

C2a - Code of Conduct Explained in Examples

Example 1

Improper or unethical behaviour

Clause 6.1 of the Code stipulates that Council officials must not conduct themselves in carrying out their functions in a manner that is likely to bring Council or holders of civic office into disrepute and must not act in a way that is improper or unethical.

An example would be making, as a member of the elected body; misleading public statements that are designed to bring the Council, Council's staff or individual Councillors into disrepute that are motivated by political gain as opposed to fair comment or criticism on a particular issue.

Example 2

Secondary Employment

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

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

Under the Local Government Act 1993, all Council staff must obtain the consent of the general manager for any secondary employment that relates to the business of Council or might conflict with their Council duties.

Example 3

Examples of inappropriate and/or unlawful Councillor conduct that could occur during lobbying includes: accepting a political donation in return for a favourable exercise of discretion during decision making and giving undertakings to an interested party prior to consideration of all information relevant to a decision.

Example

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

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

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

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

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

local charities, the offer should have been firmly refused and the matter reported to the General Manager.

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

Example 4

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

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

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

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

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

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

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

This applies to committee meetings, advisory committee meetings, closed Council and committee meetings.

Example 5

Development Applications

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

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

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

Example 6

Political Support

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

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

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

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

The Councillors would also need to consider whether such a political donation gives rise to a

reasonable perception of influence in relation to their vote.

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

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

Example 7

Club Membership

Example 1

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

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

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

Example 2

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

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

In both situations, the Councillors have two different interests in the matters. The first is their interest as a Councillor representing residents and ratepayers generally; the second is as club members who are keen to see the club prosper and provide better facilities for its members. There is nothing wrong with a Councillor having community as well as civic

interests, though there are times when these interests may be perceived as a significant conflict of interests.

The distinguishing features of examples 1 and 2 are that:

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

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

Example 8

Examples of Improper and Undue Influence

Acceptance of a Gift of Value

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

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

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

Gifts, Benefits and Hospitality

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

The officer's impartiality when dealing with the supplier would be compromised if he or she

accepts the offer. Even if this officer personally feels that s/he would not be influenced by the gift, s/he would be in breach of the code of conduct if the offer were accepted.

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

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

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

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

Acceptance of Gifts and Bribery

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

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

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

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

Acceptance of Gifts and Influence

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

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

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

Example 9

Attempting to Improperly Direct/Influence Staff

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

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

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

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

Example 10

Use of Council Information for Personal or Business Interests

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

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

Use of Council Equipment

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

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

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

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

Forms of Misuse – Staff

Forms of misuse which appear to be relatively common include:

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

Forms of Misuse - Councillors

Forms of misuse of Council resources by Councillors include the use of:

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

Information Security

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

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

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