



CODE OF CONDUCT

Adopted by Council 17 February 2010

TABLE OF CONTENTS

TABLE OF CONTENTS	2
1 INTRODUCTION.....	4
2 DEFINITIONS	5
3 PURPOSE OF THE CODE OF CONDUCT.....	7
4 KEY PRINCIPLES.....	8
5 GUIDE TO ETHICAL DECISION MAKING	10
6 GENERAL CONDUCT OBLIGATIONS	12
7 CONFLICT OF INTERESTS	15
8 PERSONAL BENEFIT	22
9 RELATIONSHIP BETWEEN COUNCIL OFFICIALS	24
10 ACCESS TO INFORMATION AND COUNCIL RESOURCES.....	26
11 REPORTING BREACHES	30
12 COMPLAINT HANDLING PROCEDURES & SANCTIONS	33
13 COMPLAINT ASSESSMENT CRITERIA.....	38
14 CONDUCT REVIEW COMMITTEE/REVIEWER OPERATING GUIDELINES..	39
APPENDIX 1	43
APPENDIX 2.....	44
CODE REVISIONS	45

PART 1: CONTEXT

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

1 INTRODUCTION

The Model Code of Conduct for Local Councils in NSW (“the Model Code of Conduct”) is made for the purposes of section 440 of the *Local Government Act 1993* (“the Act”). Section 440 of the Act requires every Council to adopt a Code of Conduct that incorporates the provisions of the Model Code. For the purposes of section 440 of the Act, the Model Code of Conduct comprises all Parts of this document *in standard font*. *Where sections have been added to the Model Code of Conduct in order to tailor the Model Code of Conduct to the needs of Wentworth Shire Council, all effort has been made to italicise the words which have been added. Henceforth, the phrase “Model Code of Conduct” has been replaced with Code of Conduct or this Code of Conduct.*

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

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

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

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

Failure by a Councillor to comply with Part 2, the Standards of Conduct, of Council’s Code of Conduct constitutes misbehaviour. The *Local Government Act 1993* provides for suspension of Councillors from civic office for up to six months for proven misbehaviour. For further information on misbehaviour, refer to Sections 11 and 12 of this Code.

Failure by a member of staff to comply with Council’s Code of Conduct may give rise to disciplinary action.

2 DEFINITIONS

The following definitions apply:

The Act	The Local Government Act 1993
Act of disorder	See the definition in clause 256 of the <i>Local Government (General) Regulation 2005</i>
Conduct Review Committee	A committee of three or more persons independent of Council who are selected from those appointed by Council to review allegations of breaches of the Code of Conduct by Councillors or the General Manager in accordance with the procedures set out in Section 12, 13 and 14
Conduct Reviewer	A person independent of Council who is solely selected from those appointed by Council to review allegations of breaches of the Code of Conduct by Councillors or the General Manager in accordance with the procedures set out in Section 12, 13 and 14
Conflict of Interests	A conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty
Council official	Includes Councillors, members of staff of Council, Administrators appointed under section 256 of the Act, members of Council committees, conduct reviewers and delegates of Council
Delegate of Council	A person or body, and the individual members of that body, to whom a function of Council is delegated. E.g. Council's contractors, consultants, volunteers, members of advisory and section 355 committees, Independent Hearing Assessment Panels and community representatives
Designated person	See the definition in section 441 of the Act
Misbehaviour	See the definition in section 440F of the Act
Non-Pecuniary Interest	A private or personal interest the council official has that does not amount to a pecuniary interest as defined in the Act. These commonly arise out of family, or personal relationships, or involvement in sporting, social or other cultural groups and associations and may include an interest of a financial nature
Pecuniary Interest	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

Personal Information	Information or an opinion about a person whose identity is apparent, or can be determined from the information or opinion
Person independent of Council	A person who is not an employee of the Council, has no current or ongoing contractual relationship with Council in the nature of a contract for services, retainer or contract for the provision of goods of any kind, or is not an employee of any entity with such a contractual relationship.
Significant non-pecuniary conflict of interest	Means where a matter does not raise a pecuniary interests but involves: <ul style="list-style-type: none"> a. A relationship between a council official and another person that is particularly close, for example, parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse, current or former spouse or partner, de facto or other person living in the same household b. Other relationships that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship c. An affiliation between the council official and an organisation, sporting body, club, corporation or association that is particularly strong

The term "you" refers to Council officials.

