

# The Model Code of Conduct

for Local Councils  
in NSW

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October 2017



**CONSULTATION DRAFT**

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## THE MODEL CODE OF CONDUCT FOR LOCAL COUNCILS IN NSW

October 2017

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# Part 1:

## Introduction



**This *Model Code of Conduct for Local Councils in NSW* (“the Model Code of Conduct”) is made under section 440 of the *Local Government Act 1993* (“LGA”) and the *Local Government (General) Regulation 2005* (“the Regulation”).**

**Section 440 of the LGA requires every council to adopt a code of conduct that incorporates the provisions of the Model Code of Conduct. A council’s adopted code of conduct may include provisions that supplement the Model Code of Conduct.**

**A council’s adopted code of conduct has no effect to the extent that it is inconsistent with the Model Code of Conduct. However, a council’s adopted code of conduct may prescribe requirements that are more onerous than those prescribed in the Model Code of Conduct.**

## Part 2:

# Definitions



**In the Model Code of Conduct the following definitions apply:**

LGA	the <i>Local Government Act 1993</i>
act of disorder	see the definition in clause 256 of the Local Government (General) Regulation 2005
administrator	an administrator of a council appointed under the Act other than an administrator appointed under section 66
Chief Executive	Chief Executive of the Office of Local Government
<b>Code</b>	<b>means the Model Code of Conduct for Local Councils in NSW</b>
committee	a council committee
conflict of interest	a conflict of interest 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 committee	a committee established by resolution of council <b>other than a wholly advisory committee</b>
council committee member	a person other than a councillor or member of staff of a council who is a member of a council committee <b>other than a wholly advisory committee</b>
council official	includes councillors, members of staff of council, administrators, council committee members, delegates of council <b>and, for the purposes of clause 4.16, council advisers</b>
councillor	any person elected or appointed to civic office, including the mayor
<b>conduct</b>	<b>includes acts and omissions</b>
delegate of council	a person (other than a councillor or member of staff of a council) or body, and the individual members of that body, to whom a function of the council is delegated
designated person	<b>a person referred to in clause 4.8</b>
election campaign	includes council, state and federal election campaigns
<b>environmental planning instrument</b>	<b>has the same meaning as in the <i>Environmental Planning and Assessment Act 1979</i></b>

**Office**

personal information

**Office of Local Government**

information or an opinion about a person whose identity is apparent, or can be ascertained from the information or opinion

**the Procedures**

the Regulation

**The Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW prescribed under the Regulation**

the Local Government (General) Regulation 2005

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

The phrase “this code” used in the Model Code of Conduct refers also to the Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW prescribed under the Local Government (General) Regulation 2005.



**Part 3:**  
**General Conduct**  
**Obligations**



## General conduct

- 3.1 You must not conduct yourself in carrying out your functions in a manner that:**
- a) is likely to bring the council or other council officials into disrepute**
  - b) is contrary to statutory requirements or the council’s administrative requirements or policies**
  - c) is improper or unethical**
  - d) is an abuse of power**
  - e) causes, comprises or involves intimidation or verbal abuse**
  - f) involves the misuse of your position to obtain a personal benefit**
  - g) constitutes harassment or bullying behaviour under this code, or is improperly discriminatory.**
- 3.2** You must act lawfully and honestly, and exercise a reasonable degree of care and diligence in carrying out your functions under the LGA or any other Act. (*section 439*).

## Fairness and equity

- 3.3** You must consider issues consistently, promptly and fairly. You must deal with matters in accordance with established procedures, in a non-discriminatory manner.
- 3.4** 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.
- 3.5 An act or omission in good faith, whether or not it involves error, will not constitute a breach of clauses 3.3 or 3.4.**

## Harassment and discrimination

- 3.6** You must not harass or improperly discriminate against others, and you must not support anyone who harasses or improperly discriminates against others. This includes, but is not limited to, harassment or discrimination on the grounds of sex, pregnancy, age, race, marital status, disability, sexuality, political or other affiliation. It also includes discrimination against those who are carers, those who identify as transgender persons, and those who have infectious diseases.
- 3.7** For the purposes of this code, “harassment” is any form of behaviour towards a person that is:
- a) not wanted by the person**
  - b) offends, humiliates or intimidates the person, and**
  - c) creates a hostile environment.**

## Bullying

- 3.8** You must not engage in bullying behaviour towards another council official.
- 3.9** For the purposes of this code, “bullying behaviour” is any behaviour in which:
- a) a person or a group of people repeatedly behaves unreasonably towards another council official or a group of council officials and**
  - b) the behaviour creates a risk to health and safety.**
- 3.10** Bullying behaviour may involve, but is not limited to, any of the following types of behaviour:
- a) aggressive or intimidating conduct**
  - b) belittling or humiliating comments**

- c) spreading malicious rumours
- d) teasing, practical jokes or 'initiation ceremonies'
- e) exclusion from work-related events
- f) unreasonable work expectations, including too much or too little work, or work below or beyond a worker's skill level
- g) displaying offensive material
- h) pressure to behave in an inappropriate manner.

**3.11** Reasonable management action carried out in a reasonable manner does not constitute bullying behaviour for the purposes of this code. Examples of reasonable management action may include, but are not limited to:

- a) performance management processes
- b) disciplinary action for misconduct
- c) informing a worker about unsatisfactory work performance or inappropriate work behaviour
- d) directing a worker to perform duties in keeping with their job
- e) maintaining reasonable workplace goals and standards.

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## Work health and safety

**3.12** All council officials, including councillors, owe statutory duties under the *Work Health and Safety Act 2011* (WH&S Act). You must comply with your duties under the WH&S Act and your responsibilities under any policies or procedures adopted by the council to ensure workplace health and safety. Specifically, you must:

- a) take reasonable care for your own health and safety

- b) take reasonable care that your acts or omissions do not adversely affect the health and safety of other persons
- c) comply, so far as you are reasonably able, with any reasonable instruction that is given to ensure compliance with the WH&S Act and any policies or procedures adopted by the council to ensure workplace health and safety
- d) cooperate with any reasonable policy or procedure of the council relating to workplace health or safety that you have been notified of
- e) report accidents, incidents, near misses, to the general manager and take part in any incident investigations.

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## Land use planning, development assessment and other regulatory functions

**3.13** You must ensure that land use planning, development assessment and other regulatory decisions are properly made, and that all parties are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the exercise of land use planning, development assessment and other regulatory functions.

**3.14** In exercising land use planning, development assessment and other regulatory functions, you must ensure that no action, statement or communication between yourself and others conveys any suggestion of willingness to improperly provide concessions or preferential or unduly unfavourable treatment.

**3.15** You must keep a written record of all meetings and other communications with applicants or objectors to planning

**applications. Councillors must disclose in writing any meetings and other communications with applicants or objectors to a planning application at a council or committee meeting where the planning application is under consideration.**

- 3.16 For the purposes of clause 3.15, a “planning application” is:**
- a) an application for development consent, or for the modification of a development consent, or**
  - b) an application for a complying development certificate, or an application for the modification of a complying development certificate, or**
  - c) a formal request to initiate the making of an environmental planning instrument or development control plan in relation to development on a particular site.**

## Binding caucus votes

- 3.17** You must not participate in binding caucus votes in relation to matters to be considered at a council or committee meeting.
- 3.18** For the purposes of clause 3.17, a binding caucus vote is a process whereby a group of councillors are compelled by a threat of disciplinary or other adverse action to comply with a predetermined position on a matter before the council or committee, irrespective of the personal views of individual members of the group on the merits of the matter before the council or committee.
- 3.19** Clause 3.17 does not prohibit councillors from discussing a matter before the council or committee prior to considering the matter in question at a council or committee meeting, or from voluntarily holding a shared view with other councillors on the merits of a matter.

- 3.20** Clause 3.17 does not apply to a decision to elect the mayor or deputy mayor, or to nominate a person to be a member of a council committee **or a representative of the council on an external body.**

## Obligations in relation to meetings

- 3.21** You must comply with rulings by the chair at council and committee meetings or other proceedings of the council.
- 3.22** You must not harass the chair, other council officials or any members of the public present during council or committee meetings or other proceedings of the council.
- 3.23** You must not engage in conduct that disrupts council or committee meetings or other proceedings of the council, or that would otherwise be inconsistent with the orderly conduct of meetings.
- 3.24** If you are a councillor, you must not engage in any acts of disorder or other conduct that is intended to prevent the proper or effective functioning of the council, or of a committee of the council. **Without limiting this clause, you must not:**
- a) leave a meeting of the council or a committee for the purposes of depriving the meeting of a quorum, or**
  - b) submit a rescission motion with respect to a decision for the purposes of voting against it to prevent another councillor from submitting a rescission motion with respect to the same decision, or**
  - c) submit a large number of notices of motion, questions with notice or other business for consideration at a meeting of the council or a committee for the purposes of impeding the consideration of other business in the agenda for the meeting.**

## Part 4:

# Pecuniary Interests



## What is a pecuniary interest?

- 4.1 A pecuniary interest is an interest that you have in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to you or a person referred to in clause 4.3.
- 4.2 You will not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision you might make in relation to the matter, or if the interest is of a kind specified in clause 4.6.
- 4.3 For the purposes of this Part, you will have a pecuniary interest in a matter if the pecuniary interest is:
- (a) your interest, or
  - (b) the interest of your spouse or de facto partner, your relative, or your partner or employer, or
  - (c) a company or other body of which you, or your nominee, partner or employer, is a member.
- 4.4 For the purposes of clause 4.3:
- (a) Your “relative” is any of the following:
    - i) your parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
    - ii) your spouse’s or de facto partner’s parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
    - iii) the spouse or de facto partner of a person referred to in paragraphs (i) and (ii).
  - (b) “de facto partner” has the same meaning as defined in section 21C of the *Interpretation Act 1987*.

- 4.5 You will not have a pecuniary interest in relation to a person referred to in subclauses 4.3(b) or (c):
- (a) if you are unaware of the relevant pecuniary interest of your spouse, de facto partner, relative, partner, employer or company or other body, or
  - (b) just because the person is a member of, or is employed by, a council or a statutory body, or is employed by the Crown, or
  - (c) just because the person is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.

## What interests do not have to be disclosed?

- 4.6 You do not have to disclose the following interests for the purposes of this Part:
- (a) your interest as an elector
  - (b) your interest as a ratepayer or person liable to pay a charge
  - (c) an interest you have in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to the public generally, or to a section of the public that includes persons who are not subject to this code
  - (d) an interest you have in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to your relative by the council in the same manner and subject to the same conditions as apply to persons who are not subject to this code

- (e) an interest you have as a member of a club or other organisation or association, unless the interest is as the holder of an office in the club or organisation (whether remunerated or not)
  - (f) if you are a council committee member, an interest you have as a person chosen to represent the community, or as a member of a non-profit organisation or other community or special interest group, if you have been appointed to represent the organisation or group on the council committee
  - (g) an interest you have relating to a contract, proposed contract or other matter, if the interest arises only because of a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company
  - (h) an interest you have arising from the proposed making by the council of an agreement between the council and a corporation, association or partnership, being a corporation, association or partnership that has more than 25 members, if the interest arises because your relative is a shareholder (but not a director) of the corporation, or is a member (but not a member of the committee) of the association, or is a partner of the partnership
  - (i) an interest you have arising from the making by the council of a contract or agreement with your relative for, or in relation to, any of the following, but only if the proposed contract or agreement is similar in terms and conditions to such contracts and agreements as have been made, or as are proposed to be made, by the council in respect of similar matters with other residents of the area:
    - i) the performance by the council at the expense of your relative of any work or service in connection with roads or sanitation
    - ii) security for damage to footpaths or roads
    - iii) any other service to be rendered, or act to be done, by the council by or under any Act conferring functions on the council, or by or under any contract
  - (j) an interest relating to the payment of fees to councillors (including the mayor and deputy mayor)
  - (k) an interest relating to the payment of expenses and the provision of facilities to councillors (including the mayor and deputy mayor) in accordance with a policy under section 252 of the LGA,
  - (l) an interest relating to an election to the office of mayor arising from the fact that a fee for the following 12 months has been determined for the office of mayor
  - (m) an interest of a person arising from the passing for payment of a regular account for the wages or salary of an employee who is a relative of the person
  - (n) an interest arising from being covered by, or a proposal to be covered by, indemnity insurance as a councillor or a council committee member
  - (o) an interest arising from the appointment of a councillor to a body as a representative or delegate of the council, whether or not a fee or other recompense is payable to the representative or delegate.
- 4.7 For the purposes of clause 4.6, “relative” has the same meaning as in clause 4.4, but includes your spouse or de facto partner.

## What disclosures must be made by a designated person?

### 4.8 Designated persons include:

- (a) the general manager
- (b) other senior staff of the council for the purposes of section 332 of the LGA
- (c) a person (other than a member of the senior staff of the council) who is a member of staff of the council or a delegate of the council and who holds a position identified by the council as the position of a designated person because it involves the exercise of functions (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the person's duty as a member of staff or delegate and the person's private interest
- (d) a person (other than a member of the senior staff of the council) who is a member of a committee of the council identified by the council as a committee whose members are designated persons because the functions of the committee involve the exercise of the council's functions (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the member's duty as a member of the committee and the member's private interest.

### 4.9 A designated person:

- (a) must prepare and submit written returns of interests in accordance with clauses 4.21, and
- (b) must disclose pecuniary interests in accordance with clause 4.10.

4.10 A designated person must as soon as practicable disclose in writing to the general manager (or if the person is the general manager, to the council) the nature of any pecuniary interest the person has in any council matter with which the person is dealing.

4.11 Clause 4.10 does not require a designated person who is a member of staff of the council to disclose a pecuniary interest if the interest relates only to the person's salary as a member of staff, or to his or her other conditions of employment.

4.12 The general manager must, on receiving a disclosure from a designated person, deal with the matter to which the disclosure relates or refer it to another person to deal with.

4.13 A disclosure by the general manager must, as soon as practicable after the disclosure is made, be laid on the table at a meeting of the council and the council must deal with the matter to which the disclosure relates or refer it to another person to deal with.

## What disclosures must be made by council staff other than designated persons?

4.14 A member of staff of council, other than a designated person, must disclose in writing to their supervisor or the general manager the nature of any pecuniary interest they have in a matter they are dealing with as soon as practicable.

4.15 The staff member's supervisor or the general manager must, on receiving a disclosure under clause 4.14, deal with the matter to which the disclosure relates or refer it to another person to deal with.

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## What disclosures must be made by council advisers?

- 4.16 A person who, at the request or with the consent of the council or a council committee, gives advice on any matter at any meeting of the council or committee, must disclose the nature of any pecuniary interest the person has in the matter to the meeting at the time the advice is given. The person is not required to disclose the person's interest as an adviser.
- 4.17 A person does not breach clause 4.16 if the person did not know, and could not reasonably be expected to have known, that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

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## What disclosures must be made by a council committee member?

- 4.18 A council committee member must disclose pecuniary interests in accordance with clause 4.29 and comply with clause 4.30.
- 4.19 For the purposes of clause 4.18, a "council committee member" includes a member of staff of council.

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## What disclosures must be made by a councillor?

- 4.20 A councillor:
- (a) must prepare and submit written returns of interests in accordance with clause 4.21, and

- (b) must disclose pecuniary interests in accordance with clause 4.29 and comply with clause 4.30.

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## Disclosure of interests in written returns

- 4.21 A councillor or designated person must make and lodge with the general manager a return in the form set out in schedule 2 to this code, disclosing the councillor's or designated person's interests as specified in schedule 1 to this code within 3 months after:
- (a) becoming a councillor or designated person, and
  - (b) 30 June of each year, and
  - (c) the councillor or designated person becoming aware of an interest they are required to disclose under schedule 1 that has not been previously disclosed in a return lodged under paragraphs (a) or (b).
- 4.22 A person need not make and lodge a return under clause 4.21, paragraphs (a) and (b) if:
- (a) they made and lodged a return under that clause in the preceding 3 months, or
  - (b) they have ceased to be a councillor or designated person in the preceding 3 months.
- 4.23 A person must not make and lodge a return that the person knows or ought reasonably to know is false or misleading in a material particular.
- 4.24 The general manager must keep a register of returns required to be made and lodged with the general manager.

