

COUNCIL POLICY

BACKGROUND

Council acknowledges the importance of high standards of management 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 requires all Council employees to comply with the standards set out in the Code of Conduct.

OBJECTIVE

To ensure that Council employees 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.

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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 Procedures.

- 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, set out the conduct obligations required of council officials. These are the enforceable standards of conduct.
- Part 3: Procedures, contains the complaint handling procedures and complaint assessment criteria. This Part should be used to guide the management of complaints about breaches of the Code.

All staff members of Council must comply with the applicable provisions of Council's Code of Conduct in carrying out their functions as council officials. It is the personal responsibility of Council officials to comply with the standards in this Code and regularly review their personal circumstances with this in mind.

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

2 DEFINITIONS

In this Code of Conduct the following definitions apply:

the Act

the *Local Government Act 1993*

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 members of staff of Council.

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 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. This Code 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 fulfil their statutory duty to act honestly and exercise a reasonable degree of care and diligence (section 439)
- act in a way that enhances public confidence in the integrity of local government.

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 the conduct of Council officials and which underpin 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 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 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 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?

Seeking advice

- 5.3 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 Division of Local Government, the Ombudsman’s Office and the Independent Commission Against Corruption.

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| 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 the conduct obligations required of Council officials. These are the enforceable standards of conduct.

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 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.

Fairness and equity

- 6.4 You must consider issues consistently, promptly and fairly. You must deal with matters in accordance with established procedures, in a non-discriminatory manner.
- 6.5 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

- 6.6 Wollongong City Council is committed to providing a safe and harassment-free workplace. You must not harass, discriminate against, or support others who harass or discriminate against Council officials 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.
- 6.7 All Council officials 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.

6.8 All Council officials 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.

6.9 Council has a duty of care for all staff and must balance confidentiality in relation to these issues with its statutory obligations. All endeavours will be made to maintain confidentiality.

6.10 If you experience or witness bullying or harassment you should report the behaviour immediately to a supervisor or manager.

Child Protection

6.11 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.

6.12 All Council officials have a responsibility to report to the General Manager any allegations or convictions that occur within the workplace.

6.13 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

6.14 You must not attend a Council workplace or return to the workplace if you are under the influence of alcohol or other drugs that could impair your ability to perform your job or cause danger to other employees or persons, or cause damage to materials, plant or equipment. If you are taking medication that may affect your work or your work area's performance your supervisor must be informed prior to you commencing work.

Occupational Health and Safety

6.15 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.

6.16 Council officials must, while at work, 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, Council officials 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 management of potential safety problems and report hazards and incidents.

Public Comment

- 6.17 Only Council staff who are specifically delegated to do so by the General Manager may make public comment about Council matters.

Regulatory or Development Decisions

- 6.18 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.
- 6.19 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.
- 6.20 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.
- 6.21 All Council officials 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 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) 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) 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 Council staff, 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.

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 7.12.
- 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 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.
- 7.15 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.
- 7.16 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.

Other business or employment

- 7.17 If you are 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]*
- 7.18 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

- 7.19 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.

Former Council officials

- 7.20 Council officials must not use their position to obtain opportunities for future employment.
- 7.21 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.
- 7.22 Council officials 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.

Sponsorship

- 7.23 Council actively seeks financial or in-kind sponsorship from a variety of sources to support specific events, promotions, services or other activities of Council. It is essential that sponsorships do not limit Council's ability to carry out its functions fully and impartially. All sponsorship arrangements must comply with Council's Sponsorship policy.

Staff political participation

- 7.24 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.

8 PERSONAL BENEFIT

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

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.

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 You must not:
- seek or accept a bribe or other improper inducement
 - seek gifts or benefits of any kind
 - 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
 - accept any gift or benefit of more than token value
 - 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 your supervisor or the General Manager. The recipient, supervisor or the General Manager must ensure that any gifts or benefits of more than token value that are offered or accepted are 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 your Director 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.
- 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 staff

- 9.1 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.
- 9.2 Members of staff of Council must:
- give their attention to the business of Council while on duty
 - ensure that their work is carried out efficiently, economically and effectively
 - 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

- 9.3 You must act in accordance with Council's Code of Meeting Practice 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) refusing to give information that is available.
 - b) providing ad hoc advice to Councillors without recording or documenting the interaction as they would if the advice was provided to a member of the community.
 - c) meeting with developers alone AND outside office hours to discuss development applications or proposals.
- 9.6 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

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*.
- 10.2 The General Manager must provide Councillors with information sufficient to enable them to carry out their functions.
- 10.3 Members of staff must provide full and timely information to Councillors sufficient to enable them to carry out their functions and in accordance with Council procedures.