3 PURPOSE OF THE CODE OF CONDUCT

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

This Code of Conduct has been developed to assist Council officials to:

- understand the Standards of Conduct that are expected of them
- enable them to fulfill their statutory duty to act honestly and exercise a reasonable degree of care and diligence (section 439)
- act in a way that enhances public confidence in the integrity of Local Government.

A Code of Conduct is a key mechanism to assist council official to act honestly, ethically, responsibly and with accountability.

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

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

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

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

The Code of Conduct applies to all council officials, that is, councillors, members of staff of council, administrators appointed under section 256 of the Act, members of council committees, conduct reviewers and other delegates of council. It requires them to act honestly, ethically and responsibly in the performance of their duties.

It is the personal responsibility of all council officials to observe the standards in the Code of Conduct and regularly review their personal circumstances with this in mind.

4 KEY PRINCIPLES

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

Integrity

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

Leadership

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

Selflessness

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

Impartiality

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

Accountability

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

Openness

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

Honesty

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

Respect

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

Core Values at Wentworth Shire Council

In addition to the principles outlined above, Wentworth Shire Council has adopted values, which also help to underpin and guide these key principles and may be used as an aid in interpreting the substantive provisions of the Code.

- 4.9 *At Wentworth Shire Council, we value:*

- *Honesty and Integrity*
- *Accountability and Transparency*
- *Respect*
- *Quality*
- *Commitment*
- *Respect*

5 GUIDE TO ETHICAL DECISION MAKING

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

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

Conflict of Interests

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

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

Political donations and conflict of interests

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

Seeking advice

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

Independent Commission Against Corruption	(02) 8281 5999
NSW Ombudsman	(02) 9286 1000
NSW Department of Local Government	(02) 4428 4100

PART 2: STANDARDS OF CONDUCT

This Part of the Model Code sets out the conduct obligations required of Council officials. These are the enforceable Standards of Conduct.

Failure by a Councillor to comply with part 2, the Standards of Conduct, of Council's Code of Conduct constitutes misbehaviour and may constitute a substantial breach for the purposes of section 9 of the ICAC Act 1988.

The Local Government Act 1993 provides for suspension of Councillors from civic office for up to six months for proven misbehaviour. For further information on misbehaviour, refer to Sections 11 and 12 of this Code.

Failure by a member of staff to comply with Council's Code of Conduct may give rise to disciplinary action.

6 GENERAL CONDUCT OBLIGATIONS

General conduct

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

Fairness and equity

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

Harassment and discrimination

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

Development decisions

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

Lobbying

- 6.10 *Councillors and council staff may be lobbied by a wide range of people, including individuals, organisations, companies and developers. As a general rule, it is an essential element of the democratic system that any individual should be able to lobby the council or a councillor. However, particular considerations apply when councillors and council staff are dealing with statutory powers such as planning.*
- 6.11 *Councillors and council staff must consider evidence and arguments put by a wide range of organisations and individuals in order to perform their duties effectively. However, councillors should encourage lobbyists and applicants to put their views in writing to the general manager for evaluation by council staff and reporting to council of all the consequences of granting the request.*

Appointments to Other Organisations

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

Alcohol and Other Drugs

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

Health, wellbeing and safety

- 6.15 *Councillors and council staff should ensure that council's premises are adequate to ensure the health, safety and well being of other council officials*

and members of the public in accordance with their obligations under the Occupational Health and Safety Act 2000.

