

COUNCIL POLICY

BACKGROUND

Council acknowledges the importance of high standards of behaviour in maintaining good governance and good reputation.

This Code of Conduct incorporates the model Code of Conduct produced by the Division of Local Government and contemporary best practice. This Code of Conduct applies to Councillors, who are required to comply with the standards set out in the Code of Conduct.

OBJECTIVE

To ensure that Councillors adhere to the highest standards of conduct.

POLICY STATEMENT

This Code of Conduct reflects Council's determination to support the highest level of community confidence in the integrity of Council.

TABLE OF CONTENTS

1	INTRODUCTION.....	4
2	DEFINITIONS	4
3	PURPOSE OF THE CODE OF CONDUCT	5
4	KEY PRINCIPLES.....	6
	4.1 Integrity.....	6
	4.2 Leadership	6
	4.3 Selflessness.....	6
	4.4 Impartiality.....	6
	4.5 Accountability.....	6
	4.6 Openness	6
	4.7 Honesty	6
	4.8 Respect	7
5	GUIDE TO ETHICAL DECISION MAKING	7
	Conflict of interests	7
	Political donations and conflict of interests.....	7
	Seeking advice	7
	PART 2: STANDARDS OF CONDUCT	8
6	GENERAL CONDUCT OBLIGATIONS.....	8
	General conduct	8
	Fairness and equity	8
	Positive Working Relationships – Prohibition of Harassment or Discrimination.....	8
	Child Protection.....	9
	Drugs and Alcohol.....	9
	Occupational Health and Safety	9
	Regulatory or Development Decisions	10
7	CONFLICT OF INTERESTS.....	10
	What is a pecuniary interest?	10
	What is a non-pecuniary conflict of interests?	11
	Managing non-pecuniary conflict of interests.....	11

	Political donations exceeding \$1,000.....	12
	Personal dealings with Council	12
	Former Council officials.....	12
8	PERSONAL BENEFIT	12
	Token gifts and benefits having a value of less than \$50	13
	Gifts and benefits of value in excess of \$50.....	13
	Gifts and benefits.....	13
	Improper and undue influence	14
9	RELATIONSHIP BETWEEN COUNCIL OFFICIALS	14
	Obligations of Councillors	14
	Obligations during meetings	14
	Inappropriate interactions.....	14
10	ACCESS TO INFORMATION AND COUNCIL RESOURCES	15
	Councillor access to information	15
	Councillors to properly examine and consider information.....	15
	Refusal of access to documents	15
	Use of certain Council information.....	15
	Use and security of confidential information	16
	Personal information.....	16
	Use of Council resources	16
	Councillor access to Council buildings.....	16
	Information Technology	17
11	REPORTING BREACHES	17
	Protected disclosures.....	17
	Reporting breaches of this Code of Conduct	18
	PART 3: SANCTIONS	19
	Sanctions available to Council	19
	Councillor misbehaviour	19
	APPENDIX 1	20

PART 1: CONTEXT

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

1 INTRODUCTION

This 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 of Conduct produced by the Division of Local Government.

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

- Part 1: Context, establishes the purpose and principles that are used to interpret the standards in this Code. This Part does not constitute separate enforceable standards of conduct.
- Part 2: Standards of Conduct, sets out the conduct obligations required of council officials. These are the enforceable standards of conduct.
- Part 3: Sanctions, sets out the sanctions available to Council in the event that it finds that you have breached this Code of Conduct.

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. As a member of the governing body, you should work as part of a team to make decisions and policies that guide the activities of the Council. Your role as an elected person requires you to represent the interests of the community and provide leadership. This Code sets the standard of conduct that is expected when you exercise these roles.

Councillors must comply with the applicable provisions of Council's Code of Conduct in carrying out your functions as a Council official. It is your personal responsibility to comply with the standards in this Code and regularly review your personal circumstances with this in mind.

Failure 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 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.