Use of certain Council information

- 10.4 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

- 10.5 You must maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible.
- 10.6 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

10.7 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, and
- e) the Privacy Code of Practice for Local Government

Use of Council resources

- 10.8 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.
- 10.9 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.
- 10.10 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.
- 10.11 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.
- 10.12 You must not convert any property of the Council to your own use unless properly authorised.
- 10.13 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.

Information Technology

- 10.14 All Council officials 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.

Protected disclosures

- 11.2 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.
- 11.3 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
- 11.4 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.'

- 11.5 Council's *Internal Reporting – Protected Disclosures* policy sets out the procedures for the management of protected disclosures.

Reporting breaches of this Code of Conduct

- 11.6 You should report suspected breaches of this Code of Conduct by members of staff of Council (excluding the General Manager) to the General Manager in writing.
- 11.7 Where you believe that the General Manager has breached this Code of Conduct, you should report the matter to a Councillor in writing.

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

PART 3: PROCEDURES

This Part of this Code contains the complaint handling procedures and complaint assessment criteria. This Part should be used to guide the management of complaints about breaches of this Code.

12 COMPLAINT HANDLING PROCEDURES AND SANCTIONS

- 12.1 Complaints about the conduct of members of Council staff 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 a Councillor.

Complaint handling procedures – staff (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 this Code of Conduct regarding members of staff of Council, delegates of Council and/or members of Council committees 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 depend on the severity, scale and importance of the breach and must be determined in accordance with any relevant industrial instruments or contracts.

Complaint handling procedures – General Manager conduct

- 12.7 A Councillor is responsible for assessing complaints, made under clause 11.1, alleging breaches of this Code of Conduct by the General Manager, in accordance with the assessment criteria provided at section 13 of this Code.
- 12.8 A Councillor 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.

Sanctions

- 12.9 Before a Council can impose a sanction it must make a determination that the General Manager has breached this Code of Conduct.

- 12.10 Where the Council finds that the General Manager has breached this Code, it may decide by resolution to:
- a) require the General Manager to apologise to any person adversely affected by the breach
 - b) counsel the General Manager
 - c) make public findings of inappropriate conduct
 - d) prosecute for any breach of law.

Reporting on complaints

- 12.11 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

- 13.1 The General Manager, or a Councillor, in the case of a complaint about the General Manager, will assess a complaint alleging a breach of this Code of Conduct. In assessing the complaint, the General Manager and Councillor will have regard to the following grounds:
- a) whether there is any prima facie evidence of a breach of this Code of Conduct
 - b) whether the subject matter of the complaint relates to conduct that is associated with the carrying out of the functions of civic office or duties as General Manager
 - c) whether the complaint is trivial, frivolous, vexatious or not made in good faith
 - d) whether the conduct the subject of the complaint could reasonably constitute a breach of this Code of Conduct
 - e) whether the complaint raises issues that require investigation by another person or body, such as referring the matter to the Division 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 to be referred to a more appropriate person or body can be finalised by the General Manager, or a Councillor, in the case of complaints about the General Manager.

APPENDIX 1

Civic Functions – Attendance by Council Officers
Code of Business Ethics
Code of Meeting Practice
Conflicts of Interests
Corporate Records Management
Employment Policy and Procedures
Secondary Employment Policy
Enterprise Agreement
Gifts and Benefits
Information Security
Internal Reporting – Protected Disclosures
Mobile Phone
Positive Working Relationships
Privacy Management Plan and Code of Practice
Sponsorship of Council Activities from External Sources
Technology Systems Acceptable Usage
Use of Confidential Information

SUMMARY SHEET

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| RESPONSIBLE DIVISION | OFFICE OF THE GENERAL MANAGER |
| DATE ADOPTED ON BEHALF OF COUNCIL | 1 February 2011 |
| DATE OF PREVIOUS ADOPTION(S) | 28 June 2004, 28 February 2005, 16 October 2007, 23 July 2008 |
| DATE FOR REVIEW | July 2012 |
| PREPARED BY | Peter Weber, Senior Legal and Governance Officer |
| AUTHORISED BY | Lyn Kofod, Manager Governance and Information |