Public comment by council officials

- 6.16 *Council staff should understand and comply with council's media/public comment policy and know whether they are permitted to make public comment on behalf of the council. If in doubt, authorisation should be obtained from the general manager.*
- 6.17 *"Public comment" includes public speaking engagements (including comments on radio and television), expressing views in letters to the press or in books or notices or where it is reasonably foreseeable that publication or circulation will enter the public domain.*
- 6.18 *For example, as a member of the community, council staff have a right to enter into public debate in their private capacity. However, council staff must take care not to give the impression that their comments are made on behalf of council. Council staff will need to clearly state that such public comment reflects personal opinion. Public comment or statements on council matters should only be made in accordance with council's policy.*
- 6.19 *Council officials (including councillors) should ensure that they clarify whether or not they are acting on behalf of council and/or in their public capacity when speaking publicly or attending functions to avoid situations where this might be directly implied or indirectly inferred.*

Child protection Code of Conduct

- 6.20 *Under the Ombudsman Act 1974, the head of a designated agency or public authority is responsible for ensuring systems are in place for recording and responding to all allegations of a child protection nature against an employee.*
- 6.21 *The head of an agency is required to determine which allegations and convictions are to be notified to the Ombudsman as a reportable allegation or conviction and which matters are exempt from notification. These exemptions require a code of conduct which includes details of what behaviour by employees is reasonable for the purpose of the discipline, management or care of children. The code of conduct should also clarify what is acceptable and what is not acceptable behaviour by employees towards children, as well as what will happen if an employee breaches the council's code of conduct.*

7 CONFLICT OF INTERESTS

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

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

The political views of a councillor do not constitute a private interest. When councillors run for office, they outline their position and views in relation to issues facing the community. These views are essentially public in nature and do not represent private interests.

- 7.1 A conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty.
- 7.2 You must avoid or appropriately manage any conflict of interests. The onus is on you to identify a conflict of interests and take the appropriate action to manage the conflict in favour of your public duty.
- 7.3 Any conflict of interests must be managed to uphold the probity of Council decision-making. When considering whether you have a conflict of interests, it is always important to think about how others would view your situation.
- 7.4 Private interests can be of two types: pecuniary or non-pecuniary.

What is a pecuniary interest?

- 7.5 A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. (*Section 442*)
- 7.6 A person will also be taken to have a pecuniary interest in a matter if that person's spouse or de facto partner or a relative of the person or a partner or employer of the person, or a company or other body of which the person, or a nominee, partner or employer of the person is a member, has a pecuniary interest in the matter. (*Section 443*)
- 7.7

Pecuniary interests are regulated by Chapter 14, Part 2 of the Act. The Act requires that:-

- (a) Councillors and designated persons lodge an initial and an annual written disclosure of interests that could potentially be in conflict with their public or professional duties (Section 449)
- (b) Councillors or members of Council committees disclose an interest and the nature of that interest at a meeting, leave the meeting and be out of sight of the meeting and not participate in discussions or voting on the matter (Section 451)
- (c) designated persons immediately declare, in writing, any pecuniary interest. (Section 459)

7.8 Designated persons are defined at section 441 of the Act, and include, but are not limited to, the General Manager and other senior staff of the Council.

7.9 Where you are a member of staff of Council, other than a designated person (as defined by Section 441), you must disclose in writing to your supervisor or the General Manager, the nature of any pecuniary interest you have in a matter you are dealing with as soon as practicable.

What is a non-pecuniary conflict of interests?

7.10 Non-pecuniary interests are private or personal interests the Council official has that do not amount to a pecuniary interest as defined in the Act. These commonly arise out of family, or personal relationships, or involvement in sporting, social or other cultural groups and associations and may include an interest of a financial nature.

7.11 The matter of a report to Council from the conduct review committee/reviewer relates to the public duty of a Councillor or the General Manager. Therefore, there is no requirement for Councillors or the General Manager to disclose a conflict of interests in such a matter.

7.12 The political views of a Councillor do not constitute a private interest.

Managing non-pecuniary conflict of interests

7.13 Where you have a non-pecuniary interest that conflicts with your public duty, you must disclose the interest fully and in writing, even if the conflict is not significant. You must do this as soon as practicable.

7.14 If a disclosure is made at a Council or committee meeting, both the disclosure and the nature of the interest must be recorded in the minutes. This disclosure constitutes disclosure in writing for the purposes of clause 7.13.

7.15 How you manage a non-pecuniary conflict of interests will depend on whether it is significant or less than significant.