- 4.25 Returns required to be lodged with the general manager under clause 4.21(a) and (b) must be tabled at the first meeting of the council after the last day the return is required to be lodged.
- 4.26 Returns required to be lodged with the general manager under clause 4.21(c) must be tabled at a council meeting as soon as practicable after the return is lodged.
- 4.27 The general manager must cause the information contained in returns made and lodged by councillors and the general manager under clause 4.21, other than information disclosing the address of the councillor's or general manager's principal place of residence, to be published on the council's website as soon as practicable after the returns are lodged. The general manager must cause the information published on the council's website to be kept up to date.
- 4.28 Information contained in returns made and lodged by designated persons other than the general manager is not to be publicly disclosed (including in the tabling of the returns under clauses 4.25 and 4.26) unless the council decides to grant access to the information in response to an access request made under the *Government Information (Public Access) Act 2009*.
- 4.30 The councillor or council committee member must not be present at, or in sight of, the meeting of the council or committee:
- (a) at any time during which the matter is being considered or discussed by the council or committee, or
  - (b) at any time during which the council or committee is voting on any question in relation to the matter.
- 4.31 A disclosure made at a meeting of a council or council committee must be recorded in the minutes of the meeting.
- 4.32 A general notice may be given to the general manager in writing by a councillor or a council committee member to the effect that the councillor or council committee member, or the councillor's or council committee member's spouse, de facto partner or relative, is:
- (a) a member of, or in the employment of, a specified company or other body, or
  - (b) a partner of, or in the employment of, a specified person.
- Such a notice is, unless and until the notice is withdrawn, sufficient disclosure of the councillor's or council committee member's interest in a matter relating to the specified company, body or person that may be the subject of consideration by the council or council committee after the date of the notice.
- 4.33 A councillor or a council committee member is not prevented from being present at and taking part in a meeting at which a matter is being considered, or from voting on the matter, merely because the councillor or council committee member has an interest in the matter of a kind referred to in clause 4.6.

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## Disclosure of pecuniary interests at meetings

- 4.29 A councillor or a council committee member who has a pecuniary interest in any matter with which the council is concerned, and who is present at a meeting of the council or committee at which the matter is being considered, must disclose the nature of the interest to the meeting as soon as practicable.

- 4.34** A person does not breach clauses 4.29 or 4.30 if the person did not know, and could not reasonably be expected to have known, that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.
- 4.35** Despite clause 4.30, a councillor who has a pecuniary interest in a matter may participate in a decision to delegate consideration of the matter in question to another body or person.
- 4.36** Clause 4.30 does not apply to a councillor who has a pecuniary interest in a matter that is being considered at a meeting if:
- (a) the matter is a proposal relating to:
    - (i) the making of a principal environmental planning instrument applying to the whole or a significant portion of the council's area, or
    - (ii) the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant portion of the council's area, and
  - (b) the pecuniary interest arises only because of an interest of the councillor in the councillor's principal place of residence or an interest of another person (whose interests are relevant under clause 4.3) in that person's principal place of residence, and
  - (c) the councillor made a special disclosure under clause 4.37 in relation to the interest before the commencement of the meeting.
- 4.37** A special disclosure of a pecuniary interest made for the purposes of clause 4.36(c) must:
- (a) be in the form set out in schedule 3 of this code and contain the information required by that form, and
  - (b) be laid on the table at a meeting of the council as soon as practicable after the disclosure is made, and a copy of the special disclosure is to be recorded in the minutes of the meeting.
- 4.38** The *Minister for Local Government* may, conditionally or unconditionally, allow a councillor or a council committee member who has a pecuniary interest in a matter with which the council is concerned to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter if the *Minister* is of the opinion:
- (a) that the number of councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business, or
  - (b) that it is in the interests of the electors for the area to do so.



## Part 5:

# Non-pecuniary Conflicts of Interest



## What is a non-pecuniary conflict of interest?

- 5.1 Non-pecuniary interests are private or personal interests a council official has that do not amount to a pecuniary interest as defined in clause 4.1 of this code. These commonly arise out of family or personal relationships, or out of involvement in sporting, social or other cultural groups and associations, and may include an interest of a financial nature.
- 5.2 **A non-pecuniary conflict of interest exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty.**
- 5.3 **Non-pecuniary conflicts of interest must be identified and appropriately managed to uphold community confidence in the probity of council decision-making. The onus is on you to identify any non-pecuniary conflict of interest you may have in matters that you deal with, to disclose the interest fully and in writing, and to take appropriate action to manage the conflict in favour of your public duty.**
- 5.4 **When considering whether or not you have a non-pecuniary conflict of interest, it is always important to think about how others would view your situation.**
- 5.5 The political views of a councillor do not constitute a private interest for the purposes of clause 5.2.
- 5.7 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 5.6.
- 5.8 How you manage a non-pecuniary conflict of interest will depend on whether or not it is significant.
- 5.9 As a general rule, a non-pecuniary conflict of interest will be significant **where it does not involve a pecuniary interest for the purposes of clause 4.1**, but it involves:
- a) **a relationship between a council official and another person that is particularly close, for example, a current or former spouse or de facto partner, a relative for the purposes of clause 4.4 or another person from the council official's extended family that the council official has a close personal relationship with, or another 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, including, but not limited to, active participation in its management or administration and other activities**
  - d) **a financial interest that is not a pecuniary interest for the purposes of clause 4.1.**
  - e) **the conferral or loss of a personal benefit other than one conferred or lost as a member of the community or a broader class of people affected by a decision.**

## Managing non-pecuniary conflicts of interest

- 5.6 Where you have a non-pecuniary conflict of interest for the purposes of clause 5.2, you must disclose the relevant private interest fully and in writing as soon as practicable.

- 5.10 If you have a significant non-pecuniary conflict of interest, you must manage it in one of two ways:**
- a) **by removing yourself from consideration of the matter in which you have a significant non-pecuniary conflict of interest and arranging to have your duties in relation to the matter allocated to another person, or**
  - b) **if the significant non-pecuniary conflict of interest arises in relation to a matter you are required to consider at a council or committee meeting, by managing the conflict of interest as if you had a pecuniary interest in the matter by complying with clauses 4.29 and 4.30.**
- 5.11 If you determine that you have a non-pecuniary conflict of interest in a matter that is not significant and does not require further action, when disclosing the interest you must also explain why you consider that the non-pecuniary conflict of interest is not significant and does not require further action in the circumstances.**
- 5.12 If you are a member of staff of council, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with your manager.
- 5.13 Despite clause 5.10(b), a councillor who has a significant non-pecuniary conflict of interest in a matter, may participate in a decision to delegate consideration of the matter in question to another body or person.**
- 5.15 Where a councillor has received or knowingly benefitted from a reportable political donation:
- a) made by a major political donor in the previous four years, and
  - b) where the major political donor has a matter before council,
- the councillor must declare a non-pecuniary conflict of interest, disclose the nature of the interest, and **manage the conflict of interest as if they had a pecuniary interest in the matter by complying with clauses 4.29 and 4.30.**
- 5.16 For the purposes of this Part:
- a) a “reportable political donation” is a “reportable political donation” for the purposes of section 86 of the *Election Funding, Expenditure and Disclosures Act 1981*
  - b) a “major political donor” is a “major political donor” for the purposes of section 84 of the *Election Funding, Expenditure and Disclosures Act 1981*.
- 5.17 Councillors should note that political donations below \$1000, or political donations to a registered political party or group by which a councillor is endorsed, may still give rise to a non-pecuniary conflict of interest. Councillors should determine whether or not such conflicts are significant **for the purposes of clause 5.9** and take the appropriate action to manage them.
- 5.18 If a councillor has received or knowingly benefitted from a reportable political donation of the kind referred to in clause 5.15, that councillor is not prevented from participating in a decision **to delegate consideration of the matter in question to another person** (see clause 5.13 above).

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## Political donations

- 5.14 Councillors should be aware that matters before council or committee meetings involving their political donors may also give rise to a non-pecuniary conflict of interest.**

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## Loss of quorum as a result of compliance with this Part

5.19 Where a majority of councillors is precluded from consideration of a matter **by compliance with a requirement under this Part**, the council or committee must resolve to delegate consideration of the matter in question to another person.

5.20 Where a majority of councillors is precluded under this Part from consideration of a matter, and the matter in question concerns the exercise of a function that may not be delegated under section 377 **of the LGA**, the councillors may apply in writing to the Chief Executive to be exempted from complying with a requirement under this Part relating to the management of a non-pecuniary conflict of interest.

5.21 The Chief Executive will only exempt a councillor from complying with a requirement under this Part where:

- a) compliance by councillors with a requirement under the Part in relation to a matter will result in the loss of a quorum, and
- b) the matter relates to the exercise of a function of the council that may not be delegated under section 377 of the Act.

5.22 Where the Chief Executive exempts a councillor from complying with a requirement under this Part, the councillor must still disclose any interests they have in the matter the exemption applies to, in accordance with **clause 5.6**.

5.23 A councillor who would otherwise be precluded from participating in the consideration of a matter under this Part because they have a non-pecuniary

conflict of interest in the matter is permitted to participate in consideration of the matter if:

- a) the matter is a proposal relating to
  - i) the making of a principal environmental planning instrument applying to the whole or a significant **portion** of the council's area, or
  - ii) the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant **portion** of the council's area, and
- b) the non-pecuniary conflict of interest arises only because of an interest that a person has in that person's principal place of residence, and
- c) the councillor **discloses** the interest they have in the matter that would otherwise have precluded their participation in consideration of the matter under this Part **in accordance with clause 5.6**.

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## Other business or employment

**5.24 The general manager must not engage, for remuneration, in private employment or contract work outside the service of the council without the approval of the council.**

**5.25 A member of staff must not engage, for remuneration, in private employment or contract work outside the service of the council that relates to the business of the council or that might conflict with the staff member's council duties unless he or she has notified the general manager in writing of the employment or work.**

**5.26** The general manager may at any time prohibit a member of staff from engaging, for remuneration, in private employment or contract work outside the service of the council that relates to the business of the council, or that might conflict with the member's council duties.

**5.27** A member of staff must not engage, for remuneration, in private employment or contract work outside the service of the council if prohibited from doing so.

**5.28** Members of staff must ensure that any outside employment or business they engage in will not:

- a) conflict with their official duties
- b) involve using confidential information or council resources obtained through their work with the council
- c) require them to work while on council duty
- d) discredit or disadvantage the council
- e) pose, due to fatigue, a risk to their health or safety, or to the health and safety of their co-workers.

way other members of the community deal with the council. In particular, you must not:

- a) access council information for personal purposes
- b) undertake personal dealings with the council during work time, or
- c) approach council staff in staff only areas to discuss your personal dealings with the council.

You must also ensure that you disclose and appropriately manage any conflict of interest you may have in any matter in accordance with the requirements of this code.

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## Personal dealings with council

**5.29** You may have reason to deal with your council in your personal capacity (for example, as a ratepayer, recipient of a council service or applicant for a **development** 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.

**5.30** You must undertake any personal dealings you have with the council in a manner that is consistent with the



## Part 6:

# Personal Benefit



For the purposes of this section, a reference to a gift or benefit does not include a political donation **for the purposes of the *Election Funding, Expenditure and Disclosures Act 1981***.

## Gifts and benefits

- 6.1 You must avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to secure favourable treatment from you or from the council.
- 6.2 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 include parents, **spouses or de facto partners**, children and siblings.

## How are offers of gifts and benefits to be dealt with?

- 6.3 You must not:
- a) seek or accept a bribe or other improper inducement
  - b) seek gifts or benefits of any kind
  - c) accept any gift or benefit that may create a sense of obligation on your part, or may be perceived to be intended or likely to influence you in carrying out your public duty
  - d) accept any gift or benefit of value**
  - e) accept an offer of cash or a cash-like gift, regardless of the amount
  - f) participate in competitions for prizes where eligibility is based on the council being in a customer-supplier relationship with the competition organiser**

- g) personally benefit from reward points programs when purchasing on behalf of the council.**

6.4 Where you are offered or receive a gift or benefit, you must disclose this promptly to your supervisor or the general manager in writing. The recipient, supervisor, or general manager must ensure that, at a minimum, the following details are recorded in the council's gift register:

- a) whether the gift was accepted or refused
- b) the nature of the gift
- c) the estimated monetary value of the gift
- d) the name of the person who offered the gift, and
- e) the date on which the gift was offered or received.

6.5 Where you receive a gift or benefit of value that cannot reasonably be refused or returned, the gift or benefit must be surrendered to the council, unless the nature of the gift or benefit makes this impractical.

## Token gifts and benefits

- 6.6 Generally speaking, token gifts and benefits include:
- a) one or more gifts or benefits received from a person over a 12-month period that do not exceed a cumulative value of \$50.**
  - b) free or subsidised meals, beverages or refreshments provided in conjunction with:
    - i) the discussion of official business
    - ii) council work-related events such as **council-sponsored events**, training, education sessions or workshops

- iii) conferences
  - iv) council functions or events
  - v) social functions organised by groups, such as council committees and community organisations
- c) **invitations to and attendance at local social, cultural or sporting events with a ticket value that does not exceed \$50**
- d) **gifts of single bottles of 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) that do not exceed a value of \$50**
- e) ties, scarves, coasters, tie pins, diaries, chocolates or flowers
- f) **prizes that do not exceed \$50 in value.**

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## Gifts and benefits of value

- 6.7 **Gifts or benefits that exceed \$50 in value are to be treated as gifts or benefits of value and must not be accepted.**
- 6.8 **Where you have accepted a token gift or benefit from a person, you must not accept a further gift or benefit from the same person or another person associated with that person within a single 12-month period where the value of the gift, added to the value of earlier gifts received from the same person or a person associated with that person, during the same 12-month period would exceed \$50 in value.**
- 6.9 **Gifts and benefits of value include, but are not limited to, tickets to major sporting events (such as international matches or matches in national sporting**

**codes with a ticket value that exceeds \$50, corporate hospitality at a corporate facility at major sporting events, discounted products for personal use, the frequent use of facilities such as gyms, the use of holiday homes, free or discounted travel.)**

- 6.10 **Clause 6.9 does not apply to events that have been organised or sponsored by the council, where the person is required to attend the event for the purposes of performing their official functions.**
- 6.11 **For the purposes of this Part, the value of a gift or benefit is the monetary value of the gift or benefit inclusive of GST.**

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## “Cash-like gifts”

- 6.12 For the purposes of clause 6.3(e), “cash-like gifts” include but are not limited to, gift vouchers, credit cards, debit cards with credit on them, prepayments such as phone or internal credit, memberships or entitlements to discounts.

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## Improper and undue influence

- 6.13 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 proper exercise of their role as prescribed under the LGA.**
- 6.14 You must not take advantage (or seek to take advantage) of your status or position with council, or of functions you perform for council, in order to obtain a private benefit for yourself or for any other person or body.



## Part 7:

# Relationships Between Council Officials



## Obligations of councillors and administrators

- 7.1 Each council is a body politic. The councillors or administrator/s are the governing body of the council. **Under section 223 of the LGA, the role of the governing body of the council includes the development and endorsement of the strategic plans, programs, strategies and policies of the council, including those relating to workforce policy.**
- 7.2 Councillors or administrators must not:
- a) direct council staff other than by giving appropriate direction to the general manager in the performance of the council's functions by way of council or committee resolution, or by the mayor or administrator exercising their power under section 226 of the **LGA (section 352)**
  - b) in any public or private forum, direct or influence, or attempt to direct or influence, any other member of the staff of the council or a delegate of the council in the exercise of the functions of the staff member or delegate
  - c) contact a member of the staff of the council on council-related business unless in accordance with the policy and procedures governing the interaction of councillors and council staff that have been authorised by the council and the general manager
  - d) contact or issue instructions to any of council's contractors or tenderers, including council's legal advisers, unless by the mayor or administrator exercising their power under section 226 of the **LGA. Councillors may contact the council's external auditor or the chair of the council's audit risk and improvement committee to provide information reasonably**

necessary for the external auditor or audit, risk and improvement committee to effectively perform their functions.

