Media Liaison Officer that you have been contacted by a member of the media.

- 10.33.** As a member of the community, you have the right to enter into debate in your role as a private citizen, however you must take care not to give the impression that your comments are made on behalf of Council.

*Refer to Council's [Media Procedures and Media Release Policy and Procedures](#).
For specific inquiries contact the Media Liaison Officer/General Manager or Mayor*

Participating on-line

- 10.34.** New technologies provide unprecedented opportunities to open up government decision making and implementation to contributions from the community. Any Council Officer participating in on-line discussion including on-line forum and social networking sites in their role as a Council Officer must be an approved spokesperson or have approval from the General Manager, Mayor, or the Director in their area of responsibility.

- 10.35.** Participation by an approved Council spokesperson must follow the same principles as outlined in Council's Media Procedure and Media Release Protocol.
- 10.36.** Participation by an approved Council Officer should be done in a professional manner that reflects the policies and procedures of Council. This includes:
- being apolitical and impartial
 - behaving with respect and courtesy, and without harassment
 - dealing appropriately with information, recognising that some information needs to remain confidential
 - delivering services fairly, effectively, impartially and courteously to the public
 - being sensitive to the diversity of the community
 - taking reasonable steps to avoid conflicts of interest
 - making proper use of Council resources and information
 - upholding Council's values, integrity and good reputation.
- 10.37.** As a member of the community, you have the right to enter into debate in your role as a private citizen, however you must ensure that your comments are made as a private citizen and not give the impression that your comments are made for, or on behalf of Council.
- 10.38.** All written comments made by approved Council spokesperson must be forwarded to Council's Records Section for filing.

11. 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.

Gifts and benefits

The ICAC describe a number of different types of gifts. These descriptions are useful in helping to you understand the potential motive of the gift giver and whether or not it is appropriate to accept their offer.

Gift of influence – a gift that is intended to generally ingratiate the giver with the recipient for favourable treatment in the future.

Gift of gratitude – a gift offered in appreciation of performing specific tasks or for exemplary performance of duties. Gifts for speaking at official functions may also be considered gifts of gratitude.

Ceremonial gift – an official gift from one agency to another. Such gifts are often provided to a host agency when conducting official business with delegates from another organisation. Although these gifts may sometimes be offered to express gratitude, the gratitude usually extends to the work of several people in the agency, and therefore the gift is considered to be for the agency, not for a particular individual.

- 11.1.** If you are in a role with Council where you have responsibility for decision-making you must not accept gifts or benefits of any kind, regardless of the value, from a person or persons who have sought the exercise of Council's decision-making discretion within the previous two years.
- 11.2.** Notwithstanding 11.1, 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 which 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
 - f) accept lottery tickets (or similar) or gift vouchers.
- 11.3.** 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 Council.
- 11.4.** 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.

Token gifts and benefits

- 11.5.** In determining if a gift or benefit is a 'token' consideration must be given to, but not restricted to its value.

Notwithstanding the following points, as a guide, gifts that have a value in excess of \$25 may not be of token value.

- 11.6.** 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.

- 11.7.** The value of a gift is not reduced by the act of sharing the gift. The value is that of the gift as a whole, not its separated components.

- 11.8.** As a guide gifts from ratepayers and residents are more likely to be tokens of appreciation than gifts from suppliers, developers or contractors that are more likely to be seeking to influence an outcome. Gifts from suppliers, developers or contractors should not be accepted.

- 11.9.** Employees are responsible for checking with their supervisor, manager, the General Manager or the Public Officer to ensure that a gift or benefit is appropriate and/or has only a token value.

- 11.10.** Councillors are responsible for checking with the Mayor or the General Manager to ensure that a gift or benefit is appropriate and/or has only a token value.