Significant non-pecuniary conflict of interest

- 7.16 As a general rule, a non-pecuniary conflict of interests will be significant where a matter does not raise a pecuniary interest but it involves:
- a) a relationship between a Council official and another person that is particularly close, for example, parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse, current or former spouse or partner, de facto or other person living in the same household
 - b) other relationships that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship
 - c) an affiliation between the Council official and an organisation, sporting body, club, corporation or association that is particularly strong.
- 7.17 If you are a Council official, other than a member of staff of Council, and you have disclosed that a significant non-pecuniary conflict of interests exists, you must manage it in one of two ways:
- (a) remove the source of the conflict, by relinquishing or divesting the interest that creates the conflict, or re-allocating the conflicting duties to another Council official;
 - (b) have no involvement in the matter, by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in Section 451(2) of the Act apply.

Less than significant non-pecuniary conflict of interest

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

Political donations exceeding \$1,000

- 7.21 Councillors should note that matters before Council involving political or campaign donors may give rise to a non-pecuniary conflict of interests.

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

Other business or employment

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

Personal dealings with Council

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

Sponsorships

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

Caucus Votes

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

Former council officials

- 7.32 Councillors and council staff must be careful in their dealings with former council officials and make sure that they do not give them, or appear to give them, favourable treatment or access to privileged information. Former council officials must not use, or take advantage of confidential information obtained in the course of their official duties that may lead to gain or profit. At the end of their involvement with council, they must:
- Return all council property, documents or items (keys, mobile phones etc)
 - Not make public or otherwise use any confidential information gained as a consequence of their involvement with council

Staff political participation

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

Senior advisor on conflicts of interests

- 7.34 Councils should consider nominating a senior officer, establishing a panel or engaging a suitably qualified person, such as a solicitor or auditor, to provide objective advice to council officials on conflict of interest matters.
- 7.35 Advice would constitute guidance on the criteria to help make a decision and the range of options available to an individual. This advice should not be considered a legal opinion and council officials may need to obtain their own legal advice on the matter. The onus is on individuals to recognise circumstances where a conflict of interest may arise.
- 7.36 Councils often invite interested members of the community to join council committees. Usually the reason for their involvement is due to specific knowledge, experience and expertise in the business of the committee. Questions can arise as to whether this knowledge, experience and expertise

gives rise to a pecuniary or non-pecuniary conflict of interests. This personal interest in the broad issues is generally well understood and would not need to be disclosed.

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

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

8 PERSONAL BENEFIT

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

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

Token gifts and benefits

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

Gifts and benefits of value

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

Gifts and benefits

- 8.3 You must not:
- (a) seek or accept a bribe or other improper inducement
 - (b) seek gifts or benefits of any kind
 - (c) accept any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your public duty
 - (d) accept any gift or benefit of more than token value
 - (e) accept an offer of money, regardless of the amount.

- 8.4 Where you receive a gift or benefit of more than token value that cannot reasonably be refused or returned, this must be disclosed promptly to your supervisor, the Mayor or the General Manager. The recipient, supervisor, Mayor or General Manager must ensure that any gifts or benefits of more than token value that are received are recorded in a Gifts Register. The gift or benefit must be surrendered to Council, unless the nature of the gift or benefit makes this impractical.
- 8.5 You must avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to secure favourable treatment from you or from the Council.
- 8.6 You must take all reasonable steps to ensure that your immediate family members do not receive gifts or benefits that give rise to the appearance of being an attempt to secure favourable treatment. Immediate family members ordinarily include parents, spouses, children and siblings.

Improper and undue influence

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

9 RELATIONSHIP BETWEEN COUNCIL OFFICIALS

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

Obligations of Councillors and Administrators

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

Obligations of staff

- 9.3 The General Manager is responsible for the efficient and effective operation of the Council's organisation and for ensuring the implementation of the decisions of the Council without delay.
- 9.4 Members of staff of Council must:
- (a) give their attention to the business of Council while on duty
 - (b) ensure that their work is carried out efficiently, economically and effectively
 - (c) carry out lawful directions given by any person having authority to give such directions

- (d) give effect to the lawful decisions, policies and procedures of the Council, whether or not the staff member agrees with or approves of them.

Obligations during meetings

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

Inappropriate interactions

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

10 ACCESS TO INFORMATION AND COUNCIL RESOURCES

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

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

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

Councillor and Administrator access to information

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

Councillors and Administrators to properly examine and consider information

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

Refusal of access to documents

- 10.7 Where the General Manager and Public Officer determine to refuse access to a document sought by a Councillor or Administrator they must act reasonably. In reaching this decision they must take into account whether or not the document sought is required for the Councillor or Administrator to perform their civic duty (see clause 10.2). The General Manager or Public Officer must state the reasons for the decision if access is refused.