2 DEFINITIONS

In this Code of Conduct the following definitions apply:

the Act

the *Local Government Act 1993*

act of disorder

see the definition in clause 256 of the *Local Government (General) Regulation 2005*

conduct review committee

a committee of three or more persons independent of Council who are selected from those appointed by Council to review allegations of breaches of this Code of Conduct by Councillors or the General Manager in accordance with the procedures set out in the Code of Conduct Complaint Handling Policy

conduct reviewer

a person independent of Council who is solely selected from those appointed by Council to review allegations of breaches of this Code of Conduct by Councillors or the General Manager in accordance with the procedures set out in the Code of Conduct Complaint Handling Policy

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

delegate of Council

a person or body, and the individual members of that body, to whom a function of Council is delegated

designated person

see the definition in section 441 of the Act

misbehaviour

see the definition in section 440F of the Act

personal information

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

person independent of Council

a person who is not an employee of the Council, has no current or ongoing contractual relationship with Council in the nature of a contract for services, retainer or contract for the provision of goods of any kind, or is not an employee of any entity with such a contractual relationship

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

3 PURPOSE OF THE CODE OF CONDUCT

This Code of Conduct sets the minimum requirements of conduct for Councillors in carrying out your functions. This Code is prescribed by regulation.

This Code of Conduct has been developed to assist Councillors to:

- understand the standards of conduct that are expected of them
- enable you to fulfil your 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.

This Code is Council’s principal governance policy and requires compliance with a number of supporting policies as listed in Appendix 1.

4 KEY PRINCIPLES

Wollongong City Council has a set of Corporate Values to guide your conduct and it underpins this Code of Conduct. In everything we do, we will:

- maintain integrity and earn trust
- treat customers as we want to be treated
- use the community's money wisely
- bring out the best in each other

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

4.1 Integrity

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

4.2 Leadership

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

4.3 Selflessness

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

4.4 Impartiality

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

4.5 Accountability

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

4.6 Openness

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

4.7 Honesty

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

4.8 Respect

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

5 GUIDE TO ETHICAL DECISION MAKING

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

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

Conflict of interests

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

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

Political donations and conflict of interests

5.3 You should take all reasonable steps to identify circumstances where political contributions may give rise to a reasonable perception of influence in relation to your 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 the Division of Local Government, the Ombudsman's Office and the Independent Commission Against Corruption.

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

PART 2: STANDARDS OF CONDUCT

This Part of the Code sets out Councillor conduct obligations. These are the enforceable standards of conduct.

Your failure to comply with Part 2, the standards of conduct, of this 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 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.

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 yourself into disrepute. Specifically, you must not act in a way that:
- a) contravenes the Act, associated regulations, Council's relevant administrative requirements and policies;
 - b) is detrimental to the pursuit of the charter of Council;
 - c) is improper or unethical;
 - d) is an abuse of power or otherwise amounts to misconduct;
 - e) causes, comprises or involves intimidation, harassment or verbal abuse;
 - f) causes, comprises or involves discrimination, disadvantage or adverse treatment in relation to employment;
 - g) causes, comprises or involves prejudice in the provision of a service to the community. *(Schedule 6A)*
- 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 have been found in breach of this 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.

Positive Working Relationships – Prohibition of Harassment or Discrimination

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

- 6.8 You are required to comply with Council's *Positive Working Relationships* Policy which prohibits the following:
- Workplace bullying – offensive, unreasonable, humiliating and/or intimidating and generally persistent behaviour that is directed at an individual or group of employees by another individual or group of employees.
 - Harassment – any form of behaviour that is unwelcome or uninvited which humiliates or intimidates an employee based on the attributes protected under Federal and State Legislation.
 - Sexual harassment – any verbal or physical conduct of a sexual nature that offends, humiliates, embarrasses, intimidates or otherwise causes distress to any person. It is behaviour that is unsolicited, unwelcome and unreciprocated. It may be explicit or implicit. It may be a single incident or may occur over a period of time. This behaviour is not acceptable during working hours or during Council-related functions, social or work-related events.
- 6.9 You have a leadership role in demonstrating acceptable workplace behaviour. It is the responsibility of every person who is a part of or associated with Council to eliminate unacceptable workplace behaviour and to create a positive culture for all to enjoy at work.
- 6.10 Council has a duty of care to all of its staff and Councillors and must balance confidentiality in relation to these issues with its statutory obligations. All endeavours will be made to maintain confidentiality.
- 6.11 If you experience or witness bullying or harassment you should report the behaviour immediately to the Lord Mayor or General Manager.