Refer to [Gifts and Benefits Decision Making Guide](#)

Prizes and Bonuses

- 11.11.** On some occasions Council officials may receive a prize as a result of entering a competition while engaging in official duties, for example a raffle or a lucky door prize drawn at a conference or a prize that was promoted as an incentive to complete a survey.
- 11.12.** While it is acceptable for Council officials to enter such competitions while working in their official capacity, prizes need to be considered on a case by case basis taking into account the nature of the prize and the relationship with the prize giver. Acceptance of a prize may give rise to similar perceptions as acceptance of a gift or benefit. If you win a prize as a result of your official duties you should assess whether or not it should be accepted using the same process as you would for assessing a gift or benefit.
- 11.13.** In some cases suppliers offer a bonus or prize after the purchase of a certain quantity of product. It is important to ensure that Council's impartiality is not compromised or perceived to be compromised in order to obtain such a bonus. If such a bonus or prize is received it must be to the benefit of Council, not to any particular individual/s. If such a bonus or prize is offered it should be declared on a Gifts and Benefits Declaration Form and forfeited to Council via the General Manager or Public Officer.

Refer to [Gifts and Benefits Decision Making Guide](#)

Gifts and benefits of value

- 11.14.** You must not accept any gift or benefit that is other than token in nature.
- 11.15.** Notwithstanding clause 11.6, 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.

Declaring gifts and benefits

- 11.16.** You must declare all gifts and benefits as soon as practical and at a minimum within 7 days of receiving the gift or benefit.

Declarations are to be made in writing or by using Council's Gift Declaration Form and should be forwarded to Council's Public Officer or the General Manager for inclusion in Council's Gifts Register.

- 11.17.** Gifts and benefits offered and refused should be declared and recorded in the Gifts Register with an appropriate notation to the effect that they were refused or returned.
- 11.18.** Where you receive a gift or benefit of more than token value that cannot reasonably be refused or returned, it 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 action taken will be determined by the General Manager and/or Public Officer and will also be recorded in the Gifts Register.

The gift or benefit must be surrendered to Council, unless the nature of the gift or benefit makes this impractical. This will also be determined by the General Manager and/or Public Officer.

Council's Gifts and Benefits Register is a restricted confidential file held by Records Coordinator.

[Gift Declaration Forms](#) are available on Council's Intranet, from your Manager or from the Human Resources Section.

For specific inquiries employees should contact their manager, the Public Officer or the General Manager, Councillors should contact the Mayor or the General Manager.

Improper and undue influence

- 11.19.** 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.
- 11.20.** 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.

12. RELATIONSHIP BETWEEN COUNCIL OFFICIALS

Obligations of councillors and administrators

- 12.1.** For some purposes council is considered to be 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.
- 12.2.** Councillors or administrators must not:

- a) direct Council employees 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 employees of Council or a delegate of Council in the exercise of the functions of the employee or delegate (Schedule 6A of the Act).
- c) contact an employee of Council on Council-related business unless in accordance with the policy and procedures governing the interaction of councillors and employees that have been authorised by 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 employees

12.3. 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 Council without delay.

12.4. Employees 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 Council, whether or not the employee agrees with or approves of them.

Relationships between Councillors and Employees

12.5. The Meetings Regulation (Clause 21 of the Local Government Act) makes provision for a Councillor to obtain information at a Council meeting, or by a Question on Notice at a Council meeting. [This process can also be extended to include committee meetings if it is incorporated in Council's

Code of Meeting Practice. While the regulation sets out the formal means for Councillors to obtain information, in some Councils it may unnecessarily prolong a Council meeting. Therefore, Council may adopt a policy that sets out procedures designed to facilitate Councillors seeking information from staff according to prescribed guidelines.]