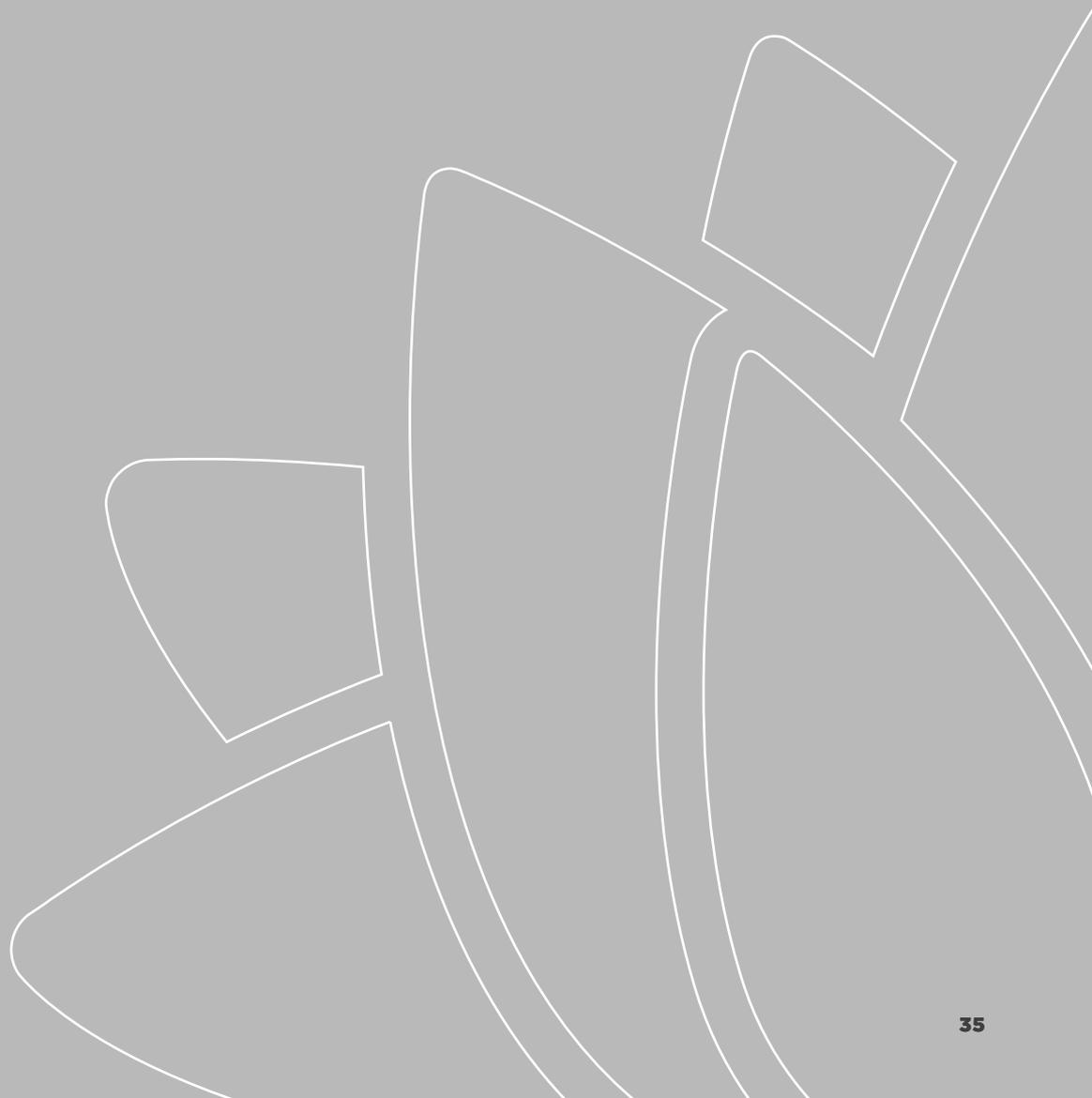
## Obligations of staff

- 7.3 **Under section 335 of the LGA, the role of the general manager includes conducting the day-to-day management of the council in accordance with the strategic plans, programs, strategies and policies of the council, implementing without undue delay, lawful decisions of the council and ensuring that the mayor and other councillors are given timely information and advice and the administrative and professional support necessary to effectively discharge their official functions.**
- 7.4 Members of staff of council must:
- a) give their attention to the business of the council while on duty
  - b) ensure that their work is carried out efficiently, economically and effectively
  - c) carry out lawful directions given by any person having authority to give such directions
  - d) give effect to the lawful decisions, policies and procedures of the council, whether or not the staff member agrees with or approves of them
  - e) ensure that any participation in political activities outside the service of the council does not conflict with the performance of their official duties.

## Inappropriate interactions

- 7.5 You must not engage in any of the following inappropriate interactions:

- a) councillors and administrators approaching staff and staff organisations to discuss individual or operational staff matters **including but not limited to industrial relations matters such as grievances, workplace investigations and disciplinary matters**
- b) council staff approaching councillors and administrators to discuss individual or operational staff matters **including but not limited to industrial relations matters such as grievances, workplace investigations and disciplinary matters**
- c) **subject to clause 8.6**, council staff refusing to give information that is available to other councillors to a particular councillor
- d) councillors and administrators who have lodged a development application with council, discussing the matter with council staff in staff-only areas of the council
- e) councillors and administrators being overbearing or threatening to council staff
- f) councillors and administrators making personal attacks on council staff in public forums **including social media**
- g) councillors and administrators directing or pressuring council staff in the performance of their work, or recommendations they should make
- h) council staff providing ad hoc advice to councillors and administrators without recording or documenting the interaction as they would if the advice was provided to a member of the community
- i) council staff meeting with applicants or objectors alone AND outside office hours to discuss applications or proposals
- j) councillors attending on-site inspection meetings with lawyers and/or consultants engaged by the council associated with current or proposed legal proceedings unless permitted to do so by the council's general manager or, in the case of the mayor or administrator, unless they are exercising their **functions** under section 226 of the **LGA**.



## Part 8:

# Access To Information and Council Resources



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## Councillor and administrator access to information

- 8.1 **The general manager is responsible for ensuring that councillors and administrators can access information necessary for the performance of their official functions. The general manager and public officer are also responsible for ensuring that members of the public can access publicly available council information under the *Government Information (Public Access) Act 2009* (the GIPA Act).**
- 8.2 The general manager must provide councillors and administrators with **the information necessary to effectively discharge their official functions.**
- 8.3 Members of staff of council must provide full and timely information to councillors and administrators sufficient to enable **them to exercise their official functions** and in accordance with council procedures.
- 8.4 Members of staff of council who provide any information to a particular councillor in the performance of their **official functions** must also make it available to any other councillor who requests it and in accordance with council procedures.
- 8.5 Councillors and administrators who have **a private interest only in council information** have the same rights of access as any member of the public.
- 8.6 **Notwithstanding clause 8.4, councillors who are precluded from participating in the consideration of a matter under this code because they have a pecuniary or significant non-pecuniary conflict of interest in the matter, are not entitled to access to council information in relation to the matter unless the information is otherwise available to members of the**

public, or the council has determined to make the information available under the GIPA Act.

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## Councillors and administrators to properly examine and consider information

- 8.7 **Councillors and administrators must ensure that they comply with their duty under section 439 of the LGA to act honestly and exercise a reasonable degree of care and diligence by properly examining and considering all the information provided to them relating to matters that they are required to make a decision on.**

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## Refusal of access to documents

- 8.8 Where the general manager or 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 **official functions (see clause 8.2)**. The general manager or public officer must state the reasons for the decision if access is refused.

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## Use of certain council information

- 8.9 In regard to information obtained in your capacity as a council official, you must:
- only access council information needed for council business
  - 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 access 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.

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## Use and security of confidential information

- 8.10 You must maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible.
- 8.11 In addition to your general obligations relating to the use of council information, you must:
- a) **only access confidential information that you have been authorised to access and only do so for the purposes of exercising your official functions**
  - b) protect confidential information
  - c) only release confidential information if you have authority to do so
  - d) only use confidential information for the purpose for which it is intended to be used
  - e) not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person
  - f) not use confidential information with the intention to cause harm or detriment to the council or any other person or body

- g) **not disclose any information discussed during a confidential session of a council or committee meeting or any other confidential forum.**

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## Personal information

- 8.12 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) the council's privacy management plan
  - e) the Privacy Code of Practice for Local Government

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## Use of council resources

- 8.13 You must use council resources ethically, effectively, efficiently and carefully in the course of your official duties, and must not use them for private purposes (except when supplied as part of a contract of employment) unless this use is lawfully authorised and proper payment is made where appropriate.
- 8.14 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.

- 8.15 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.
- 8.16 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.
- 8.17 You must not use council resources, property or facilities for the purpose of assisting your election campaign or the election campaigns of others unless the resources, property or facilities are otherwise available for use or hire by the public and any publicly advertised fee is paid for use of the resources, property or facility.
- 8.18 You must not use the council letterhead, council crests or other information that could give the appearance it is official council material for:
- a) the purpose of assisting your election campaign or the election campaign of others, or
  - b) for other non-official purposes.
- 8.19 You must not convert any property of the council to your own use unless properly authorised.
- 8.21 You must not use social media to post comments, photos, sound recordings or other information that:**
- a) **compromises your capacity to perform your official duties in an unbiased manner**
  - b) **has the potential to have a negative impact on your working relationships within the council or with external parties**
  - c) **is offensive, humiliating, threatening or intimidating to other council officials or those that deal with the council**
  - d) **has the capacity to damage the council's reputation or contains content about the council that may be misleading or deceptive**
  - e) **divulges confidential council information**
  - f) **breaches the privacy of other council officials or those that deal with council**
  - g) **contains allegations of suspected breaches of this code or information about the consideration of a matter under this code, or**
  - h) **could be perceived to be an official comment on behalf of the council where you have not been authorised to make such comment.**

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## Internet access and use of social media

- 8.20 You must not use council's computer resources **or other mobile devices** to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature, **or that could otherwise lead to criminal penalty or civil liability and/or damage the council's reputation.**

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## Council record keeping

- 8.22 All information received in your official capacity is a council record and must be managed in accordance with the council's approved record management practices and policies.**
- 8.23 All information stored in either soft or hard copy on council supplied resources is deemed to be related to the business of the council and can be used by the council as a council record regardless of whether the original intention was to create the information for personal purposes.**

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## Councillor access to council buildings

- 8.24 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.
- 8.25 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.
- 8.26 Councillors and administrators must ensure that when they are within a staff area **they refrain from conduct that could be perceived to** improperly influence council staff decisions.



## Part 9:

# Maintaining the Integrity of This Code



- 9.1 You must not conduct yourself in a manner that is likely to undermine confidence in the integrity of this code or its administration.

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## Complaints made for an improper purpose

- 9.2 You must not make a complaint or cause a complaint to be made under this code for an improper purpose.
- 9.3 For the purposes of clause 9.2, a complaint is made for an improper purpose where it is trivial, frivolous, vexatious or not made in good faith, or where it otherwise lacks merit and has been made substantially for one or more of the following purposes:
- a) to intimidate or harass another council official
  - b) to damage another council official's reputation
  - c) to obtain a political advantage
  - d) to influence a council official in the exercise of their official functions or to prevent or disrupt the exercise of those functions
  - e) to influence the council in the exercise of its functions or to prevent or disrupt the exercise of those functions
  - f) to avoid disciplinary action under this code
  - g) to take reprisal action against a person for making a complaint under this code
  - h) to take reprisal action against a person for exercising a function prescribed under the Procedures for the administration of this code
  - i) to prevent or disrupt the effective administration of this code.

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## Detrimental action

- 9.4 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for a complaint they have made under this code.
- 9.5 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for any function they have exercised under this code.
- 9.6 For the purposes of clauses 9.4 and 9.5, a detrimental action is an action causing, comprising or involving any of the following:
- a) injury, damage or loss
  - b) intimidation or harassment
  - c) discrimination, disadvantage or adverse treatment in relation to employment
  - d) dismissal from, or prejudice in, employment
  - e) disciplinary proceedings.

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## Compliance with requirements under this code

- 9.7 You must not engage in conduct that is calculated to impede or disrupt the consideration of a matter under this code.
- 9.8 You must comply with a reasonable and lawful request made by a person exercising a function under **the Procedures. A failure to make a written or oral submission invited under the Procedures will not constitute a breach of this clause.**
- 9.9 You must comply with a practice ruling made by the **Office**.

- 9.10 Where you are a councillor or the general manager, you must comply with any council resolution requiring you to take action as a result of a breach of this code.

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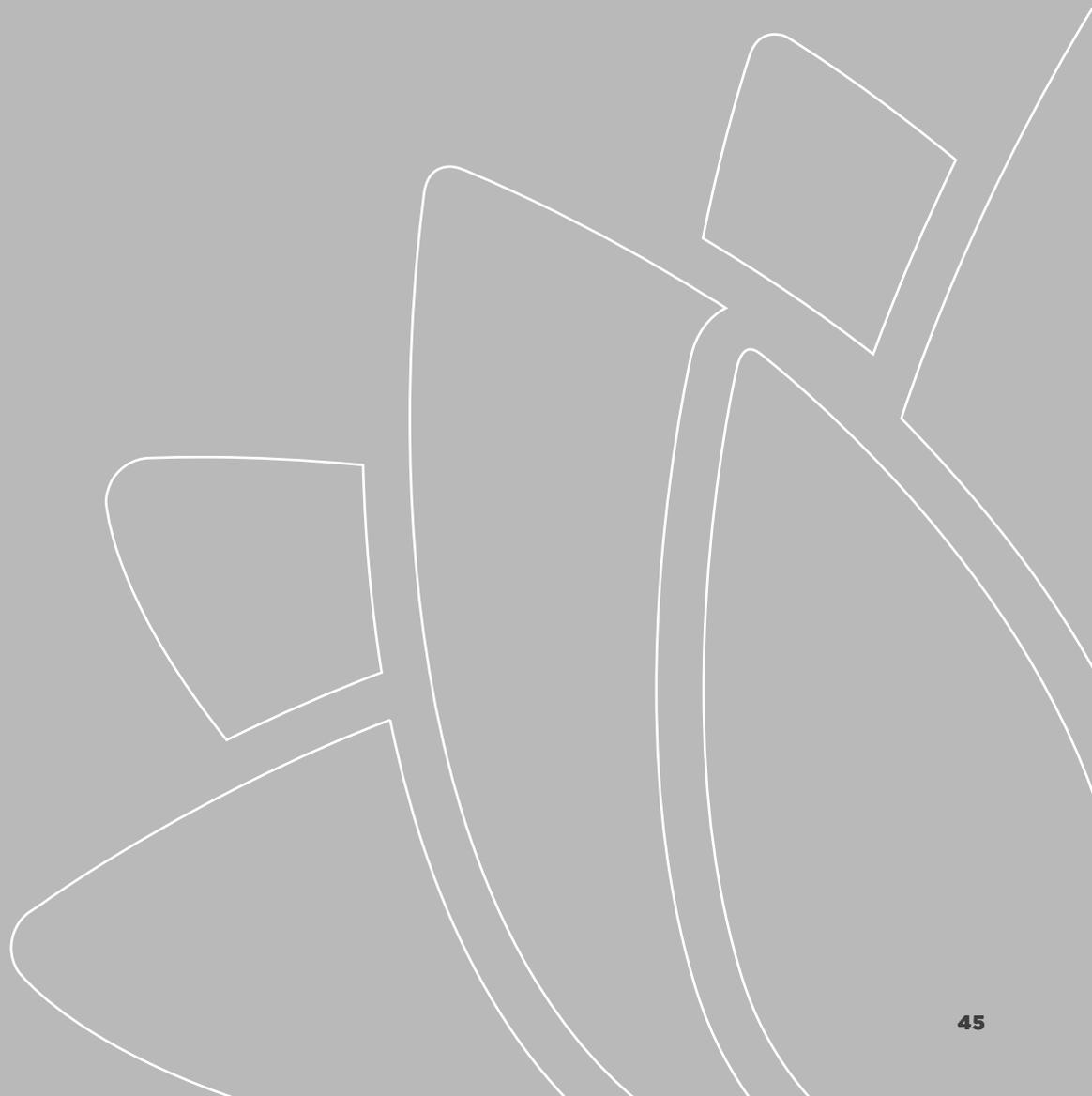
## Disclosure of information about the consideration of a matter under this code

- 9.11 All allegations of breaches of this code must be dealt with under and in accordance with the Procedures.**
- 9.12 You must not allege breaches of this code other than by way of a complaint made or initiated under the Procedures.**
- 9.13 You must not make allegations about, or disclose information about, suspected breaches of this code at council, committee or other meetings, whether open to the public or not, or in any other forum, whether public or not.**
- 9.14 You must not disclose information about **a complaint you have made under this code or a matter being considered** under this code except for the purposes of seeking legal advice, unless the disclosure is otherwise permitted under **the Procedures**.