Use of certain Council information

10.8 In regard to information obtained in your capacity as a Council official, you must:

- (a) only access Council information needed for Council business
- (b) not use that Council information for private purposes
- (c) not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for yourself, or any other person or body, from any information to which you have by virtue of your office or position with Council
- (d) only release Council information in accordance with established Council policies and procedures and in compliance with relevant legislation

Use and security of confidential information

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

10.10 In addition to your general obligations relating to the use of Council information you must:-

- (a) protect confidential information
- (b) only release confidential information if you have authority to do so
- (c) only use confidential information for the purpose it is intended to be used
- (d) not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person
- (e) not use confidential information with the intention to cause harm or detriment to your Council or any other person or body
- (f) Not disclose any information discussed during a confidential session of a Council meeting.

Personal information

10.11 When dealing with personal information you must comply with:

- (a) the *Privacy and Personal Information Protection Act 1998*,
- (b) the *Health Records and Information Privacy Act 2002*,
- (c) the Information Protection Principles and Health Privacy Principles,
- (d) Council's privacy management plan,
- (e) the Privacy Code of Practice for Local Government

Use of Council resources

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

- 10.13 Union delegates and consultative committee members may have reasonable access to Council resources for the purposes of carrying out their industrial responsibilities, including but not limited to:
- (a) the representation of members with respect to disciplinary matters
 - (b) the representation of employees with respect to grievances and disputes
 - (c) functions associated with the role of the local consultative committee
- 10.14 You must be scrupulous in your use of Council property, including intellectual property, official services and facilities and must not permit their misuse by any other person or body.
- 10.15 You must avoid any action or situation that could create the appearance that Council property, official services or public facilities are being improperly used for your benefit or the benefit of any other person or body.
- 10.16 The interests of a Councillor in their re-election is considered to be a private interest and as such the reimbursement of travel expenses incurred on election matters is not appropriate. You must not use Council letterhead, Council crests and other information that could give the appearance it is official Council material for these purposes.
- 10.17 You must not convert any property of the Council to your own use unless properly authorised.
- 10.18 You must not use Council's computer resources to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature.

Councillor access to Council Buildings

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

Contractors

- 10.22 *Contracts with contractors, consultants, agents or advisers should specify that such persons are under an obligation not to use confidential information in ways which are an abuse of their role, functions or position, or which put*

them in a position which is inconsistent with their legal and professional obligations to the council.

Business Investments

- 10.23 Council staff should avoid investments or business activities in relation to which their potential access to confidential information might reasonably be perceived as giving them an unfair or improper advantage over other people.*
- 10.24 Councillors also need to be aware of this issue and manage their access to confidential or commercially sensitive information appropriately.*

11 REPORTING BREACHES

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

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

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

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

Officer	Report To
Councillors, members of staff of council (excluding the General Manager) or delegates	<i>General Manager in writing</i>
General Manager	<i>Mayor in writing</i>
Administrator	<i>Minister for Local Government in writing</i>

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

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

Protected disclosures

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

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

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

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

Reporting breaches of the Code of Conduct

- 11.6 You should report suspected breaches of the Code of Conduct by Councillors, members of staff of Council (excluding the General Manager) or delegates to the General Manager in writing.
- 11.7 Where you believe that the General Manager has breached the Code of Conduct, you should report the matter to the Mayor in writing.
- 11.8 Where you believe that an Administrator has breached the Code of Conduct, you should report the matter to the Minister for Local Government in writing.
- 11.9 Councillors should not make allegations of suspected breaches of the Code at Council meetings or in other public forums.

PART 3: PROCEDURES

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

12 COMPLAINT HANDLING PROCEDURES & SANCTIONS

- 12.1 Complaints about the conduct of Councillors, members of staff of Council, members of Council committees and delegates of Council should be addressed in writing to the General Manager.
- 12.2 Complaints about the conduct of the General Manager should be addressed in writing to the Mayor.