- The General Manager is responsible to the Council for performance and direction of all staff and day to day management of Council. Therefore, it is appropriate that all requests for information and approaches to staff outside the forum of a Council or committee meeting, will be directed to the General Manager, or person/s nominated by the General Manager.
- Only those senior officers (as defined in s.332 of the Local Government Act) and managers nominated by the General Manager can provide advice to Councillors.
- It is within the discretion of the General Manager to require Councillors to make an appointment with a senior officer, to put a request in writing, or to put it on notice to the Council to obtain detailed or otherwise time consuming information. If a request is refused, the General Manager must indicate in writing, the reasons for refusing a request.
- If required, Councillors should put their requests for information or advice in writing to be answered by the General Manager or the appropriate senior officer. These written requests then form part of Council records and can be filed appropriately.
- A senior officer has the discretion to refer any request for information to the General Manager. The senior officer must indicate to the Councillor their reasons for the referral.
- If a Councillor is concerned about any refusal to provide information, they should firstly raise the matter with the General Manager (or the Mayor if it was the General Manager who refused to provide the advice). If the Councillor is still dissatisfied they should request the information by way of a Question on Notice to the Council.
- Councillors must not attempt to direct staff as to the performance of their work. Staff must report all such attempts immediately to their director or the General Manager.
- Councillors must not request staff to undertake work for the Councillor or any other person.

- A Councillor, member of staff or delegate must not take advantage of their official position to improperly influence other Councillors, members of staff or delegates in the performance of their public or professional duties for the purpose of securing private benefit for themselves or for some other person.

Obligations during meetings

- 12.6.** You must act in accordance with Council's Code of Meeting Practice and the Local Government (General) Regulation 2005 during Council and committee meetings.
- 12.7.** 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.

Refer to Council's [Code of Meeting Practice](#)

For specific inquiries employees should contact the General Manager and Councillors should contact the General Manager or the Mayor.

Inappropriate interactions

- 12.8.** The following interactions are inappropriate and constitute a breach of Council's Code of Conduct:
- a) Councillors approaching Council employees other than the General Manager or Directors for information or assistance.
 - b) Councillors approaching employees and employee organisations to discuss individual employee matters and not broader industrial policy issues.
 - c) Council employees approaching councillors to discuss individual employee matters and not broader industrial policy issues.
 - d) Council employees refusing to give information that is available to other councillors to a particular councillor.
 - e) Councillors who have lodged a development application with council, discussing the matter with Council employees in employee-only areas of the Council.
 - f) Councillors being overbearing or threatening to council staff.
 - g) Councillors making personal attacks on Council employees in a public forum.

- h) Councillors directing or pressuring Council employees in the performance of their work, or recommendations they should make.
- i) Council employees providing ad hoc advice to councillors without recording or documenting the interaction as they would if the advice was provided to a member of the community.
- j) Council employees meeting with developers alone and outside office hours to discuss development applications or proposals.
- k) 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.

Appropriate interactions

- 12.9.** It is appropriate that employees and employee organisations have discussions with councillors in relation to matters of industrial policy.
- 12.10.** Councillors seeking to contact Council employees for the purpose of obtaining or providing information must do so via the General Manager or the Director.
- 12.11.** If an employee is contacted by a Councillor they must advise their supervisor or manager. The supervisor or manager will then liaise with the Director or General Manager to ensure that the employee is the appropriate person to deal with the request.

For specific inquiries contact the General Manager or Public Officer.

13. ACCESS TO INFORMATION AND COUNCIL RESOURCES

Refer to Council's [Privacy Management Plan](#).

For specific inquiries contact the General Manager or the Public Officer who is also Council's Privacy Contact Officer.

Councillor and administrator access to information

- 13.1.** Under the Government Information (Public Access) Act (GIPAA), Council must provide access to the current and most recent previous version of certain Council documents free of charge to all members of the public. This includes Councillors.

13.2. Without limiting any common law right of access Clause 41 of the Local Government (Meetings) Regulation provides:-

- 1) The General Manager may allow or refuse to allow any Councillor to inspect any record of the Council that the Councillor requests to see.
- 2) If the General Manager refuses to allow a Councillor to inspect any such record, the Councillor may, at a meeting of the Council, move for the production of the document. However, the Councillor must give notice of intention to move the motion.
- 3) If the Council passes a motion for the production of a Council record, the Council must ensure that the record:-
 - a) is produced immediately and laid on the table for inspection by the Councillors; and
 - b) is made available for inspection by any Councillor on reasonable notice to the General Manager during the Council's ordinary office hours on any day that is within one month after the passing of the motion.
- 4) Councillors have an obligation to properly examine and understand 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.