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## Complaints alleging a breach of this part

- 9.15 Complaints alleging a breach of this Part by a councillor, the general manager or an administrator **are to be managed by the Office. The Office may delegate the consideration of an alleged breach of this Part to the general manager, the mayor or to another person.**
- 9.16 Complaints alleging a breach of this Part by other council officials **are to be managed** by the general manager.



# Schedule 1: Disclosures of Interest

## Part 1: Preliminary

### Definitions

1. For the purposes of the schedules to this code, the following definitions apply:

**address** means:

- a) in relation to a person other than a corporation, the last residential or business address of the person known to the councillor or designated person disclosing the address, or
- b) in relation to a corporation, the address of the registered office of the corporation in New South Wales or, if there is no such office, the address of the principal office of the corporation in the place where it is registered, or

**c) in relation to any real property, the street address of the property.**

**de facto partner** has the same meaning as defined in section 21C of the *Interpretation Act 1987*.

**disposition of property** means a conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, including the following:

- a) the allotment of shares in a company
- b) the creation of a trust in respect of property
- c) the grant or creation of a lease, mortgage, charge, easement, licence, power, partnership or interest in respect of property
- d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of a debt, contract or chose in action, or of an interest in respect of property

- e) the exercise by a person of a general power of appointment over property in favour of another person
- f) a transaction entered into by a person who intends by the transaction to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of another person.

**gift** means a disposition of property made otherwise than by will (whether or not by instrument in writing) without consideration, or with inadequate consideration, in money or money's worth passing from the person to whom the disposition was made to the person who made the disposition, but does not include a financial or other contribution to travel.

**interest** means:

- a) in relation to property, an estate, interest, right or power, at law or in equity, in or over the property, or
- b) in relation to a corporation, a relevant interest (within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth) in securities issued or made available by the corporation.

**listed company** means a company that is listed within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth.

**occupation** includes trade, profession and vocation.

**professional or business association** means an incorporated or unincorporated body or organisation having as one of its objects or activities the promotion of the economic interests of its members in any occupation.

**property** includes money.

**return date** means:

- a) in the case of a return made under clause 4.21(a), the date on which a person became a councillor or designated person
- b) in the case of a return made under clause 4.21(b), 30 June of the year in which the return is made
- c) in the case of a return made under clause 4.21(c), the date on which the councillor or designated person became aware of the interest to be disclosed.

**relative** includes any of the following:

- a) a person's spouse or de facto partner
- b) a person's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
- c) a person's spouse's or de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
- d) the spouse or de facto partner of a person referred to in paragraphs (b) and (c).

**travel** includes accommodation incidental to a journey.

## Matters relating to the interests that must be included in returns

- 2. **Interests etc. outside New South Wales:** A reference in this schedule or in schedule 2 to a disclosure concerning a corporation or other thing includes any reference to a disclosure concerning a corporation registered, or other thing arising or received, outside New South Wales.
- 3. **References to interests in real property:** A reference in this schedule or in schedule 2 to real property in which a councillor or designated person has an interest includes

a reference to any real property situated in Australia in which the councillor or designated person has an interest.

- 4. **Gifts, loans etc. from related corporations:** For the purposes of this schedule and schedule 2, gifts or contributions to travel given, loans made, or goods or services supplied, to a councillor or designated person by two or more corporations that are related to each other for the purposes of section 50 of the *Corporations Act 2001* of the Commonwealth are all given, made or supplied by a single corporation.

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## Part 2: Pecuniary interests to be disclosed in returns

### Real property

- 5. A person making a return under clause 4.21 of this code must disclose:
  - a) the **street** address of each parcel of real property in which he or she had an interest on the return date, and
  - b) the **street** address of each parcel of real property in which he or she had an interest in the period since 30 June of the previous financial year, and
  - c) the nature of the interest.
- 6. An interest in a parcel of real property need not be disclosed in a return if the person making the return had the interest only:
  - a) as executor of the will, or administrator of the estate, of a deceased person and not as a beneficiary under the will or intestacy, or

- b) as a trustee, if the interest was acquired in the ordinary course of an occupation not related to his or her duties as the holder of a position required to make a return.
7. An interest in a parcel of real property need not be disclosed in a return if the person ceased to hold the interest prior to becoming a councillor or designated person.
  8. For the purposes of clause 5 of this schedule, "interest" includes an option to purchase.

## Gifts

9. A person making a return under clause 4.21 of this code must disclose:
  - a) a description of each gift received in the period since 30 June of the previous financial year, and
  - b) the name and address of the donor of each of the gifts.
10. A gift need not be included in a return if:
  - a) it did not exceed **\$1000**, unless it was among gifts totalling more than **\$1000** made by the same person during a period of 12 months or less, or
  - b) it was a political donation disclosed, or required to be disclosed, under Part 6 of the *Election Funding Expenditure and Disclosures Act 1981*, or
  - c) the donor was a relative of the donee, or
  - d) subject to paragraph (a), it was received prior to the person becoming a councillor or designated person.
11. For the purposes of clause 10 of this schedule, the amount of a gift other than money is an amount equal to the value of the property given.

## Contributions to travel

12. A person making a return under clause 4.21 of this code must disclose:
  - a) the name and address of each person who made any financial or other contribution to the expenses of any travel undertaken by the person in the period since 30 June of the previous financial year, and
  - b) the dates on which the travel was undertaken, and
  - c) the names of the states and territories, and of the overseas countries, in which the travel was undertaken.
13. A financial or other contribution to any travel need not be disclosed under this clause if it:
  - a) was made from public funds (including a contribution arising from travel on free passes issued under an Act or from travel in government or council vehicles), or
  - b) was made by a relative of the traveller, or
  - c) was made in the ordinary course of an occupation of the traveller that is not related to his or her functions as the holder of a position requiring the making of a return, or
  - d) did not exceed **\$500**, unless it was among gifts totalling more than **\$500** made by the same person during a 12-month period or less, or
  - e) was a political donation disclosed, or required to be disclosed, under Part 6 of the *Election Funding Expenditure and Disclosures Act 1981*, or
  - f) was made by a political party of which the traveller was a member and the travel was undertaken for the purpose of political activity of the party in New

South Wales, or to enable the traveller to represent the party within Australia, or

- g) subject to paragraph (d) it was received prior to the person becoming a councillor or designated person.
14. For the purposes of clause 13 of this schedule, the amount of a contribution (other than a financial contribution) is an amount equal to the value of the contribution.

## Interests and positions in corporations

15. A person making a return under clause 4.21 of this code must disclose:
- a) the name and address of each corporation in which he or she had an interest or held a position (whether remunerated or not) on the return date, and
  - b) the name and address of each corporation in which he or she had an interest or held a position in the period since 30 June of the previous financial year, and
  - c) the nature of the interest, or the position held, in each of the corporations, and
  - d) a description of the principal objects (if any) of each of the corporations, except in the case of a listed company.
16. An interest in, or a position held in, a corporation need not be disclosed if the corporation is:
- a) formed for the purpose of providing recreation or amusement, or for promoting commerce, industry, art, science, religion or charity, or for any other community purpose, and
  - b) required to apply its profits or other income in promoting its objects, and

c) prohibited from paying any dividend to its members.

17. An interest in a corporation need not be disclosed if the interest is a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company.
18. An interest or a position in a corporation need not be disclosed if the person ceased to hold the interest or position prior to becoming a councillor or designated person.

## Interests as a property developer or a close associate of a property developer

19. A person making a return under clause 4.21 of this code must disclose whether they were a property developer, or a close associate of a corporation that is a property developer, on the return date.
20. For the purposes of clause 19:
- close associate** of a corporation means each of the following:
- a) a director or officer of the corporation, or a related body corporate of the corporation, or the spouse of such a director or officer
  - b) a person whose voting power in the corporation, or a related body corporate of the corporation, is greater than 20% or the spouse of such a person
  - c) if the corporation is a trustee, manager or responsible entity in relation to a trust—a person who holds more than 20% of the units in the trust (in the case of a unit trust) or is a beneficiary of the trust (in the case of a discretionary trust)
  - d) if the corporation or a related body corporate of the corporation is a stapled entity in relation to a stapled

security—a person who holds more than 20% of the units in the trust that is the other stapled entity.

**officer, related body corporate** and **voting power** have the same meanings as they have in the *Corporations Act 2001* of the Commonwealth.

**property developer** means a person engaged in a business that regularly involves the making of relevant planning applications by or on behalf of the person in connection with the residential or commercial development of land, with the ultimate purpose of the sale or lease of the land for profit.

**spouse of a person** includes a de facto partner of that person.

## Positions in trade unions and professional or business associations

21. A person making a return under clause 4.21 of the code must disclose:
  - a) the name of each trade union, and of each professional or business association, in which he or she held any position (whether remunerated or not) on the return date, and
  - b) the name of each trade union, and of each professional or business association, in which he or she has held any position (whether remunerated or not) in the period since 30 June of the previous financial year, and
  - c) a description of the position held in each of the unions and associations.
22. A position held in a trade union or a professional or business association need not be disclosed if the person ceased to hold the position prior to becoming a councillor or designated person.

## Dispositions of real property

23. A person making a return under clause 4.21 of this code must disclose particulars of each disposition of real property by the person (**including the street address of the affected property**) in the period since 30 June of the previous financial year, under which he or she wholly or partly retained the use and benefit of the property or the right to re-acquire the property.
24. A person making a return under clause 4.21 of this code must disclose particulars of each disposition of real property to another person (**including the street address of the affected property**) in the period since 30 June of the previous financial year, that is made under arrangements with, but is not made by, the person making the return, being a disposition under which the person making the return obtained wholly or partly the use of the property.
25. A disposition of real property need not be disclosed if it was made prior to a person becoming a councillor or designated person.

## Sources of income

26. A person making a return under clause 4.21 of this code must disclose:
  - a) each source of income that the person reasonably expects to receive in the period commencing on the first day after the return date and ending on the following 30 June, and
  - b) each source of income received by the person in the period since 30 June of the previous financial year.
27. A reference in clause 26 of this schedule to each source of income received, or reasonably expected to be received, by a person is a reference to:

- a) in relation to income from an occupation of the person:
    - (i) a description of the occupation, and
    - (ii) if the person is employed or the holder of an office, the name and address of his or her employer, or a description of the office, and
    - (iii) if the person has entered into a partnership with other persons, the name (if any) under which the partnership is conducted, or
  - b) in relation to income from a trust, the name and address of the settlor and the trustee, or
  - c) in relation to any other income, a description sufficient to identify the person from whom, or the circumstances in which, the income was, or is reasonably expected to be, received.
28. The source of any income need not be disclosed by a person in a return if the amount of the income received, or reasonably expected to be received, by the person from that source did not exceed **\$1000**, or is not reasonably expected to exceed **\$1000**, as the case may be.
29. The source of any income received by the person that they ceased to receive prior to becoming a councillor or designated person need not be disclosed.
- 30. A fee paid to a councillor or to the mayor or deputy mayor under sections 248 or 249 of the LGA need not be disclosed.**

## Debts

31. A person making a return under clause 4.21 of this code must disclose the name and address of each person to whom the person was liable to pay any debt:
- a) on the return date, and
  - b) at any time in the period since 30 June of the previous financial year.
32. A liability to pay a debt must be disclosed by a person in a return made under clause 4.21 whether or not the amount, or any part of the amount, to be paid was due and payable on the return date or at any time in the period since 30 June of the previous financial year, as the case may be.
33. A liability to pay a debt need not be disclosed by a person in a return if:
- a) the amount to be paid did not exceed **\$1000** on the return date or in the period since 30 June of the previous financial year, as the case may be, unless:
    - (i) the debt was one of two or more debts that the person was liable to pay to one person on the return date, or at any time in the period since 30 June of the previous financial year, as the case may be, and
    - (ii) the amounts to be paid exceeded, in the aggregate, **\$1000**, or
  - b) the person was liable to pay the debt to a relative, or

- c) in the case of a debt arising from a loan of money the person was liable to pay the debt to an authorised deposit-taking institution or other person whose ordinary business includes the lending of money, and the loan was made in the ordinary course of business of the lender, or
- d) in the case of a debt arising from the supply of goods or services:
  - (i) the goods or services were supplied in the period of 12 months immediately preceding the return date, or were supplied in the period since 30 June of the previous financial year, as the case may be, or
  - (ii) the goods or services were supplied in the ordinary course of any occupation of the person that is not related to his or her duties as the holder of a position required to make a return, or
- e) **subject to paragraph (a), the debt was discharged prior to the person becoming a councillor or designated person.**

## Discretionary disclosures

34. A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision of this Schedule.

## Schedule 2:

# Form of Return – Disclosure of Interest



## ‘Disclosures by councillors and designated persons’ return

- 1 The pecuniary interests and other matters to be disclosed in this return are prescribed by Schedule 1 of the Model Code of Conduct for Local Councils in NSW (the Model Code of Conduct).
- 2 If this the first return you have been required to lodge with the general manager after becoming a councillor or designated person, do not complete Parts C, D and I of the return. All other parts of the return should be completed with appropriate information based on your circumstances at the return date, that is, the date on which you became a councillor or designated person.
- 3 If you have previously lodged a return with the general manager and you are completing this return for the purposes of disclosing a new interest that was not disclosed in the last return you lodged with the general manager, you must complete all parts of the return with appropriate information for the period from 30 June of the previous financial year to the return date which is the date you became aware of the new interest to be disclosed in your updated return.
- 4 If you have previously lodged a return with the general manager and are submitting a new return for the new financial year, you must complete all parts of the return with appropriate information for the 12-month period commencing on 30 June of the previous year to 30 June this year.
- 5 This form must be completed using block letters or typed.
- 6 If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.

- 7 If there are no pecuniary interests or other matters of the kind required to be disclosed under a heading in this form, the word “NIL” is to be placed in an appropriate space under that heading.
- 8 “\*” means delete whichever is inapplicable.

## Important information

This information is being collected for the purpose of complying with clause 4.21 of the Model Code of Conduct.

You must not lodge a return that you know or ought reasonably to know is false or misleading in a material particular (see clause 4.23 of the Model Code of Conduct). Complaints about breaches of these requirements are to be referred to the Office of Local Government and may result in disciplinary action by the council, the Chief Executive of the Office of Local Government or the NSW Civil and Administrative Tribunal.

The information collected on this form will be kept by the general manager in a register of returns. The general manager is required to table all returns at a council meeting.

If you are a councillor or the general manager, information in this return other than information about your principal place of residence will be published on the council’s website.

If you are a designated person other than the general manager, information in this return is not to be publicly disclosed by the council unless the council decides to grant access in response to an access request made under the *Government Information (Public Access) Act 2009*.

You have an obligation to keep the information contained in this return up to date. If you become aware of a new interest that must be disclosed in this return, or an interest that you have previously failed to disclose, you must submit an updated return within three months of becoming aware of the previously undisclosed interest.