Child Protection

- 6.12 Council has a responsibility to only engage in practices that are respectful of and provide security for children and in no way degrade, endanger, exploit, intimidate or harm children psychologically or physically.
- 6.13 You have a responsibility to report to the General Manager any allegations or convictions that occur within the workplace.
- 6.14 Reportable conduct includes:
- sexual offence, sexual misconduct committed against, with or in the presence of a child (including a child pornography offence)
 - assault, ill treatment or neglect of a child
 - behaviour that causes or may cause psychological harm to a child.

Drugs and Alcohol

- 6.15 You must not attend a Council workplace or event if you are under the influence of alcohol or other drugs that could impair your ability to perform your duties as a Councillor or cause danger to others, or cause damage to materials or equipment.

Occupational Health and Safety

- 6.16 The *Occupational Health and Safety Act 2000* requires all Council officials to take reasonable care for the health, safety and welfare of people who are in the place of work.
- 6.17 You must, while undertaking your duties as a Councillor, at a Council workplace, cooperate so far as is necessary to enable compliance with any requirement under the Act or the Regulations that are imposed in the interest of the health, safety and welfare of any person. Specifically, Councillors must:
- minimise any risks to health and safety in the workplace by removing hazards where possible;

- isolate hazards that cannot be removed and report them to a supervisor or other appropriate person;
- observe safety and security directives of management;
- advise the General Manager of potential safety problems and report hazards and incidents.

Regulatory or Development Decisions

- 6.18 Binding caucus votes in relation to development applications which are the subject of a report to a meeting of Council for determination are prohibited.
- 6.19 You must ensure that regulatory or development decisions are properly made, evidenced in writing and that parties involved in the development assessment process are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the development assessment process.
- 6.20 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.
- 6.21 In determining development applications or in exercising regulatory or enforcement functions, it is essential that you are highly conscious of the potential for even the slightest impropriety that may lead to any suspicion of misconduct.
- 6.22 You must refrain from offering support to affected parties prior to the normal assessment or review processes of Council being undertaken.

7 CONFLICT OF INTERESTS

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

What is a pecuniary interest?

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

What is a non-pecuniary conflict of interests?

- 7.8 Non-pecuniary interests are private or personal interests that you have 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.
- 7.9 The matter of a report to Council from the Conduct Review Committee/Sole Conduct Reviewer relates to the public duty of a Councillor or the General Manager. Therefore, there is no requirement for you or the General Manager to disclose a conflict of interests in such a matter.
- 7.10 Your political views do not constitute a private interest.

Managing non-pecuniary conflict of interests

- 7.11 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.
- 7.12 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.
- 7.13 How you manage a non-pecuniary conflict of interests will depend on whether or not it is significant.
- 7.14 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 yourself 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 yourself and an organisation, sporting body, club, corporation or association that is particularly strong.
- 7.15 If 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
 - b) have no involvement in the matter, by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in section 451(2) of the Act apply.
- 7.16 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.
- 7.17 Despite clause 7.15(b), if you have disclosed that a significant non-pecuniary conflict of interests exists you 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 7.15(b) above.

Political donations exceeding \$1,000

- 7.18 You should note that matters before Council involving political or campaign donors may give rise to a non-pecuniary conflict of interests.
- 7.19 You should take all reasonable steps to ascertain the source of any political contributions that directly benefit your 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 1987*) that directly benefit their election campaign.
- 7.20 Where you or your "official agent" has received "political contributions" or "political donations", as the case may be, within the meaning of the *Election Funding Act 1987* 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 you must declare a non-pecuniary conflict of interests, disclose the nature of the interest, and manage the conflict of interests in accordance with clause 7.15(b).
- 7.21 Political contributions below \$1,000, or political contributions to a registered political party or group by which you are endorsed, may still give rise to a non-pecuniary conflict of interests. You should determine whether or not such conflicts are significant and take the appropriate action to manage them.
- 7.22 If you have received a donation of the kind referred to in clause 7.20, you are 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 7.17 above).

Personal dealings with Council

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

Former Council officials

- 7.24 You must not use your position to obtain opportunities for future employment.
- 7.25 At the end of your involvement as a Council official you must return all Council property, documents and other items and not make public or otherwise use confidential information obtained during the time of your involvement with Council.
- 7.26 You should be careful in their dealings with former Council officials and ensure that they do not give or appear to give favourable treatment or access to otherwise confidential information to former Council officials.