13.3.

- Councillors can request the General Manager or the Public Officer to provide access to a particular Council record;
- Councillors are entitled to access to all Council files, records or other documents where that document is identified in Schedule 5 of GIPAA or is relevant to a matter currently before the Council;
- The General Manager or Public Officer shall not unreasonably decide that a document is not relevant to the performance of the Councillor's civic duty and deny access to a Council document. The General Manager must state their reasons for the decision if they refuse access;
- Councillors can request access to other documents of the Council either by a Notice of Motion to the Council or a GIPAA Access Application; and
- The General Manager or Public Officer shall keep a record of all formal requests by Councillors for access to information (other than those

listed in Schedule 5 of GIPAA or by a Notice of Motion at a Council Meeting). These requests shall be reported regularly to the Council.

- 13.4.** 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 Schedule 5 of GIPAA.
- 13.5.** The General Manager must provide councillors and administrators with information sufficient to enable them to carry out their civic office functions.
- 13.6.** Employees 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.
- 13.7.** Employees 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.
- 13.8.** 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

- 13.9.** 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

- 13.10.** 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

- 13.11.** 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

13.12. You must maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible.

13.13. 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 Council or any other person or body
- f) not disclose any information discussed during a confidential session of a Council meeting.

Personal information

13.14. 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

Privacy Contact Officer

- 13.15.** Council's Privacy Contact Officer and Public Officer is the Human Resources Officer.

Refer to Council's [Privacy Management Plan](#).

Refer to the [Government Information \(Public Access\) Act 2009](#).

For specific inquiries contact the Privacy Contact Officer/Public Officer or the General Manager.

Use of Council resources

- 13.16.** 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 for example leaseback motor vehicle or mobile phone where use is formally authorised and proper payment is made. Use of any other item must be only for work related purposes and removal from Council premises is permitted only with the prior approval of the Director or General Manager.
- 13.17.** You are responsible for the careful use and maintenance of any Council property entrusted to you. Any losses, damage or malfunctions should be reported to Council immediately, either via your supervisor, or if you are a Councillor, via the Mayor.
- 13.18.** Having Council property within your possession without authorisation and theft of Council property are considered to be gross misconduct and may lead to disciplinary action and criminal charges.
- 13.19.** Council's stationary is not to be used for private purposes nor should private mail be directed to Council.
- 13.20.** Council reserves the right to monitor information transmitted via its communication systems.

Council's communication systems including fixed and mobile telephones, internet and intranet and email should be used for Council business. Minimal and appropriate use of fixed and mobile telephones, email, internet, photocopier and fax for private purposes is acceptable however unreasonable use may lead to disciplinary action. Where there is

question, determination of 'reasonable use' will be at the General Manager's discretion.

- 13.21.** 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.

Employees should restrict access to non-work related information to their lunch breaks, before they have signed-on for work or after they have signed-off from work.

- 13.22.** Notwithstanding the above, under no circumstances are you permitted to use Council resources for the purpose of outside work or your interests outside of Council.

- 13.23.** 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.

- 13.24.** 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.

- 13.25.** 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.

- 13.26.** 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.

- 13.27.** You must not convert any property of the Council to your own use unless properly authorised.

For specific inquiries contact the Manager Information Technology, Public Officer or General Manager.

Refer to Council's [Mobile Phone Policy](#)

Reimbursement of expenses

- 13.28.** You must make reasonable and honest claims in accordance with appropriate Council Policies when claiming reimbursement for expenses incurred as a result of Council business.

Refer to Council's Policy on the [Payment of Expenses and Provision of Facilities to the Mayor, Deputy Mayor and other Councillors](#).

For specific inquiries contact the Manager Corporate Services, Public Officer or General Manager.

Councillor access to Council buildings

- 13.29.** Councillors who are not in pursuit of their civic duties have the same rights of access to Council buildings and premises as any other member of the public.