**Disclosure of pecuniary interests and other matters by** *[full name of councillor or designated person]*

\*as at *[return date]*

\*in respect of the period from *[date]* to *[date]*

*[councillor's or designated person's signature]*

*[date]*

**A. Real Property**

**Street address** of each parcel of real property in which I had an interest \*at the return date/\*at any time since 30 June Nature of interest

**B. Sources of income**

1 \*Sources of income I reasonably expect to receive from an occupation in the period commencing on the first day after the return date and ending on the following 30 June:

\*Sources of income I received from an occupation at any time since 30 June:

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
---------------------------	--	--

2 \*Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June:

\*Sources of income I received from a trust since 30 June:

Name and address of settlor	Name and address of trustee
-----------------------------	-----------------------------

3 \*Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June:

\*Sources of other income I received at any time since 30 June:

*[Include description sufficient to identify the person from whom, or the circumstances in which, that income was received]*

**C. Gifts**

Description of each gift I received at any time since 30 June Name and address of donor

#### D. Contributions to travel

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time since 30 June	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel was undertaken
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#### E. Interests and positions in corporations

Name and address of each corporation in which I had an interest or held a position *at the return date/*at any time since 30 June	Nature of interest (if any)	Description of position (if any)	Description of principal objects (if any) of corporation (except in case of listed company)
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#### F. Were you a property developer or a close associate of a corporation that is a property developer on the return date? (Y/N)

#### G. Positions in trade unions and professional or business associations

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) *at the return date/*at any time since 30 June	Description of position
---	-------------------------

#### H. Debts

Name and address of each person to whom I was liable to pay any debt *at the return date/*at any time since 30 June
---

#### I. Dispositions of property

1 Particulars of each disposition of real property by me (**including the street address of the affected property**) at any time since 30 June as a result of which I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time

2 Particulars of each disposition of property to a person by any other person under arrangements made by me (**including the street address of the affected property**), being dispositions made at any time since 30 June, as a result of which I obtained, either wholly or in part, the use and benefit of the property

#### J. Discretionary disclosures

## Schedule 3:

# Form of Special Disclosure of Pecuniary Interest



- 1 This form must be completed using block letters or typed.
- 2 If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.

---

## Important Information

This information is being collected for the purpose of making a special disclosure of pecuniary interests under clause 4.36(c) of the Model Code of Conduct for Local Councils in NSW (the Model Code of Conduct).

The special disclosure must relate to a pecuniary interest that arises only because of an interest of the councillor in the councillor's principal place of residence, or an interest of another person (whose interests are relevant under clause 4.3 of the Model Code of Conduct) in that person's principal place of residence.

You must not make a special disclosure that you know or ought reasonably to know is false or misleading in a material particular. Complaints about breaches of these requirements are to be referred to the Office of Local Government and may result in disciplinary action by the Chief Executive of the Office of Local Government or the NSW Civil and Administrative Tribunal.

This form must be completed by you before the commencement of the council or council committee meeting in respect of which the special disclosure is being made. The completed form must be tabled at the meeting. Everyone is entitled to inspect it. The special disclosure must be recorded in the minutes of the meeting.

**Special disclosure of pecuniary interests by** *[full name of councillor]*

in the matter of *[insert name of environmental planning instrument]*

which is to be considered at a meeting of the *[name of council or council committee (as the case requires)]*

to be held on the      day of      20 .

**Pecuniary interest**

Address of land in which councillor or an associated person, company or body has a proprietary interest (the identified land)<sup>1</sup>

Relationship of identified land to councillor  
*[Tick or cross one box.]*

- Councillor has interest in the land (e.g. is owner or has other interest arising out of a mortgage, lease, trust, option or contract, or otherwise).
- Associated person of councillor has interest in the land.
- Associated company or body of councillor has interest in the land.

**Matter giving rise to pecuniary interest<sup>2</sup>**

Current zone/planning control  
*[Insert name of current planning instrument and identify relevant zone/planning control applying to the subject land]*

Proposed change of zone/planning control  
*[Insert name of proposed LEP and identify proposed change of zone/planning control applying to the subject land]*

Effect of proposed change of zone/planning control on councillor **or associated person**  
*[Insert one of the following: "Appreciable financial gain" or "Appreciable financial loss"]*

[If more than one pecuniary interest is to be declared, reprint the above box and fill in for each additional interest.]

Councillor's signature

Date

[This form is to be retained by the council's general manager and included in full in the minutes of the meeting]

- 1 Clause 4.1 of the Model Code of Conduct provides that 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. A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter, or if the interest is of a kind specified in clause 4.6 of the Model Code of Conduct (for example, an interest as an elector or as a ratepayer or person liable to pay a charge).
- 2 Clause 4.3 of the Model Code of Conduct provides that you may have a pecuniary interest in a matter because of the pecuniary interest of your spouse or your de facto partner or your relative or because your business partner or employer has a pecuniary interest. You may also have a pecuniary interest in a matter because you, your nominee, your business partner or your employer is a member of a company or other body that has a pecuniary interest in the matter.
- 3 “Relative” is defined by clause 4.4 of the Model Code of Conduct as meaning your, your spouse’s or your de facto partner’s parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child and the spouse or de facto partner of any of those persons.



Procedures for the  
Administration of

# The Model Code of Conduct

for Local Councils in NSW

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October 2017



**CONSULTATION DRAFT**

# CONSULTATION DRAFT

## PROCEDURES FOR THE ADMINISTRATION OF THE MODEL CODE OF CONDUCT FOR LOCAL COUNCILS IN NSW

October 2017

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**Part 1:**

**Introduction**



**These procedures (“the Model Code Procedures”) are prescribed for the administration of the *Model Code of Conduct for Local Councils in NSW* (“the Model Code of Conduct”).**

**The Model Code of Conduct is made under section 440 of the *Local Government Act 1993* (“the Act”) and the *Local Government (General) Regulation 2005* (“the Regulation”). Section 440 of the Act requires every council to adopt a code of conduct that incorporates the provisions of the Model Code of Conduct.**

**The Model Code Procedures are made under section 440AA of the Act and the Regulation. Section 440AA of the Act requires every council to adopt procedures for the administration of their codes of conduct that incorporate the provisions of the Model Code Procedures.**

In adopting procedures for the administration of their adopted codes of conduct, councils may supplement the Model Code Procedures. However, provisions that are not consistent with those prescribed under the Model Code Procedures will have no effect.

**Note: Parts 6, 7, 8 and 11 of these Model Code Procedures apply only to the management of code-of-conduct complaints about councillors (including the mayor) or the general manager.**

## Part 2:

# Definitions



For the purposes of the procedures, the following definitions apply:

the Act	the <i>Local Government Act 1993</i>
administrator	an administrator of a council appointed under the Act other than an administrator appointed under section 66
code of conduct	a code of conduct adopted under section 440 of the Act
code of conduct complaint	<b>a complaint that is a code of conduct complaint for the purposes of clauses 4.1 and 4.2 of these procedures</b>
complainant	a person who makes a code of conduct complaint
complainant councillor	a councillor who makes a code of conduct complaint
complaints coordinator	a person appointed by the general manager under these procedures as a complaints coordinator
conduct reviewer	a person appointed under these procedures to review allegations of breaches of the code of conduct by councillors or the general manager
<b>council committee</b>	<b>a committee established by resolution of council other than a wholly advisory committee</b>
<b>council committee member</b>	<b>a person other than a councillor or member of staff of a council who is a member of a council committee other than a wholly advisory committee</b>
councillor	a person elected or appointed to civic office and includes a mayor
council official	any councillor, member of staff of council, administrator, council committee member, delegate of council <b>and, for the purposes of clause 4.16 of the Model Code of Conduct, council adviser</b>
delegate of council	a person (other than a councillor or member of staff of a council) or body and the individual members of that body to whom a function of the council is delegated
<b>the Office</b>	<b>the Office of Local Government</b>
investigator	a conduct reviewer
the Regulation	<i>the Local Government (General) Regulation 2005</i>
subject person	<b>a person whose conduct is the subject of investigation by a conduct reviewer under these procedures</b>

**Part 3:**  
**Administrative**  
**Framework**



## The establishment of a panel of conduct reviewers

- 3.1 The council must by resolution establish a panel of conduct reviewers.
- 3.2 The council may by resolution enter into an arrangement with one or more other councils to share a panel of conduct reviewers **including through a regional body associated with the councils.**
- 3.3 The panel of conduct reviewers is to be established following a public expression of interest process.
- 3.4 An expression of interest for members of the council's panel of conduct reviewers must, at a minimum, be advertised locally and in the Sydney metropolitan area.
- 3.5 To be eligible to be a conduct reviewer, a person must, at a minimum, meet the following requirements:
- a) an understanding of local government, and
  - b) knowledge of investigative processes including but not limited to procedural fairness requirements and the requirements of the *Public Interest Disclosures Act 1994*, and
  - c) knowledge and experience of one or more of the following:
    - i) investigations
    - ii) law
    - iii) public administration
    - iv) public sector ethics
    - v) alternative dispute resolution, and
  - d) meet the eligibility requirements for membership of a panel of conduct reviewers under clause 3.6.
- 3.6 A person is not eligible to be a conduct reviewer if they are:
- a) a councillor, or
  - b) a nominee for election as a councillor, or
  - c) an administrator, or
  - d) an employee of a council, or
  - e) a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or
  - f) a nominee for election as a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or
  - g) a person who has a conviction for an indictable offence that is not an expired conviction.
- 3.7 A person is not precluded from being a member of the council's panel of conduct reviewers if they are a member of another council's panel of conduct reviewers.
- 3.8 A panel of conduct reviewers established under this Part is to have a term of up to four years.
- 3.9 The council may terminate the panel of conduct reviewers at any time by resolution.
- 3.10 When the term of the conduct reviewers concludes or is terminated, the council must establish a new panel of conduct reviewers in accordance with the requirements of this Part.
- 3.11 A person who was a member of a previous panel of conduct reviewers established by the council may be a member of subsequent panels of conduct reviewers established by the council.

## The appointment of complaints coordinators

- 3.12 The general manager must appoint a member of staff of the council or **another person (such as, but not limited to, a member of staff of another council or a regional body associated with the council)**, to act as a complaints coordinator. **Where the complaints coordinator is a member of staff of the council**, the complaints coordinator should be a senior and suitably qualified member of staff.
- 3.13 The general manager may appoint other members of staff of the council or **other persons (such as, but not limited to, members of staff of another council or a regional body associated with the council)**, to act as alternates to the complaints coordinator.
- 3.14 The general manager must not undertake the role of complaints coordinator.
- 3.15 The person appointed as complaints coordinator or alternate complaints coordinator must also be a nominated disclosures coordinator appointed for the purpose of receiving and managing reports of wrongdoing under the Public Interest *Disclosures Act 1994*.
- 3.16 The role of the complaints coordinator is to:
- a) coordinate the management of complaints made under the council's code of conduct
  - b) liaise with and provide administrative support to a conduct reviewer or conduct review committee
  - c) liaise with the **Office** and
  - d) arrange the annual reporting of code of conduct complaints statistics.



## Part 4:

# How May Code Of Conduct Complaints be Made?



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## What is a code of conduct complaint?

- 4.1 For the purpose of these procedures, a code of conduct complaint is a complaint that alleges conduct on the part of a council official in connection with their role as a council official or the exercise of their functions as a council official that would constitute a breach of the standards of conduct prescribed under the council’s code of conduct.
- 4.2 The following are not “code of conduct complaints” for the purposes of these procedures:
- a) complaints about the standard or level of service provided by the council or a council official
  - b) complaints about the merits of a decision made by the council or a council official or the exercise of a discretion by the council or a council official
  - c) complaints about the policies or procedures of the council
  - d) complaints about the exercise in good faith by a council official of their functions, whether or not involving error.
- 4.3 Only code of conduct complaints are to be dealt with under these procedures. Complaints that do not satisfy the definition of a code of conduct complaint are to be dealt with under council’s routine complaints management processes.

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## When must a code of conduct complaint be made?

- 4.4 A code of conduct complaint must be made within three months of the alleged conduct occurring or within three months of the complainant becoming aware of the alleged conduct.
- 4.5 A complaint made after 3 months may only be accepted if the general manager **or their delegate**, or, in the case of a complaint about the general manager, the mayor **or their delegate**, is satisfied that there are compelling grounds for the matter to be dealt with under the code of conduct.

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## How may a code of conduct complaint about a council official other than the general manager be made?

- 4.6 All code of conduct complaints other than those relating to the general manager are to be made to the general manager in writing. **This clause does not operate to prevent a person from making a complaint to an external agency.**
- 4.7 Where a code of conduct complaint about a council official other than the general manager cannot be made in writing, the complaint must be confirmed with the complainant in writing as soon as possible after the receipt of the complaint.
- 4.8 In making a code of conduct complaint about a council official other than the general manager, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.

- 4.9 The general manager **or their delegate**, or, where the complaint is referred to a conduct reviewer, the conduct reviewer, must consider the complainant's preferences in deciding how to deal with the complaint.
- 4.10 Notwithstanding **clauses 4.6 and 4.7**, where the general manager becomes aware of a possible breach of the council's code of conduct, he or she may initiate the process for the consideration of the matter under these procedures without a written complaint.
- 4.15 Notwithstanding **clauses 4.11 and 4.12**, where the mayor becomes aware of a possible breach of the council's code of conduct by the general manager, he or she may initiate the process for the consideration of the matter under these procedures without a written complaint.

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## How may a code of conduct complaint about the general manager be made?

- 4.11 Code of conduct complaints about the general manager are to be made to the mayor in writing. **This clause does not operate to prevent a person from making a complaint about the general manager to an external agency.**
- 4.12 Where a code of conduct complaint about the general manager cannot be made in writing, the complaint must be confirmed with the complainant in writing as soon as possible after the receipt of the complaint.
- 4.13 In making a code of conduct complaint about the general manager, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.
- 4.14 The mayor **or their delegate**, or, where the complaint is referred to a conduct reviewer, the conduct reviewer, must consider the complainant's preferences in deciding how to deal with the complaint.



## **Part 5:**

# **How are Code of Conduct Complaints to be Managed?**



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## Delegation by general managers and mayors of their functions under this Part

- 5.1 A general manager or mayor may delegate his or her functions under this Part to a member of staff of the council or to a person or persons external to the council other than a state government agency. References in this part to the general manager or mayor are also to be taken to be references to their delegates.

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## What complaints may be declined at the outset?

- 5.2 Without limiting any other provision in these procedures, the general manager or, in the case of a complaint about the general manager, the mayor, may decline to deal with a complaint under these procedures where he or she is satisfied that the complaint:
- a) is not a code of conduct complaint, or
  - b) subject to clause 4.5, is not made within 3 months of the alleged conduct occurring or the complainant becoming aware of the alleged conduct, or
  - c) is trivial, frivolous, vexatious or not made in good faith, or
  - d) relates to a matter the substance of which has previously been considered and addressed by the council and does not warrant further action, or
  - e) is not made in a way that would allow the alleged conduct and any alleged breaches of the council's code of conduct to be readily identified.

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## How are code of conduct complaints about staff (other than the general manager) to be dealt with?

- 5.3 The general manager is responsible for the management of code of conduct complaints about members of staff of council (other than complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct) and for determining the outcome of such complaints.
- 5.4 The general manager must refer code of conduct complaints about members of staff of council alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct to the Office.
- 5.5 The general manager may decide to take no action in relation to a code of conduct complaint about a member of staff of council other than one requiring referral to the Office under clause 5.4 on grounds that he or she considers that no action is warranted in relation to the complaint.
- 5.6 Where the general manager decides to take no action in relation to a code of conduct complaint about a member of staff of council, the general manager must give the complainant reasons in writing for their decision and this shall finalise the consideration of the matter under these procedures.
- 5.7 Code of conduct complaints about members of staff of council must be managed in accordance with the relevant industrial instrument or employment contract and make provision for procedural fairness including the right of an employee to be represented by their union.

5.8 Sanctions for **breaches of the code of conduct by** staff depend on the severity, scale and importance of the breach and must be determined in accordance with any relevant industrial instruments or contracts.

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## How are code of conduct complaints about delegates of council, council advisers and council committee members to be dealt with?

5.9 The general manager is responsible for the management of code of conduct complaints about delegates of council and council committee members (other than complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct) and for determining the outcome of such complaints.

5.10 The general manager must refer code of conduct complaints about council advisers, delegates of council and council committee members alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct to the Office.

5.11 The general manager may decide to take no action in relation to a code of conduct complaint about a delegate of council or a council committee member other than one requiring referral to the Office under clause 5.10 on the grounds that he or she considers that no action is warranted in relation to the complaint.

5.12 Where the general manager decides to take no action in relation to a code of conduct complaint about a delegate of council or a council committee member,

**the general manager must give the complainant reasons in writing for their decision and this shall finalise the consideration of the matter under these procedures.**

5.13 Where the general manager considers it to be practicable and appropriate to do so, the general manager may seek to resolve code of conduct complaints about delegates of council or council committee members, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or a voluntary apology. The resolution of a code of conduct complaint under this clause is not to be taken as a determination that there has been a breach of the council's code of conduct.

5.14 Where the general manager resolves a code of conduct complaint under clause 5.13 to the general manager's satisfaction, the general manager must notify the complainant in writing of the steps taken to resolve the complaint and this shall finalise the consideration of the matter under these procedures.