8 PERSONAL BENEFIT

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

The offer of a gift or benefit of any value in circumstances where the person is seeking the exercise of Council's decision making discretion or where the person has sought the exercise of Council's decision making discretion in the previous 12 months must be refused.

Councillors must comply with Council's *Gifts and Benefits* policy and further information on the management of gifts and benefits is contained in the policy.

Token gifts and benefits having a value of less than \$50

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.

You may wish to disclose the receipt of token gifts or benefits in the Gifts and Benefits Register.

Gifts and benefits of value in excess of \$50

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 Councillors 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 but less than \$250 in value that cannot reasonably be refused or returned, this must be disclosed promptly to the Lord Mayor or the General Manager. You must then ensure that the gift or benefit is recorded in the Gifts and Benefits Register. The gift or benefit must be surrendered to Council, unless the nature of the gift or benefit makes this impractical. Where you receive an offer of a gift or benefit of a value that exceeds \$250, you must obtain the written approval of the Lord Mayor or the General Manager prior to the acceptance of such a gift or benefit which must be surrendered to Council, unless the nature of the gift or benefit makes this impractical and record all actions in the Gifts and Benefits Register.

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. You will not be in breach of this clause where you seek to influence other council officials through the appropriate exercise of your 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

Obligations of Councillors

- 9.1 Each council is a body corporate. The Councillors 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 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 Lord Mayor exercising 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 Lord Mayor exercising 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 during meetings

- 9.3 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.
- 9.4 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

- 9.5 You must not engage in any of the following inappropriate interactions:
- a) approach staff and staff organisations to discuss individual staff matters and not broader industrial policy issues;
 - b) discuss a development application that you have lodged with Council staff in staff-only areas of the Council;
 - c) be overbearing or threatening to Council staff;

- d) make personal attacks on Council staff in a public forum;
- e) direct or pressure Council staff in the performance of their work, or recommendations they should make (staff performance issues should be discussed with the General Manager);
- f) attend 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 Lord Mayor, exercising power under section 226 of the Act.

9.6 It is acceptable that staff and staff organisations have discussions with you in relation to matters of industrial policy.

10 ACCESS TO INFORMATION AND COUNCIL RESOURCES

Councillor access to information

- 10.1 The General Manager and Public Officer are responsible for ensuring that members of the public and Councillors can gain access to the documents available under the *Government Information (Public Access) Act 2009*.
- 10.2 The General Manager must provide you with information sufficient to enable you to carry out your civic office functions.
- 10.3 Members of staff of Council must provide full and timely information to you sufficient to enable you to carry out your 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 If you have a private (as distinct from civic) interest in a document of Council, you have the same rights of access as any member of the public.

Councillors to properly examine and consider information

- 10.6 You must properly examine and consider all the information provided to you relating to matters that you are dealing with to enable you 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 you, they must act reasonably. In reaching this decision they must take into account whether or not the document sought is required for you to perform your 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 Councillors must comply with the:
- a) *Privacy and Personal Information Protection Act 1998*;
 - b) *Health Records and Information Privacy Act 2002*;
 - c) Information Protection Principles and Health Privacy Principles;
 - d) Council's Privacy Management Plan;
 - e) 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 where allowed under the Payment of Expenses and Provision of Facilities to Lord Mayor and Councillors Policy) unless this use is lawfully authorised and proper payment is made where appropriate.
- 10.13 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.
- 10.14 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.
- 10.15 Your interests in your re-election is considered to be a private interest and as such the reimbursement of travel expenses incurred on election matters and the use of Council resources for election purposes 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.
- 10.16 You must not convert any property of the Council to your own use unless properly authorised.
- 10.17 You must comply with Council's Technology Acceptable Usage policy in relation to the restriction on search, access, download or communication of any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature.

Councillor access to Council buildings

- 10.19 Councillors are entitled to have access to the Council Chamber, Administration Building, Level 10 Committee Rooms, Lord Mayor's office (subject to availability), Councillors' Room, and public areas of

Council's buildings, during normal business hours. If you need access to these facilities at other times you must obtain prior authority from the General Manager.

10.20 Councillors must not enter staff-only areas of Council buildings without the prior approval of the General Manager (or delegate) or as provided in the procedures governing the interaction of Councillors and Council staff.