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.

- 13.30.** 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.

- 13.31.** Councillors and administrators must ensure that when they are within an employee area they avoid giving rise to the appearance that they may improperly influence Council employees' decisions.

14. REPORTING BREACHES

- 14.1.** Any person, whether or not a Council official, may make a complaint alleging a breach of the Code of Conduct.
- 14.2.** 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

- 14.3.** In your duties with Council you are required to act honestly at all times and to report any instances of possible corruption, maladministration or serious and substantial waste. If you are unclear about what these terms mean you should seek advice from your manager, Council's Public Officer who is also Council's Disclosure Coordinator or one of Council's Contact Officers.

Breaches can be reported as Protected Disclosures in accordance with Council's Internal Reporting Policy. Alternatively you can report corruption to the Independent Commission Against Corruption (the ICAC), maladministration to the Ombudsman and serious and substantial waste to the Department of Local Government.

- 14.4.** 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.
- 14.5.** 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.¹
- 14.6.** 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.'*

¹ Protected Disclosures Guidelines, 5th Edition, NSW Ombudsman, May 2004, Annexure 2.

Refer to Council's [Internal Reporting Policy](#).

For specific inquiries contact the Public Officer or General Manager

Reporting breaches of the Code of Conduct

- 14.7.** You should report suspected breaches of the Code of Conduct by councillors, employees of Council (excluding the General Manager) or delegates of Council to the General Manager in writing.
- 14.8.** Where you believe that the General Manager has breached the Code of Conduct, you should report the matter to the Mayor in writing.
- 14.9.** 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.
- 14.10.** Councillors should not make allegations of suspected breaches of the code at Council meetings or in other public forums.

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

15. COMPLAINT HANDLING PROCEDURES & SANCTIONS

- 15.1.** Complaints about the conduct of councillors, employees of Council, members of Council committees and delegates of Council should be addressed in writing to the General Manager.
- 15.2.** Complaints about the conduct of the General Manager should be addressed in writing to the Mayor.

Complaint handling procedures – employees, delegates and Council committee members conduct (excluding the General Manager)

- 15.3.** The General Manager is responsible for making enquiries, or causing enquiries to be made, into complaints alleging breach of the Code of Conduct regarding employees of Council, delegates of Council and/or members of Council committees (other than councillors), and will determine such matters.
- 15.4.** 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.
- 15.5.** Enquiries made into the conduct of an employee 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.
- 15.6.** Sanctions for employees depend on the severity, scale and importance of the breach and must be determined in accordance with any relevant industrial instruments or contracts.
- 15.7.** 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

15.8. 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.

15.9. 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

- 15.10.** 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.
- 15.11.** 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

- 15.12.** 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.
- 15.13.** 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.
- 15.14.** The conduct review committee, members of such committee and sole conduct reviewers may act in that role for more than one council.
- 15.15.** 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.
- 15.16.** 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.
- 15.17.** The conduct review committee/reviewer will operate in accordance with the operating guidelines at Section 14 of this code.
- 15.18.** 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.
- 15.19.** 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:
- 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
 - 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
 - make enquiries into the complaint, or

- engage another appropriately qualified person to make enquiries into the complaint, or
 - 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.
- 15.20.** 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.
- 15.21.** 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.
- 15.22.** 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.
- 15.23.** The conduct review committee/reviewer will report its findings and any recommendations to Council only when it has completed its deliberations.

Sanctions

- 15.24.** Before Council can impose a sanction it must make a determination that a councillor or the General Manager has breached the Code of Conduct.
- 15.25.** Where 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

- 15.26.** Under section 440G a council may by resolution at a meeting formally censure a councillor for misbehaviour.
- 15.27.** 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.
- 15.28.** 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.
- 15.29.** 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.
- 15.30.** 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.
- 15.31.** 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.
- 15.32.** 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

15.33. The General Manager must report annually to Council on Code of Conduct complaints. This report should include, as a minimum, a summary of the:

- a) number of complaints received,
- b) nature of the issues raised by complainants, and
- c) outcomes of complaints.