5.15 Sanctions for **breaches of the code of conduct by** delegates of council and/or council committee members depend on the severity, scale and importance of the breach and may include one or more of the following:

- a) censure
- b) requiring the person to apologise to any person or organisation adversely affected by the breach **in such a time and form specified by the general manager**
- c) prosecution for any breach of the law
- d) removing or restricting the person's delegation

- e) removing the person from membership of the relevant council committee.
- 5.16 Prior to imposing a sanction against a delegate of council or a council committee member under clause 5.15, the general manager or any person making enquiries on behalf of the general manager must comply with the requirements of procedural fairness. In particular:
- a) the substance of the allegation (including the relevant provision/s of the council's code of conduct that the alleged conduct is in breach of) must be put to the person who is the subject of the allegation, and
  - b) the person must be given an opportunity to respond to the allegation, and
  - c) the general manager must consider the person's response in deciding whether to impose a sanction under clause 5.15.

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## How are code of conduct complaints about administrators to be dealt with?

- 5.17 The general manager must refer all code of conduct complaints about administrators to the **Office** for its consideration.
- 5.18 The general manager must notify the complainant of the referral of their complaint in writing.

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## How are code of conduct complaints about councillors to be dealt with?

- 5.19 The general manager must refer the following code of conduct complaints about councillors to the **Office**:
- a) **complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct**
  - b) complaints alleging a failure to comply with a requirement under the code of conduct to disclose and appropriately manage conflicts of interest arising from **political donations** (see section 328B of the Act)
  - c) **complaints alleging a breach of the provisions relating to the maintenance of the integrity of the code of conduct contained in Part 9 of the code of conduct**
  - d) complaints that are the subject of a special complaints management arrangement with the **Office** under clause **5.47**.
- 5.20 Where the general manager refers a complaint to the Office under clause 5.19, the general manager must notify the complainant of the referral in writing.
- 5.21 The general manager may decide to take no action in relation to a code of conduct complaint about a councillor, other than one requiring referral to the Office under clause 5.19, on grounds that he or she considers that no action is warranted in relation to the complaint.**

**5.22 Where the general manager decides to take no action in relation to a code of conduct complaint about a councillor, the general manager must give the complainant reasons in writing for their decision and this shall finalise the consideration of the matter under these procedures.**

5.23 Where the general manager considers it to be practicable and appropriate to do so, the general manager may seek to resolve code of conduct complaints about councillors, other than those requiring referral to the **Office** under clause 5.19, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or **a voluntary apology. The resolution of a code of conduct complaint under this clause is not to be taken as a determination that there has been a breach of the council's code of conduct.**

5.24 Where the general manager resolves a code of conduct complaint under **clause 5.23** to the general manager's satisfaction, the general manager must notify the complainant in writing of the steps taken to resolve the complaint and this shall finalise the consideration of the matter under these procedures.

5.25 The general manager must refer all code of conduct complaints about councillors, other than those referred to the **Office** under **clause 5.19 or finalised under clause 5.22** or resolved under clause 5.23, to the complaints coordinator.

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## How are code of conduct complaints about the general manager to be dealt with?

5.26 The mayor must refer the following code of conduct complaints about the general manager to the **Office**:

- a) **complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct**
- b) **complaints alleging a breach of the provisions relating to the maintenance of the integrity of the code of conduct contained in Part 9 of the code of conduct**
- c) complaints that are the subject of a special complaints management arrangement with the **Office** under clause **5.47**.

5.27 Where the mayor refers a complaint to the **Office** under clause **5.26**, the mayor must notify the complainant of the referral in writing.

**5.28 The mayor may decide to take no action in relation to a code of conduct complaint about the general manager, other than one requiring referral to the Office under clause 5.26, on grounds that he or she considers that no action is warranted in relation to the complaint.**

**5.29 Where the mayor decides to take no action in relation to a code of conduct complaint about the general manager, the mayor must give the complainant reasons in writing for their decision and this shall finalise the consideration of the matter under these procedures.**

5.30 Where the mayor considers it to be practicable and appropriate to do so, he or she may seek to resolve code of

conduct complaints about the general manager, other than those requiring referral to the **Office** under **clause 5.26**, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or **a voluntary apology**. **The resolution of a code of conduct complaint under this clause is not to be taken as a determination that there has been a breach of the council's code of conduct.**

- 5.31 Where the mayor resolves a code of conduct complaint under **clause 5.30** to the mayor's satisfaction, the mayor must notify the complainant in writing of the steps taken to resolve the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.32 The mayor must refer all code of conduct complaints about the general manager, other than those referred to the **Office** under **clause 5.26** or finalised under **clause 5.28** or resolved under **clause 5.30**, to the complaints coordinator.

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## How are complaints about both the general manager and the mayor to be dealt with?

- 5.33 **Where the general manager or mayor receives a code of conduct complaint that alleges a breach of the code of conduct by both the general manager and the mayor, the general manager or mayor must either:**
- a) **delegate their functions under this part with respect to the complaint to a member of staff of the council other than the general manager or to a person external to the council, or**
  - b) **refer the matter to the complaints coordinator under clause 5.25 and clause 5.32.**

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## Referral of code of conduct complaints to external agencies

- 5.34 The general manager, mayor or a conduct reviewer may, at any time, refer a code of conduct complaint to an external agency or body such as, but not limited to, the **Office**, the Independent Commission Against Corruption, the NSW Ombudsman or the police for its consideration, where they consider such a referral is warranted.
- 5.35 Where the general manager, mayor or conduct reviewer refers a complaint to an external agency or body under clause 5.34, they must notify the complainant of the referral in writing where it is appropriate for them to do so.
- 5.36 Referral of a matter to an external agency or body shall finalise consideration of the matter under the code of conduct unless the council is subsequently advised otherwise by the referral agency or body.

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## Disclosure of the identity of complainants

- 5.37 In dealing with matters under these procedures, information that identifies or tends to identify complainants is not to be disclosed unless:
- a) the complainant consents in writing to the disclosure, or
  - b) it is generally known that the complainant has made the complaint as a result of the complainant having voluntarily identified themselves as the person who made the complaint, or
  - c) it is essential, having regard to procedural fairness requirements, that the identifying information be disclosed, or

- d) a conduct reviewer is of the opinion that disclosure of the information is necessary to investigate the matter effectively, or
- e) it is otherwise in the public interest to do so.

5.38 **Clause 5.37** does not apply to code of conduct complaints made by councillors about other councillors or the general manager.

5.39 Where a councillor makes a code of conduct complaint about another councillor or the general manager, and the complainant councillor considers that compelling grounds exist that would warrant information that identifies or tends to identify them as the complainant not to be disclosed, they may request in writing that such information not be disclosed.

5.40 A request made by a complainant councillor under **clause 5.39** must be made at the time they make a code of conduct complaint and must state the grounds upon which the request is made.

**5.41 The general manager or mayor, and where the matter is referred to a conduct reviewer, the conduct reviewer, must consider a request made under clause 5.39 before disclosing information that identifies or tends to identify the complainant councillor, but they are not obliged to comply with the request.**

**5.42 Where a complainant councillor makes a request under clause 5.39, the general manager or mayor or, where the matter is referred to a conduct reviewer, the conduct reviewer, shall notify the councillor in writing of their intention to disclose information that identifies or tends to identify them prior to disclosing the information.**

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## Code of conduct complaints made as public interest disclosures

5.43 Code of conduct complaints that are made as public interest disclosures under the *Public Interest Disclosures Act 1994* are to be managed in accordance with the requirements of that Act, the council's internal reporting policy, and any guidelines issued by the NSW Ombudsman that relate to the management of public interest disclosures.

5.44 Where a councillor makes a code of conduct complaint about another councillor or the general manager as a public interest disclosure, before the matter may be dealt with under these procedures, the complainant councillor must consent in writing to the disclosure of their identity as the complainant.

5.45 Where a complainant councillor declines to consent to the disclosure of their identity as the complainant under **clause 5.44**, the general manager or the mayor must refer the complaint to the **Office** for consideration. Such a referral must be made under section 26 of the *Public Interest Disclosures Act 1994*.

## Special complaints management arrangements

- 5.46 The general manager may request in writing that the **Office** enter into a special complaints management arrangement with the council in relation to code of conduct complaints made by or about a person or persons.
- 5.47 Where the **Office** receives a request under **clause 5.46**, it may agree to enter into a special complaints management arrangement if it is satisfied that the number or nature of code of conduct complaints made by or about a person or persons has:
- a) imposed an undue and disproportionate cost burden on the council's administration of its code of conduct, or
  - b) impeded or disrupted the effective administration by the council of its code of conduct, or
  - c) impeded or disrupted the effective functioning of the council.
- 5.48 A special complaints management arrangement must be in writing and must specify the following:
- a) the code of conduct complaints the arrangement relates to, and
  - b) the period that the arrangement will be in force.
- 5.49 The **Office** may, by notice in writing, amend or terminate a special complaints management arrangement at any time.
- 5.50 While a special complaints management arrangement is in force, an officer of the **Office** (the assessing **OLG officer**) must undertake the preliminary assessment of the code of conduct complaints specified
- in the arrangement in accordance with the requirements of **Part 6** of these procedures.
- 5.51 Where, following a preliminary assessment, the assessing **OLG officer** determines that a code of conduct complaint warrants investigation by a conduct reviewer, the assessing **OLG officer** shall notify the complaints coordinator in writing of their determination and the reasons for their determination. The complaints coordinator must comply with the recommendation of the assessing **OLG officer**.
- 5.52 Prior to the expiry of a special complaints management arrangement, **the Office may, at the request of the general manager**, review the arrangement to determine whether it should be renewed or amended.
- 5.53 A special complaints management arrangement shall expire on the date specified in the arrangement unless renewed under **clause 5.52**.

## **Part 6:**

# **Preliminary Assessment of Code of Conduct Complaints About Councillors or the General Manager by Conduct Reviewers**



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## Referral of code of conduct complaints about councillors or the general manager to conduct reviewers

- 6.1 The complaints coordinator must refer all code of conduct complaints about councillors or the general manager submitted to the complaints coordinator **to a conduct reviewer** within 21 days of receipt of a complaint by the general manager or the mayor.
- 6.2 For the purposes of clause 6.1, the complaints coordinator will refer a complaint to a conduct reviewer selected from:
- a) a panel of conduct reviewers established by the council, or
  - b) a panel of conduct reviewers established by an organisation approved by the chief executive of the **Office**.
- 6.3 In selecting a suitable conduct reviewer, the complaints coordinator may have regard to the qualifications and experience of members of the panel of conduct reviewers. **Where the conduct reviewer is an incorporated or other entity, the complaints coordinator must also ensure that the person assigned to receive the referral on behalf of the entity meets the selection and eligibility criteria for conduct reviewers prescribed under Part 3 of these procedures.**
- 6.4 A conduct reviewer must not accept the referral of a code of conduct complaint where:
- a) they have a conflict of interest in relation to the matter referred to them, or
  - b) a reasonable apprehension of bias arises in relation to their consideration of the matter, or
  - c) they or their employer has entered into one or more contracts with the council (**other than contracts relating to the exercise of their functions as a conduct reviewer**) in the 2 years preceding the referral, and they or their employer have received or expect to receive payments under the contract or contracts of a cumulative value that exceeds \$100,000, or
  - d) at the time of the referral, they or their employer are the council's legal service providers or are a member of a panel of legal service providers appointed by the council.
- 6.5 For the purposes of clause 6.4(a), a conduct reviewer will have a conflict of interest in a matter where a reasonable and informed person would perceive that they could be influenced by a private interest when carrying out their public duty (see **clause 5.2** of the Model Code of Conduct).
- 6.6 For the purposes of clause 6.4(b), a reasonable apprehension of bias arises where a fair-minded observer might reasonably apprehend that the conduct reviewer might not bring an impartial and unprejudiced mind to the matter referred to the conduct reviewer.
- 6.7 Where the complaints coordinator refers a matter to a conduct reviewer, they will provide the conduct reviewer with a copy of the code of conduct complaint and any other information relevant to the matter held by the council, **including any information about previous proven breaches and any information that would indicate that the alleged conduct forms part of an ongoing pattern of behaviour.**
- 6.8 The complaints coordinator must notify the complainant in writing that the matter has been referred to a conduct reviewer, and advise which conduct reviewer the matter has been referred to.

**6.9 Where a matter has been referred to a conduct reviewer, the conduct reviewer must comply with these procedures in their consideration of the matter and exercise their functions in a diligent and timely manner.**

**6.10 The complaints coordinator may at any time terminate the referral of a matter to a conduct reviewer and refer the matter to another conduct reviewer where the complaints coordinator is satisfied that the conduct reviewer has failed to:**

- a) comply with these procedures in their consideration of the matter, or**
- b) comply with a lawful and reasonable request by the complaints coordinator, or**
- c) exercise their functions in a timely or satisfactory manner.**

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## **Preliminary assessment of code of conduct complaints about councillors or the general manager by a conduct reviewer**

6.11 The conduct reviewer is to undertake a preliminary assessment of a complaint referred to them by the complaints coordinator for the purposes of determining how the complaint is to be managed.

6.12 The conduct reviewer may determine to do one or more of the following in relation to a complaint referred to them by the complaints coordinator:

- a) to take no action
- b) to resolve the complaint by alternative and appropriate strategies such as, but not limited to, explanation,

counselling, training, mediation, informal discussion, negotiation or a **voluntary apology**

- c) to refer the matter back to the general manager or, in the case of a complaint about the general manager, the mayor, for resolution by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, or a **voluntary apology**
- d) to refer the matter to another agency or body such as, but not limited to, the ICAC, the NSW Ombudsman, **the Office** or the police
- e) to investigate the matter.

6.13 In determining how to deal with a matter under clause 6.12, the conduct reviewer must have regard to the complaint assessment criteria prescribed under clause 6.30.

6.14 The conduct reviewer may make such enquiries the conduct reviewer considers to be reasonably necessary to determine what options to exercise under clause 6.12.

6.15 The conduct reviewer may request the complaints coordinator to provide such additional information the conduct reviewer considers to be reasonably necessary to determine what options to exercise in relation to the matter under clause 6.12. The complaints coordinator will, as far as is reasonably practicable, supply any information requested by the conduct reviewer.

6.16 The conduct reviewer must refer to **the Office** any complaints referred to him or her that should have been referred to **the Office** under clauses **5.19 and 5.26**.

6.17 The conduct reviewer must determine to take no action on a complaint that is not a code of conduct complaint for the purposes of these procedures.

- 6.18 The resolution of a code of conduct complaint under clause 6.12, paragraphs (b) or (c) is not to be taken as a determination that there has been a breach of the council's code of conduct.**
- 6.19 Where the conduct reviewer completes their preliminary assessment of a complaint by determining to exercise an option under clause 6.12, paragraphs (a), (b) or (c), they must provide the complainant with written notice of their determination and provide reasons for it, and this will finalise consideration of the matter under these procedures.
- 6.20 Where the conduct reviewer refers a complaint to another agency or body, they must notify the complainant of the referral in writing where it is appropriate for them to do so.
- 6.21 The conduct reviewer may only determine to investigate a matter where they are satisfied as to the following:
- a) that the complaint is a "code of conduct complaint" for the purposes of these procedures, and
  - b) that the alleged conduct is sufficiently serious to warrant investigation, and
  - c) that the matter is one that could not or should not be resolved by alternative means.
- 6.22 In determining whether a matter is sufficiently serious to warrant investigation, the conduct reviewer is to consider the following:**
- a) **the harm or cost that the alleged conduct has caused to any affected individuals and/or the council**
  - b) **the likely impact of the alleged conduct on the reputation of the council and public confidence in it**
  - c) **whether the alleged conduct was deliberate or undertaken with reckless intent or negligence**
- d) **any previous proven breaches by the person whose alleged conduct is the subject of the complaint and/or whether the alleged conduct forms part of an ongoing pattern of behaviour.**
- 6.23 The conduct reviewer must complete their preliminary assessment of the complaint within 28 days of referral of the matter to them by the complaints coordinator.
- 6.24 The conduct reviewer is not obliged to give prior notice to or to consult with any person before making a determination in relation to their preliminary assessment of a complaint, except as may be specifically required under these procedures.
- 
- ## Referral back to the general manager or mayor for resolution
- 6.25 Where the conduct reviewer determines to refer a matter back to the general manager or to the mayor to be resolved by alternative and appropriate means, they must write to the general manager or, in the case of a complaint about the general manager, to the mayor, recommending the means by which the complaint may be resolved.
- 6.26 The conduct reviewer must consult with the general manager or mayor prior to referring a matter back to them under **clause 6.12(c)**.