Complaint handling procedures – staff, delegate and Council committee member conduct (excluding the General Manager)

- 12.3 The General Manager is responsible for making enquiries, or causing enquiries to be made, into complaints alleging breach of the Code of Conduct regarding members of staff of Council, delegates of Council and/or members of Council committees (other than Councillors), and will determine such matters.
- 12.4 Where the General Manager has determined not to enquire into the matter, the General Manager will give the complainant the reason/s in writing as provided in clause 13.1 of this Code, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith.
- 12.5 Enquiries made into staff conduct that might give rise to disciplinary action must occur in accordance with the relevant industrial instrument and make provision for procedural fairness including the right of an employee to be represented by their union.
- 12.6 Sanctions for staff depend on the severity, scale and importance of the breach and must be determined in accordance with any relevant industrial instruments or contracts. *In the absence of any sanctions set out in staff agreements for breaches of the Code of Conduct, the following sanctions may be considered:*
- Counselling of staff member
 - Documentation on the personnel file for a period of time depending on the nature of the breach of the code
 - Disciplinary action such as demotion, foregoing the capacity to seek promotion, or to act in a higher duty capacity
 - Dismissal from employment
 - Prosecution for any breach of law which could lead to dismissal and recovery of costs/damages suffered by council and/or imprisonment
- 12.7 Sanctions for delegates and/or members of Council committees depend on the severity, scale and importance of the breach and may include:
- (a) censure
 - (b) requiring the person to apologise to any person adversely affected by the breach
 - (c) counselling
 - (d) prosecution for any breach of the law

- (e) removing or restricting the person's delegation
- (f) removing the person from membership of the relevant Council committee
- (g) revising any of Council's policies, procedures and/or the Code of Conduct.

Complaint handling procedures – Councillor conduct

12.8 The General Manager is responsible for assessing complaints, made under Section 11.1, alleging breaches of the Code of Conduct by Councillors, in accordance with the assessment criteria provided at Section 13 of this Code, in order to determine whether to refer the matter to the conduct review committee/reviewer.

12.9 The General Manager must determine either to:

- (a) take no further action and give the complainant the reason/s in writing as provided in clause 13.1 of this code, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith, or
- (b) resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing, or
- (c) discontinue the assessment in the circumstances where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing, or
- (d) refer the matter to the conduct review committee/reviewer.

Complaint handling procedures – General Manager conduct

12.10 The Mayor is responsible for assessing complaints, made under clause 11.1, alleging breaches of the Code of Conduct by the General Manager, in accordance with the assessment criteria provided at Section 13 of this Code, in order to determine whether to refer the matter to the conduct review committee/reviewer.

12.11 The Mayor must determine either to:

- (a) take no further action and give the complainant the reason/s in writing as provided in clause 13.1 of this Code, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith, or
- (b) resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing, or
- (c) discontinue the assessment in the circumstances where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing, or
- (d) refer the matter to the conduct review committee/reviewer.

Conduct review committee/reviewer

- 12.12 Council must resolve to appoint persons independent of Council to comprise the members of a conduct review committee and/or to act as sole conduct reviewers. Pursuant to resolution 12.1.5 at the council meeting held 24 June 2009, council resolved to appoint to its conduct review committee those persons who are accepted as members of the Riverina and Murray Regional Organisation of Councils (RAMROC), excluding any person who is a resident of the Wentworth Shire Council local government area.
- 12.13 The members of the conduct review committee and/or the persons acting as sole conduct reviewers should be appropriately qualified persons of high standing in the community. These persons do not need to be residents of the Local Government area of the Council that has appointed them.
- 12.14 The conduct review committee, members of such committee and sole conduct reviewers may act in that role for more than one Council.
- 12.15 The General Manager, or in the case of complaints about the General Manager, the Mayor, will undertake the following functions in relation to the conduct review committee/reviewer:
- provide procedural advice when requested
 - ensure adequate resources are provided, including providing secretariat support
 - attend meetings of the conduct review committee if so requested by the committee, and then in an advisory capacity only
 - provide advice about Council processes if requested to do so but not so as to take part in the decision making process
 - if attending the conduct review committee meeting to provide advice, must not be present at, or in sight of, the meeting when a decision is taken.
- 12.16 Where a matter is to be considered by the conduct review committee/reviewer, then in each case, the General Manager, or Mayor in the case of complaints about the General Manager, acting in their capacity as advisor, will either convene a conduct review committee and select its members from those appointed by Council or alternatively select a sole conduct reviewer from those appointed by Council.
- 12.17 The conduct review committee/reviewer will operate in accordance with the operating guidelines at Section 14 of this code.
- 12.18 The conduct review committee/reviewer operating guidelines (Section 14) are the minimum requirements for the operation of conduct review committee/reviewers. Council may supplement the guidelines, but any additional provisions should not be inconsistent with the guidelines.
- 12.19 The conduct review committee/reviewer is responsible for making enquiries into complaints made under clause 11.1 alleging breaches of the Code of Conduct by Councillors and/or the General Manager and must determine either to:

- (a) not make enquiries into the complaint and give the complainant the reason/s in writing as provided in clause 13.1 of this code, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith, or
- (b) resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, making recommendations to the General Manager, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing, or
- (c) make enquiries into the complaint, or
- (d) engage another appropriately qualified person to make enquiries into the complaint, or
- (e) Not make enquiries or discontinue making enquiries where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing. Despite any other provision of this Code, this will constitute finalisation of such matters and no further action is required.

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

12.21 Where the conduct review committee/reviewer makes findings, the conduct review committee/reviewer may recommend that Council take any actions provided for in this Code of Conduct that it considers reasonable in the circumstances.

12.22 Where the conduct review committee/reviewer makes findings, the conduct review committee/reviewer will report its findings, and the reasons for those findings, in writing to the Council, the complainant and the person the subject of the complaint.

12.23 The conduct review committee/reviewer will report its findings and any recommendations to Council only when it has completed its deliberations.

Sanctions

12.24 Before a Council can impose a sanction, it must make a determination that a Councillor or the General Manager has breached the Code of Conduct.

12.25 Where the Council finds that a Councillor or General Manager has breached the Code, it may decide by resolution to:

- (a) censure the Councillor for misbehaviour in accordance with Section 440G of the Act
- (b) require the Councillor or General Manager to apologise to any person adversely affected by the breach
- (c) counsel the Councillor or General Manager
- (d) make public findings of inappropriate conduct
- (e) prosecute for any breach of law

Councillor misbehaviour

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

Reporting on complaints

- 12.33 The General Manager must report annually to Council on Code of Conduct complaints. This report should include, as a minimum, a summary of the:
- (a) number of complaints received
 - (b) nature of the issues raised by complainants, and
 - (c) outcomes of complaints.

13 COMPLAINT ASSESSMENT CRITERIA

The Code of Conduct describes three different complaint handling procedures depending on whether the person the subject of the complaint is a:

- *Staff member, delegate or member of a council committee;*
- *General Manager*
- *Councillor*

13.1 The General Manager, or Mayor in the case of a complaint about the General Manager, will assess a complaint alleging a breach of the Code of Conduct to determine if the matter should be referred to the conduct review committee/reviewer. In assessing the complaint, the General Manager and Mayor will have regard to the following grounds:

- (a) whether there is any prima facie evidence of a breach of the Code of Conduct
- (b) whether the subject matter of the complaint relates to conduct that is associated with the carrying out of the functions of civic office or duties as General Manager
- (c) whether the complaint is trivial, frivolous, vexatious or not made in good faith
- (d) whether the conduct of the subject of the complaint could reasonably constitute a breach of the Code of Conduct
- (e) whether the complaint raises issues that require investigation by another person or body, such as referring the matter to the Department of Local Government, the NSW Ombudsman, the Independent Commission Against Corruption or the NSW Police
- (f) whether there is an alternative and satisfactory means of redress
- (g) how much time has elapsed since the events the subject of the complaint took place
- (h) how serious the complaint is and the significance it has for Council
- (i) whether the complaint is one of a series indicating a pattern of conduct.

13.2 Complaints that are assessed as not having sufficient grounds to warrant referral to the conduct review committee/reviewer or that are to be referred to a more appropriate person or body can be finalised by the General Manager or the Mayor, in the case of complaints about the General Manager.