Refer to Council's [Complaints Management Policy and Procedures](#) and the [Local Government \(State\) Award](#).

For specific inquiries contact the Public Officer, General Manager and/or Council's Manager Human Resources

16. COMPLAINT ASSESSMENT CRITERIA

16.1. 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.

16.2. 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.

16.3. 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.

17. CONDUCT REVIEW COMMITTEE/REVIEWER OPERATING GUIDELINES ²

Jurisdiction of the conduct review committee/reviewer

17.1. 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.

Role of the General Manager and Mayor

17.2. 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:

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

- 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.

Composition of the conduct review committee

- 17.3.** 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 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.

Quorum of the conduct review committee

- 17.4.** 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.

Voting of the conduct review committee

- 17.5.** 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.

Procedures of the conduct review committee/reviewer

- 17.6.** 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.

Procedural fairness

- 17.7.** 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.³

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.

Complaint handling procedures

17.8. 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.

³ NSW Ombudsman, Investigating complaints, A manual for investigators, June 2004.

Findings & recommendations of the conduct review committee/reviewer

17.9. 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 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
- 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 Council as a whole
- j) the harm or potential harm to the reputation of local government and of 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

Amendment of the operating guidelines

- 17.10.** 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.

APPENDIX - List of related documents

The following documents are relevant to particular clauses of the Code of Conduct as indicated throughout the documents. They are available on Council's intranet, from Managers or from the Human Resources Section.

[Code of Meeting Practice](#)

For specific inquiries employees should contact the General Manager and Councillors should contact the Mayor

[Complaints Management Policy and Procedures](#)

For specific inquiries contact the Public Officer or the General Manager

[Fairness and Equity Policy and Procedures.](#)

For specific inquiries contact the Human Resources Officer

[Gift and Benefits Declaration Form](#)

For specific inquiries contact the Public Officer or General Manager

[Gifts and Benefits Decision Making Guide](#)

For specific inquiries contact the Public Officer or General Manager

[Government Information \(Public Access\) Act 2009](#)

For specific inquiries contact the Public Officer or General Manager

[Guidelines for the Model Code of Conduct](#)

Details are available from the Department of Local Government

[Internal Reporting Policy \(Protected Disclosures\)](#)

For specific inquiries contact the Public Officer or the General Manager.

[Interaction with the Media Policy and Procedures](#)

For specific inquiries contact the Media Liaison Officer

[Policy on the Payment of Expenses and Provision of Facilities to the Mayor, Deputy Mayor and other Councillors.](#)

For specific inquiries contact the Manager Corporate Services or the General Manager

[Privacy Management Plan](#)

For specific inquiries contact the Public Officer or the General Manager

[Procurement Policy and Procedures](#)

For specific inquiries contact the Store/Supply Manager

[Request to Undertake Work Outside of Council](#)

For specific inquiries contact the General Manager or Public Officer

[Statement of Business Ethics – Standards for People Working with Council](#)

For specific inquiries contact the General Manager or Public Officer

[OH&S Act](#)

For specific inquiries contact the Risk/Safety Officer/HR Section.

[OH&S Policy](#)

For specific inquiries contact the Risk/Safety Officer/HR Section.

[Mobile Phone Policy](#)

For specific inquiries contact the Manager Information Technology, Public Officer or General Manager.

[Local Government \(State\) Award 2010](#)

For specific inquiries contact the Public Officer, General Manager and/or Council's Manager Human Resources

HISTORY OF POLICY CHANGES

Department: Corporate Services

File No(s): A04.005.000

Meeting Date: 1 February 2005

CR No: 034

Minute No: 008

Meeting Date: 19 April 2005

CR No: 170

Minute No: 056

Meeting Date: 19 June 2007

CR No: 193

Minute No: 099

Meeting Date: 15 July 2008

CR No: 214

Minute No: 093

Meeting Date: 24 August 2010

CR No: 261

Minute No: 123