6.27 The general manager or mayor may decline to accept the conduct reviewer's recommendation. In such cases, the conduct reviewer may determine to deal with the complaint by other means under **clause 6.12**.

6.28 Where the conduct reviewer refers a matter back to the general manager or mayor under **clause 6.12(c)**, the general manager or, in the case of a complaint about the general manager, the mayor, is responsible for implementing or overseeing the implementation of the conduct reviewer's recommendation.

6.29 Where the conduct reviewer refers a matter back to the general manager or mayor under **clause 6.12(c)**, the general manager or, in the case of a complaint about the general manager, the mayor, must advise the complainant in writing of the steps taken to implement the conduct reviewer's recommendation once these steps have been completed.

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## Complaints assessment criteria

6.30 In undertaking the preliminary assessment of a complaint, the conduct reviewer may have regard to the following considerations:

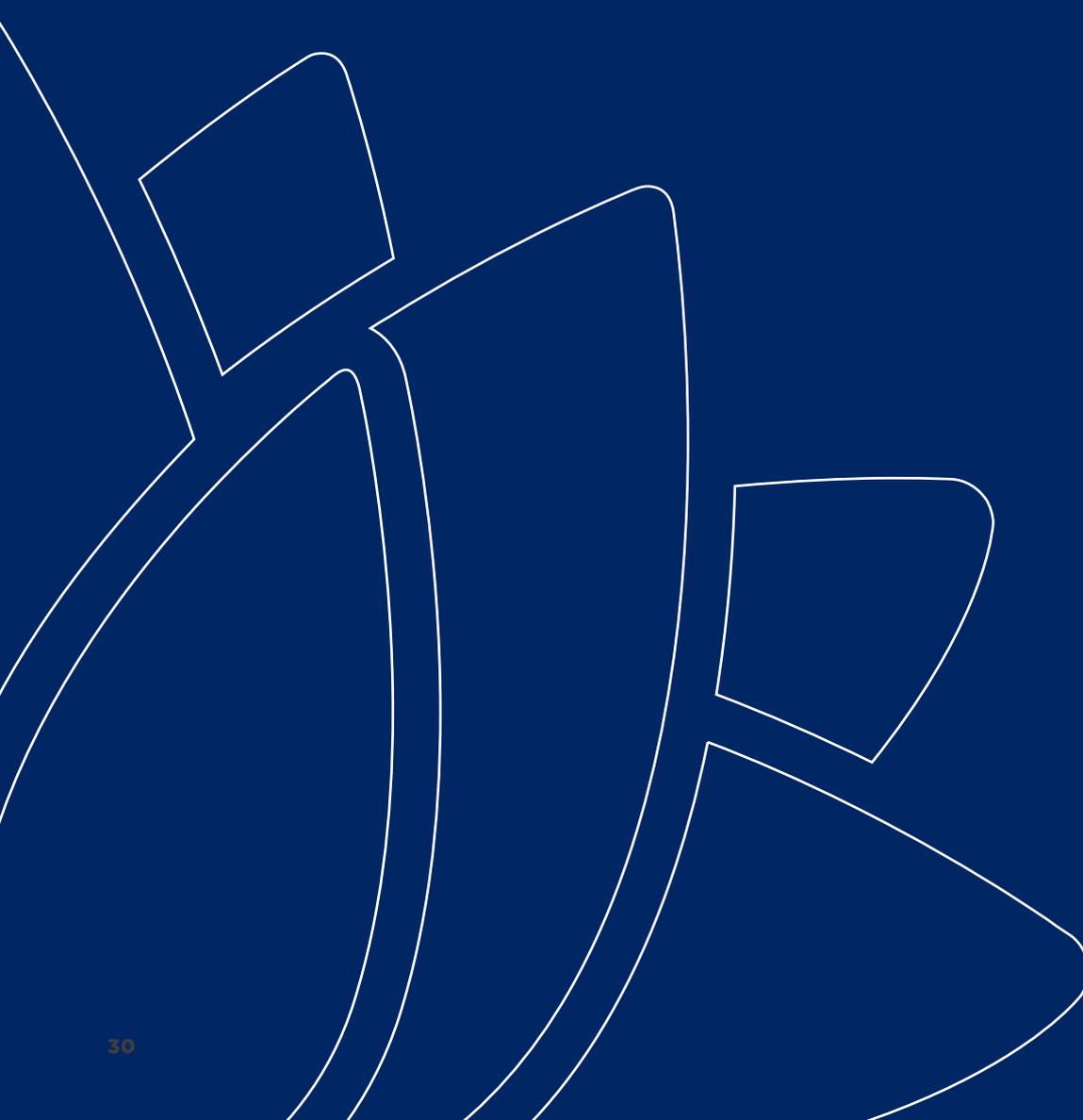
- a) whether the complaint is a "code of conduct complaint" **for the purpose of these procedures**
- b) **whether the complaint has been made in a timely manner in accordance with clause 4.4, and if not, whether there are compelling grounds for the matter to be dealt with under the council's code of conduct**
- c) whether the complaint is trivial, frivolous, vexatious or not made in good faith

- d) whether the complaint discloses prima facie evidence of **conduct that, if proven, would constitute** a breach of the code
- e) whether the complaint raises issues that would be more appropriately dealt with by another agency or body
- f) whether there is or was an alternative and satisfactory means of redress available in relation to the conduct complained of
- g) whether the complaint is one that can be resolved by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, informal discussion, negotiation or **a voluntary apology**
- h) whether the issue/s giving rise to the complaint have previously been addressed or resolved
- i) **any previous proven breaches of the council's code of conduct**
- j) whether the conduct complained of forms part of **an ongoing pattern of behaviour**
- k) whether there were mitigating circumstances giving rise to the conduct complained of
- l) the seriousness of the alleged conduct (**having regard to the criteria specified in clause 6.22**)
- m) the significance of the conduct or the impact of the conduct for the council
- n) how much time has passed since the alleged conduct occurred
- o) such other considerations that the conduct reviewer considers may be relevant to the assessment of the complaint.



## **Part 7:**

# **Investigations of Code of Conduct Complaints About Councillors or the General Manager**



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## What matters may a conduct reviewer investigate?

- 7.1 A conduct reviewer (hereafter referred to as an “investigator”) may investigate a code of conduct complaint that has been referred to them by the complaints coordinator and any matters related to or arising from that complaint.
- 7.2 Where an investigator identifies further separate possible breaches of the code of conduct that are not related to or arise from the code of conduct complaint that has been referred to them, they are to report the matters separately in writing to the general manager, or, in the case of alleged conduct on the part of the general manager, to the mayor.
- 7.3 The general manager or the mayor **or their delegate** is to deal with a matter reported to them by an investigator under **clause 7.2** as if it were a new code of conduct complaint in accordance with these procedures.
- d) invite the subject person to make a written submission in relation to the matter within **at least 14 days** or such other period specified by the investigator in the notice, and
- e) provide the subject person the opportunity to address the investigator on the matter within such reasonable time specified in the notice.
- 7.5 The subject person may, within **7 days** of receipt of the notice of investigation, request in writing that the investigator provide them with such further information they consider necessary to assist them to identify the substance of the allegation against them. An investigator will only be obliged to provide such information that the investigator considers reasonably necessary for the subject person to identify the substance of the allegation against them.
- 7.6 An investigator may at any time prior to issuing a draft report, issue an amended notice of investigation to the subject person in relation to the matter referred to them.

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## How are investigations to be commenced?

- 7.4 The investigator must at the outset of their investigation provide a written notice of investigation to the subject person. The notice of investigation must:
- disclose the substance of the allegations against the subject person, and
  - advise of the relevant provisions of the code of conduct that apply to the alleged conduct, and
  - advise of the process to be followed in investigating the matter, and
- 7.7 Where an investigator issues an amended notice of investigation, they will provide the subject person with a further opportunity to make a written submission in response to the amended notice of investigation within **at least 14 days** or such other period specified by the investigator in the amended notice.
- 7.8 The investigator must also, at the outset of their investigation, provide written notice of the investigation to the complainant, the complaints coordinator and the general manager, or in the case of a complaint about the general manager, to the complainant, the complaints coordinator and the mayor. The notice must:

- a) advise them of the matter the investigator is investigating, and
- b) in the case of the notice to the complainant, invite them to make a written submission in relation to the matter within **at least 14 days** or such other period specified by the investigator in the notice.

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## Written and oral submissions

- 7.9 Where the subject person or the complainant fails to make a written submission in relation to the matter within the period specified by the investigator in their notice of investigation or amended notice of investigation, the investigator may proceed to prepare their draft report without receiving such submissions.
- 7.10 The investigator may accept written submissions received outside the period specified in the notice of investigation or amended notice of investigation.
- 7.11 Prior to preparing a draft report, the investigator must give the subject person an opportunity to address the investigator on the matter being investigated. The subject person may do so in person or by telephone **or other electronic means**.
- 7.12 Where the subject person fails to accept the opportunity to address the investigator within the period specified by the investigator in the notice of investigation, the investigator may proceed to prepare a draft report without hearing from the subject person.
- 7.13 Where the subject person accepts the opportunity to address the investigator in person, they may have a support person or legal adviser in attendance. The support person or legal adviser will act in an advisory or support role to the subject

person only. They must not speak on behalf of the subject person or otherwise interfere with or disrupt proceedings.

- 7.14 The investigator must consider all written and oral submissions made to them in relation to the matter.

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## How are investigations to be conducted?

- 7.15 Investigations are to be undertaken without undue delay.
- 7.16 Investigations are to be undertaken in the absence of the public and in confidence.
- 7.17 Investigators must make any such enquiries that may be reasonably necessary to establish the facts of the matter.
- 7.18 Investigators may seek such advice or expert guidance that may be reasonably necessary to assist them with their investigation or the conduct of their investigation.
- 7.19 An investigator may request that the complaints coordinator provide such further information that the investigator considers may be reasonably necessary for them to establish the facts of the matter. The complaints coordinator will, as far as is reasonably practicable, provide the information requested by the investigator.

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## Referral or resolution of a matter after the commencement of an investigation

- 7.20 At any time after an investigator has issued a notice of investigation and before they have issued a draft report, an investigator may determine to:

- a) resolve the matter by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or **a voluntary apology**, or
  - b) refer the matter to the general manager, or, in the case of a complaint about the general manager, to the mayor, for resolution by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or **a voluntary apology**, or
  - c) refer the matter to another agency or body such as, but not limited to, the ICAC, the NSW Ombudsman, **the Office** or the Police.
- 7.21 Where an investigator determines to exercise any of the options under **clause 7.20** after the commencement of an investigation, they must do so in accordance with the requirements of Part 6 of these procedures relating to the exercise of these options at the preliminary assessment stage.
- 7.22 **The resolution of a code of conduct complaint under clause 7.20, paragraphs (a) or (b) is not to be taken as a determination that there has been a breach of the council's code of conduct.**
- 7.23 Where an investigator determines to exercise any of the options under **clause 7.20** after the commencement of an investigation, they may by written notice to the subject person, the complainant, the complaints coordinator and the general manager, or in the case of a complaint about the general manager, to the subject person, the complainant, the complaints coordinator and the mayor, discontinue their investigation of the matter.
- 7.24 Where the investigator discontinues their investigation of a matter under **clause 7.22**, this shall finalise the consideration of the matter under these procedures.
- 7.25 An investigator is not obliged to give prior notice to or to consult with any person before making a determination to exercise any of the options under **clause 7.20** or to discontinue their investigation except as may be specifically required under these procedures.

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## Draft investigation reports

- 7.26 When an investigator has completed their enquiries and considered any written or oral submissions made to them in relation to a matter, they must prepare a draft of their proposed report.
- 7.27 The investigator must provide their draft report to the subject person and invite them to make a written submission in relation to it within **at least 14 days** or such other period specified by the investigator.
- 7.28 Where the investigator proposes to make adverse comment about any other person (an affected person) in their report, they must also provide the affected person with relevant extracts of their draft report containing such comment and invite the affected person to make a written submission in relation to it within **at least 14 days** or such other period specified by the investigator.
- 7.29 The investigator must consider written submissions received in relation to the draft report prior to finalising their report in relation to the matter.
- 7.30 The investigator may, after consideration of all written submissions received in relation to their draft report, make further enquiries into the matter. If, as a result of making further enquiries, the investigator makes any material change to their

proposed report that makes new adverse comment about the subject person or an affected person, they must provide the subject person or affected person as the case may be with a further opportunity to make a written submission in relation to the new adverse comment.

- 7.31 Where the subject person or an affected person fails to make a written submission in relation to the draft report within the period specified by the investigator, the investigator may proceed to prepare and issue their final report without receiving such submissions.
- 7.32 The investigator may accept written submissions in relation to the draft report received outside the period specified by the investigator at any time prior to issuing their final report.

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## Final investigation reports

- 7.33 Where an investigator issues a notice of investigation they must prepare a final report in relation to the matter unless the investigation is discontinued under **clause 7.23**.
- 7.34 An investigator must not prepare a final report in relation to the matter at any time before they have finalised their consideration of the matter in accordance with the requirements of these procedures.
- 7.35 The investigator's final report must:
- make findings of fact in relation to the matter investigated, and,
  - make a determination that the conduct investigated either,
    - constitutes a breach of the code of conduct, or
    - does not constitute a breach of the code of conduct, and
  - provide reasons for the determination.

7.36 Where the investigator determines that the conduct investigated constitutes a breach of the code of conduct, the investigator may make one or more of the following recommendations:

- that the council revise any of its policies or procedures
- that the subject person undertake any training or other education relevant to the conduct giving rise to the breach
- that the subject person be counselled for their conduct
- that the subject person be removed from membership of a committee of the council or any other body or organisation that the subject person serves on as the council's representative**
- that the subject person apologise to any person or organisation affected by the breach in such a time and form specified by the recommendation
- that findings of inappropriate conduct be made public **by publishing the investigator's findings and determination in the minutes of the council meeting at which the matter is considered**
- in the case of a breach by the general manager, that action be taken under the general manager's contract
- in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the Act
- in the case of a breach by a councillor, that the council resolves as follows:
  - that the councillor be formally censured for the breach under section 440G of the Act, and
  - that the matter be referred to **the Office** for further action under the misconduct provisions of the Act.

- 7.37 Where the investigator determines that the conduct investigated does not constitute a breach of the code of conduct, the investigator may make one or more of the following recommendations:
- a) that the council revise any of its policies or procedures
  - b) that a person or persons undertake any training or other education.
- 7.38 In making a recommendation under **clause 7.36**, the investigator may 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 person has remedied or rectified their conduct
  - d) whether the subject person has expressed contrition
  - e) whether there were any mitigating circumstances
  - f) the age, physical or mental health or special infirmity of the subject person
  - g) whether the breach is technical or trivial only
  - h) any previous **proven** breaches
  - i) whether the breach forms part of **an ongoing pattern of behaviour**
  - j) the degree of reckless intention or negligence of the subject person
  - k) the extent to which the breach has affected other parties or the council as a whole
  - l) the harm or potential harm to the reputation of the council or local government in general arising from the conduct
  - m) whether the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny
  - n) whether an educative approach would be more appropriate than a punitive one
  - o) the relative costs and benefits of taking formal **disciplinary** action as opposed to taking no action or taking informal action
  - p) what action or remedy would be in the public interest.
- 7.39 Where the investigator proposes to make a recommendation under clause 7.36(i), the investigator must first consult with the Office on their proposed findings, determination and recommendation prior to finalising their report, and must take any comments by the Office into consideration when finalising their report.**
- 7.40 At a minimum, the investigator’s final report must contain the following information:
- a) a description of the allegations against the subject person
  - b) the relevant provisions of the code of conduct that apply to the alleged conduct investigated
  - c) a statement of reasons as to why the matter warranted investigation**
  - d) a statement of reasons as to why the matter was one that could not or should not be resolved by alternative means**
  - e) a description of any attempts made to resolve the matter by use of alternative means
  - f) the steps taken to investigate the matter
  - g) the facts of the matter

- h) the investigator's findings in relation to the facts of the matter and the reasons for those findings
- i) the investigator's determination and the reasons for that determination
- j) any recommendations.