10.21 You must ensure that when you are within a staff area you avoid giving rise to the appearance that you may improperly influence Council staff decisions.

Information Technology

10.22 Councillors must comply with Council's information security requirements as set out in the *Information Security* policy, the *Technology Systems Acceptable Usage* policy and the *Corporate Records Management* policy in relation to the use of information technology systems. All information stored in either soft or hard copy is deemed to be related to the business of Council and can be used by Council as records regardless of whether the original intention of the creation of the information was for personal or business purposes.

11 REPORTING BREACHES

11.1 Any person, whether or not a Council official, may make a complaint alleging a breach of this Code of Conduct.

11.2 For the purposes of Chapter 14, Part 1, Division 3 of the Act, your failure to comply with an applicable requirement of this Code of Conduct constitutes misbehaviour. (*section 440F*)

Protected disclosures

11.3 The *Protected Disclosures Act 1994* aims to encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration and serious and substantial waste in the public sector.

11.4 The purpose of that Act is to ensure that public officials who wish to make disclosures under the legislation receive protection from reprisals, and that matters raised in the disclosures are properly investigated.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:

'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.'

11.6 Council's *Internal Reporting – Protected Disclosures* Policy sets out the procedures for the management of protected disclosures.

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

Reporting breaches of this Code of Conduct

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

PART 3: SANCTIONS

This Part of this Code sets out the sanctions available to Council upon a finding being made, following consideration of a report from a Conduct Review Committee or Sole Conduct Reviewer, that you have breached this Code of Conduct. The operation of Conduct Review Committees/Sole Conduct Reviewers is set out in the Code of Conduct Complaint Policy.

Sanctions available to Council

- 12.1 Before a Council can impose a sanction it must make a determination that a Councillor or the General Manager has breached the relevant Code of Conduct.
- 12.2 Where the Council finds that there has been a breach of the relevant Code, it may decide by resolution to:
- a) censure you for misbehaviour in accordance with section 440G of the Act;
 - b) require you or the General Manager to apologise to any person adversely affected by the breach;
 - c) counsel you or the General Manager;
 - d) make public findings of inappropriate conduct;
 - e) prosecute for any breach of the law.

Councillor misbehaviour

- 12.3 Under section 440G a Council may, by resolution at a meeting, formally censure you for misbehaviour.
- 12.4 Under section 440H, the process for your suspension from civic office can be initiated by a request made by Council to the Chief Executive of the Division of Local Government.
- 12.5 The first ground on which you may be suspended from civic office is where your 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 your suspension.
- 12.6 Council cannot request your suspension on this ground unless during the period concerned you have 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.
- 12.7 The second ground on which you may be suspended from civic office is where your behaviour has involved one incident of misbehaviour that is of such a sufficiently serious nature as to warrant your suspension.
- 12.8 Council cannot request suspension on this ground unless you have been:
- formally censured for the incident of misbehaviour concerned; or
 - expelled from a meeting of the Council or a committee of the Council for the incident of misbehaviour concerned.
- 12.9 Under section 440H, the process for your suspension can also be initiated by the Division of Local Government, the Independent Commission Against Corruption or the NSW Ombudsman.

APPENDIX 1

The following policies must be read in conjunction with and in support of this Code of Conduct:

Access to Council Information and Staff

Civic Functions – Attendance by Council Officers

Code of Business Ethics

Code of Conduct Complaint Handling and Operation of Conduct Review Committees/Sole Conduct Reviewers

Code of Meeting Practice

Conflict of Interests

Corporate Records Management

Employment Policy and Procedures

Enterprise Agreement

Gifts and Benefits

Information Security

Internal Reporting – Protected Disclosures

Mobile Phone

Positive Working Relationships

Prevention of Fraud and Corrupt Conduct

Privacy Management Plan

Sponsorship of Council Activities from External Sources

Technology Systems Acceptable Usage

Use of Confidential Information

SUMMARY SHEET

RESPONSIBLE DIVISION	Governance and Information
DATE ADOPTED ON BEHALF OF COUNCIL	24 May 2011
DATE OF PREVIOUS ADOPTION(S)	23 July 2008, 16 October 2007, 28 February 2005, 28 June 200
DATE FOR REVIEW	30 July 2012
PREPARED BY	Senior Legal and Governance Officer
AUTHORISED BY	Manager Governance and Information