13.3 If a matter is referred to the conduct review committee/reviewer, then the conduct review committee/reviewer should use the above criteria in clause 13.1 for its initial assessment of the complaint and determination of the course to follow in dealing with the complaint.

14 CONDUCT REVIEW COMMITTEE/REVIEWER OPERATING GUIDELINES²

Jurisdiction of the conduct review committee/reviewer

14.1 The complaint handling function of the conduct review committee/reviewer is limited to consideration of, making enquiries into and report on complaints made under clause 11.1 about Councillors and/or the General Manager.

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

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

Role of the General Manager and Mayor

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

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

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

² **The operating guidelines have been adapted from the Ku-ring-gai Council Conduct committee Guidelines 25 Oct 2006**

Composition of the conduct review committee

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

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

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

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

Quorum of the conduct review committee

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

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

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

Business may be conducted by video-conference or tele-conference.

Voting of the conduct review committee

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

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

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

Procedures of the conduct review committee/reviewer

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

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

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

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

Procedural fairness

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

- (a) provide the person the subject of the complaint with a reasonable opportunity to respond to the substance of the allegation
- (b) provide the person the subject of the complaint with an opportunity to place before the conduct review committee/reviewer or person undertaking the enquiry any information the person considers relevant to the enquiry
- (c) provide the person the subject of the complaint with an opportunity to address the conduct review committee/reviewer in person
- (d) hear all parties to a matter and consider submissions before deciding the substance of any complaint
- (e) make reasonable enquiries before making any recommendations
- (f) act fairly and without prejudice or bias
- (g) ensure that no person decides a case in which they have a conflict of interests
- (h) conduct the enquiries without undue delay.³

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

Complaint handling procedures

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

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

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

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

In circumstances where the person the subject of the complaint meets with the conduct review committee/reviewer, they are entitled to bring a support

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

person or legal adviser. That person will act in an advisory and support role to the person affected. They will not speak on behalf of the subject person.

Findings and recommendations of the conduct review committee/reviewer

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

- (a) censure the Councillor for misbehaviour
- (b) require the Councillor or General Manager to apologise to any person adversely affected by the breach
- (c) counsel the Councillor or General Manager
- (d) make public findings of inappropriate conduct
- (e) prosecute for any breach of the law
- (f) revise any of Council's policies, procedures and/or the Code of Conduct.

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

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

Amendment of the operating guidelines

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

**APPENDIX 1
RELATED DOCUMENTS**

1. ASSOCIATED LEGISLATION

Local Government Act 1993 (NSW)

Local Government (General) Regulations 2004 (NSW)

2. ASSOCIATED GOVERNMENT POLICY PROVISIONS

New South Wales Department of Local Government Guidelines for the Model Code of Conduct – October 2008

3. ASSOCIATED COUNCIL DOCUMENTS

C1 – Code of Meeting Practice

C2a – Code of Conduct Explained in Examples

CP8 – Child Protection

CP11 – Complaints Handling

CP37 – Media Statements

CP42 – Occupational Health and Safety in the Workplace

CP84 – Secondary Employment

CP85 – Communication Devices Policy

CP87 – Payment of Expenses and Provision of Facilities Policy

CP104 – Internal Reporting System

CP105 – Gifts and Benefits Policy

CP106 - Councillor Access to Information, Staff and Premises Policy

CP108 – Asset Disposal Policy

CP141 - Access to Information Held by Council - Public

APPENDIX 2
MATERIAL DELETIONS FROM THE MODEL CODE OF CONDUCT

Part 1, Section 1	A set of guidelines have been developed to assist Councils to review and enhance their codes of conduct. The guidelines support this Code and provide further information and examples on the provisions in this Code.
----------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

CODE REVISIONS

CODE STATUS

This code replaces the previous version adopted on 24 June 2009 and includes changes to spelling and grammar which do not materially alter the meaning of the Code; revised Council values; and inclusion of paragraphs on Code Status, Code Review, and Authorisation consistent with the format of council policies.

POLICY REVIEW

This policy:

1. may be amended or revoked at any time; and
2. must be reviewed in accordance with section 440(7) of the Local Government Act, that is, within 12 months after each ordinary election.

AUTHORISATION

.....
Position: General Manager

Date: /...../.....