**7.41 The investigator must provide a copy of their report to the complaints coordinator and the subject person.**

**7.42 The investigator must provide the complainant with a written statement containing the following information:**

- a) the investigator's findings in relation to the facts of the matter and the reasons for those findings**
- b) the investigator's determination and the reasons for that determination**
- c) any recommendations, and**
- d) such other additional information that the investigator considers may be relevant.**

7.43 Where the investigator has determined that there has not been a breach of the code of conduct, the complaints coordinator must provide a copy of the investigator's report to the general manager or, where the report relates to the general manager's conduct, to the mayor, and this will finalise consideration of the matter under these procedures.

7.44 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under **clause 7.36**, paragraph (a) **only**, the complaints coordinator must provide a copy of the investigator's report to the general manager. Where the general manager agrees with the recommendation/s, the general manager is responsible for implementing the recommendation/s.

7.45 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under **clause 7.36**, paragraphs (b) or (c) **only**, the complaints coordinator must provide a copy of the investigator's report to the general manager or, where the report relates to the general manager's conduct, to the mayor. The general manager is responsible for arranging the implementation of the recommendation/s where the report relates to a councillor's conduct. The mayor is responsible for arranging the implementation of the recommendation/s where the report relates to the general manager's conduct.

7.46 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under **clause 7.36**, paragraphs **(d) to (i)**, the complaints coordinator must, where practicable, arrange for the investigator's report to be reported to the next ordinary council meeting for the council's consideration, unless the meeting is to be held within the 4 weeks prior to an ordinary local government election, in which case the report must be reported to the first ordinary council meeting following the election.

## Consideration of the final investigation report by council

- 7.47 The role of the council in relation to a final investigation report is to impose a sanction if the investigator has determined that there has been a breach of the code of conduct and has made a recommendation in their final report under **clause 7.36**, paragraphs **(d) to (i)**.
- 7.48 The council is to close its meeting to the public to consider the final investigation report in cases where it is permitted to do so under section 10A of the Act.
- 7.49 Where the complainant is a councillor, they must absent themselves from the meeting and take no part in any discussion or voting on the matter. The complainant councillor may absent themselves without making any disclosure of interests in relation to the matter unless otherwise required to do so under the code of conduct.
- 7.50 Prior to imposing a sanction, the council must provide the subject person with an opportunity to make a submission to the council. A submission may be made orally or in writing. The subject person is to confine their submission to addressing the investigator's recommendation/s.**
- 7.51 Once the subject person has made their submission they must absent themselves from the meeting and, where they are a councillor, take no part in any discussion or voting on the matter.**
- 7.52 The council must not invite submissions from other persons for the purpose of seeking to rehear evidence previously considered by the investigator.**
- 7.53 Prior to imposing a sanction, the council may by resolution:
- a) request that the investigator make additional enquiries and/or provide additional information to it in a supplementary report, or
  - b) seek an opinion from **the Office** in relation to the report.
- 7.54 The council may, by resolution, defer further consideration of the matter pending the receipt of a supplementary report from the investigator or an opinion from **the Office**.
- 7.55 The investigator may make additional enquiries for the purpose of preparing a supplementary report.
- 7.56 Where the investigator prepares a supplementary report, they must provide copies to the complaints coordinator who shall provide a copy each to the council and the subject person.
- 7.57 The investigator is not obliged to notify or consult with any person prior to submitting the supplementary report to the complaints coordinator.
- 7.58 The council is only required to provide the subject person a further opportunity to **make an oral or written submission** on a supplementary report if the supplementary report contains new information that is adverse to them.
- 7.59 A council may by resolution impose one or more of the following sanctions on a subject person:
- a) **that the subject person undertake any training or other education relevant to the conduct giving rise to the breach**
  - b) **that the subject person be counselled for their conduct**
  - c) **that the subject person be removed from membership of a committee of the council or any other body or organisation that the subject person serves on as the council's representative**

- d) that the subject person apologise to any person or organisation affected by the breach in such a time and form specified by the resolution
- e) that findings of inappropriate conduct be made public **by publishing the investigator's findings and determination in the minutes of the meeting**
- f) in the case of a breach by the general manager, that action be taken under the general manager's contract for the breach
- g) in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the Act
- h) in the case of a breach by a councillor:
  - i. that the councillor be formally censured for the breach under section 440G of the Act, and
  - ii. that the matter be referred to **the Office** for further action under the misconduct provisions of the Act.

**7.62 Where the council resolves not to adopt the investigator's recommendation/s or imposes, under clause 7.59, a sanction on the subject person that is different to the sanction recommended by the investigator, the complaints coordinator must notify the Office of the council's decision and the reasons for it.**

**7.60 The council is not obliged to adopt the investigator's recommendation/s. Where the council proposes not to adopt one or more of the investigator's recommendation/s, the council must resolve not to adopt the recommendation/s and state in its resolution the reasons for its decision.**

**7.61 Where the council proposes to impose, under clause 7.59, a sanction on the subject person that is different to the sanction recommended by the investigator in their final report, the council must state in its resolution the reasons for its decision.**



## Part 8:

# Oversight and Rights of Review



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## Failure to comply with a requirement under these procedures

**8.1** Where any person believes that a person has failed to comply with a requirement prescribed under these procedures, they may at any time raise their concerns in writing with the Office.

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## Complaints about conduct reviewers

**8.2** The general manager must refer complaints about conduct reviewers to the Office for its consideration.

**8.3** The general manager must notify the complainant of the referral of their complaint in writing.

**8.4** The general manager must implement any recommendation made by the Office as a result of its consideration of a complaint about a conduct reviewer.

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## Practice rulings

**8.5** Where a subject person and an investigator are in dispute over a requirement under these procedures, either person may make a request in writing to **the Office** to make a ruling on a question of procedure (a practice ruling).

**8.6** Where **the Office** receives a request in writing for a practice ruling, **the Office** may provide notice in writing of its ruling and the reasons for it to the person who requested it and to the investigator, where that person is different.

**8.7** Where **the Office** makes a practice ruling, all parties are to comply with it.

**8.8** **The Office** may decline to make a practice ruling. Where **the Office** declines to make a practice ruling, it will provide notice in writing of its decision and the reasons for it to the person who requested it and to the investigator, where that person is different.

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## Requests for review

**8.9** A person who is the subject of a sanction imposed under **Part 7** of these procedures other than one imposed under clause **7.59, paragraph (h)**, may, within 28 days of the sanction being imposed, seek a review of the investigator's determination and recommendation by the Office.

**8.10** A review under **clause 8.9** may be sought on the following grounds:

- a) that the investigator has failed to comply with a requirement under these procedures, or
- b) that the investigator has misinterpreted or misapplied the standards of conduct prescribed under the code of conduct, or
- c) that in imposing its sanction the council has failed to comply with a requirement under these procedures.

**8.11** A request for a review made under **clause 8.9** must be made in writing and must specify the grounds upon which the person believes the investigator or the council has erred.

**8.12** **The Office** may decline to conduct a review, in cases where the grounds upon which the review is sought are not sufficiently specified.

**8.13** **The Office** may undertake a review of a matter without receiving a request under **clause 8.9**.

- 8.14 **The Office** will undertake a review of the matter on the papers. However, **the Office** may request that the complaints coordinator provide such further information that **the Office** considers reasonably necessary for it to review the matter. The complaints coordinator must, as far as is reasonably practicable, provide the information requested by **the Office**.
- 8.15 Where a person requests a review under **clause 8.9**, **the Office** may direct the council to defer any action to implement a sanction. The council must comply with a direction to defer action by **the Office**.
- 8.16 **The Office** must notify the person who requested the review and the complaints coordinator of the outcome of **the Office's** review in writing and the reasons for its decision. In doing so, **the Office** may comment on any other matters the Office considers to be relevant.
- 8.17 Where **the Office** considers that the investigator or the council has erred, **the Office** may recommend that a decision to impose a sanction under these procedures be reviewed.
- 8.18 In the case of a sanction implemented by the general manager or mayor under **clause 7.45**, where **the Office** recommends that the decision to impose a sanction be reviewed:
- a) the complaints coordinator must provide a copy of **the Office's** determination in relation to the matter to the general manager or the mayor, and
  - b) the general manager or mayor must review any action taken by them to implement the sanction, and
  - c) the general manager or mayor must consider **the Office's** recommendation in doing so.
- 8.19 In the case of a sanction imposed by the council by resolution under **clause 7.59**, where **the Office** recommends that the decision to impose a sanction be reviewed:
- a) the complaints coordinator must, where practicable, arrange for **the Office's** determination to be tabled at the next ordinary council meeting unless the meeting is to be held within the 4 weeks prior to an ordinary local government election, in which case it must be tabled at the first ordinary council meeting following the election, and
  - b) the council must:
    - i. review its decision to impose the sanction, and
    - ii. consider **the Office's** recommendation in doing so, and
    - iii. resolve to either rescind or reaffirm its previous resolution in relation to the matter.
- 8.20 Where, having reviewed its previous decision in relation to a matter under **clause 8.19**, the council resolves to reaffirm its previous decision, the council must state in its resolution its reasons for doing so.



## Part 9:

# Procedural Irregularities



- 9.1 A failure to comply with these procedures does not, on its own, constitute a breach of the code of conduct, except as may be otherwise specifically provided under the code of conduct.
- 9.2 A failure to comply with these procedures will not render a decision made in relation to a matter invalid where:
- a) the non-compliance is isolated and/or minor in nature, or
  - b) reasonable steps are taken to correct the non-compliance, or
  - c) reasonable steps are taken to address the consequences of the non-compliance.

# Part 10:

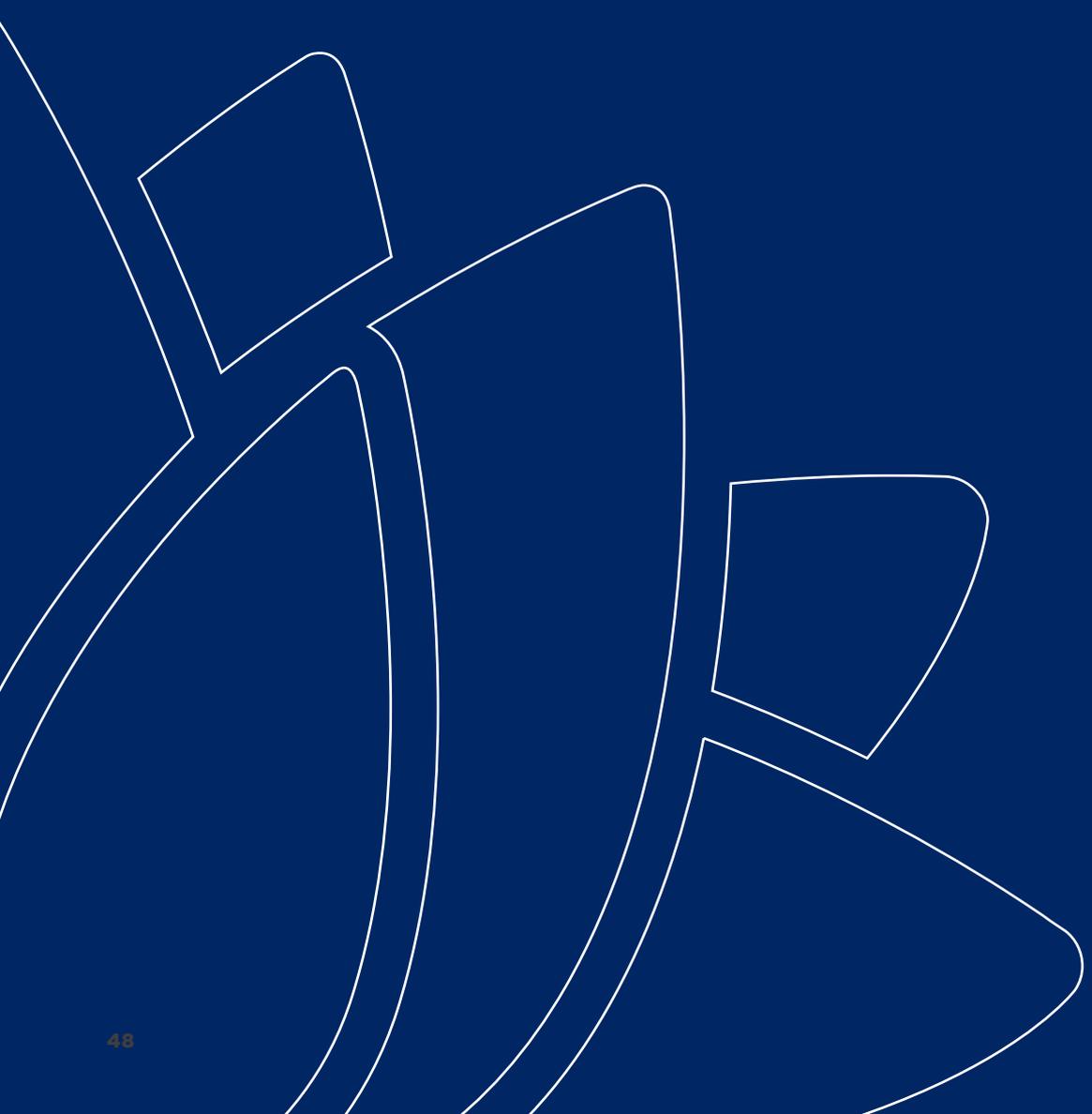
# Practice Directions



- 10.1 **The Office** may at any time issue a practice direction in relation to the application of these procedures.
- 10.2 **The Office** will issue practice directions in writing, by circular to all councils.
- 10.3 All persons performing a function prescribed under these procedures must consider **the Office's** practice directions when performing the function.

## **Part 11:**

# **Reporting Statistics on Code of Conduct Complaints About Councillors and the General Manager**



- 11.1 The complaints coordinator must arrange for the following statistics to be reported to the council within 3 months of the end of September of each year:
- a) the total number of code of conduct complaints made about councillors and the general manager under the code of conduct in the year to September (**the reporting period**)
  - b) the number of code of conduct complaints referred to a conduct reviewer **during the reporting period**
  - c) the number of code of conduct complaints finalised by a conduct reviewer at the preliminary assessment stage **during the reporting period** and the outcome of those complaints
  - d) the number of code of conduct complaints investigated by a conduct reviewer **during the reporting period**
  - e) without identifying particular matters, **the outcome of investigations completed under these procedures during the reporting period**
  - f) the number of matters reviewed by **the Office during the reporting period** and, without identifying particular matters, the outcome of the reviews, and
  - g) the total cost of dealing with code of conduct complaints made about councillors and the general manager **during the reporting period**, including staff costs.
- 11.2 The council is to provide the Office with a report containing the statistics referred to in **clause 11.1** within 3 months of the end of September of each year.

# Part 12:

# Confidentiality



- 12.1 Information about code of conduct complaints and the management and investigation of code of conduct complaints is to be treated as confidential and is not to be publicly disclosed except as may be otherwise specifically required or permitted under these procedures.
- 12.2 Where a complainant publicly discloses information on one or more occasions about a code of conduct complaint they have made or has purported to make, the general manager or their delegate may, with the consent of the Office, determine that the complainant is to receive no further information about their complaint and any future code of conduct complaint they make or purport to make.**
- 12.3 Prior to seeking the Office's consent under clause 12.2, the general manager or their delegate must give the complainant written notice of their intention to seek the Office's consent, invite them to make a written submission and consider any submission made by them.**
- 12.4 In giving its consent under clause 12.2, the Office must consider any submission made by the complainant to the general manager or their delegate.**
- 12.5 The general manager or their delegate must give written notice of a determination made under clause 12.2 to:**
- a) the complainant
  - b) the complaints coordinator
  - c) the Office, and
  - d) any other person the general manager or their delegate considers should be notified of the determination.
- 12.6 Any requirement under these procedures that a complainant is to be provided with information about a code of conduct complaint that they have made or has purported to make, will not apply to a complainant the subject of a determination made by the general manager or their delegate under clause 12.2 unless that person is otherwise entitled to receive the information under the *Public Interest Disclosures Act 1994*.**

