



## Code of Conduct Policy

### Policy Statement

The *Local Government Act* 1993 requires every Council to adopt a Code of Conduct that incorporates the provisions of the Department of Local Government's *Model Code of Conduct for Local Councils in NSW* ('Model Code'). Council's Code of Conduct adopts and incorporates the Model Code and its Guidelines (as amended).

Council's Code of Conduct sets out the minimum standards of behaviour required of all Council officials, and assists those officials in understanding the conduct expected of them. The Code also enables Council officers to fulfil their statutory duty to act honestly and in a way that enhances public confidence in the integrity of local government.

Council officials, as well as Council contractors and volunteers, must comply with the provisions of Council's Code of Conduct, and regularly review their personal circumstances with this in mind.

Coffs Harbour City Council is committed to maintaining the highest standards of ethical conduct in all its dealings. Where conduct is not in accordance with these requirements, the Code outlines complaint handling pathways, including assessment criteria and sanctions.

Council will make the Code of Conduct publicly available and may review and amend the Code from time to time, and as statutorily required.

### Related Legislation, Circulars or Guidelines (as amended)

- *Local Government Act* 1993 No. 30
- *Local Government (General) Regulation* 2005
- *Model Code of Conduct for Local Councils in NSW*, Department of Local Government, 2008
- *Guidelines for the Model Code of Conduct for Local Councils in NSW*, Department of Local Government, 2008

**Does this Document Replace an Existing Policy, Procedure or Plan?**

Yes, this document replaces Council's:

- Code of Conduct (2002)(as amended 3 November 2005 and adopted 15 December 2005)
- Code of Conduct — Conduct Committee Procedures (2006)

**Related Council Policy or Procedure**

- Complaints and Other Feedback Policy (2008)

**Application and Distribution**

**It is mandatory for all Council officials to comply with this Policy.**

The Code of Conduct is available on Council's website and will be distributed by Council to all Council officials.

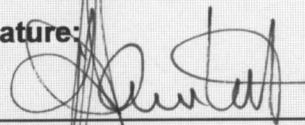
All Council officials must complete Code of Conduct training as required and abide by their obligations under the Code of Conduct and related documentation.

**Approved by:**

**Executive Team:** Not Applicable

**Council:** 18 December 2008 — Resolution No.181  
(Minutes authorised 26 February 2009)

**Signature:**



**General Manager**

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Code of Conduct Policy 2008 — December 2008 V.1

Code of Conduct Policy 2008 — April 2009 V.2 [Amendment of Statement of Commitment process based on new online training and delivery options for Council].

## Key Responsibilities

<i>Position</i>	<i>Directorate</i>	<i>Responsibility</i>
Mayor	Council	To lead Councillors in their understanding of, and compliance with, the Code of Conduct.
General Manager	Executive	To lead staff (either directly or through delegated authority) in their understanding of, and compliance with, the Code of Conduct.  To approve resources to develop, implement and review the Code of Conduct and related training and procedures.
Directors	All Directorates	To communicate, implement and comply with the Code of Conduct.  To ensure that Code of Conduct training is completed by all staff within your directorate and related training and assessment information is returned to the Executive Manager HR & Organisational Development.  To receive and appropriately record Statements of Commitment (provided in the Appendix of the Code of Conduct) completed by other Council officials on boards, committees, delegated functions or volunteer registers within the responsibility of your directorate.
Executive and Managers	All Directorates	To communicate, implement and comply with the Code of Conduct.  To lead staff in their understanding of, and compliance with, the Code of Conduct.  To ensure that Code of Conduct training is completed by all staff and related training and assessment information is returned to the Director of your Department.
All Council officials	Council	To abide and comply with the Code of Conduct and related training and procedures.  To complete Code of Conduct training and assessments as required.
Manager Legal & Governance		To ensure (directly or through delegation) that the functions identified within the Code of Conduct as the responsibility of Council's Governance and Legal Services Unit are realised.  To update the Code of Conduct and related procedures as necessary.

		To facilitate and support Conduct Review processes as necessary.
Executive Manager HR & Organisational Development	Corporate Business	Facilitate the provision of regular training to all Council officials on their role and responsibilities in relation to the Code of Conduct.  To receive and appropriately record Code of Conduct training assessments and related information for all Council officials.
Director of Corporate Services	Corporate Business	To ensure (directly or through delegation) the distribution and communication of the Code of Conduct.  To ensure (directly or through delegation) the Code of Conduct is available in hard copy and electronically on Council's website.
Information Technology Manager	Corporate Business	To assist with the development of systems to support public access to the Code of Conduct.

COFFS HARBOUR CITY COUNCIL



# Code of Conduct

**December 2008**

[As amended 17 April 2009 V. 2]

Incorporating the *Model Code of Conduct for Local Councils in NSW*,  
Department of Local Government, June 2008

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## PART ONE — CONTEXT

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

### 1 Introduction

This Code incorporates the Department of Local Government's *Model Code of Conduct for Local Councils in NSW 2008* ('Model Code') and 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. Free copies of the Model Code are available from [www.dlg.nsw.gov.au](http://www.dlg.nsw.gov.au) and from [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au) for the Act and Regulation.

Council's Code is made in three Parts —

- **Part 1 Context:** Establishes the purpose and principles that are used to interpret the standards in the Code. This Part does not constitute separate enforceable standards of conduct.
- **Part 2 Standards of Conduct:** Sets out the conduct obligations required of all Council officials. These are the enforceable standards of conduct.
- **Part 3 Procedures:** Contains the complaint handling procedures, complaint assessment criteria and the guidelines for the Conduct Review Committee/Reviewer. This Part guides the management of complaints about breaches of the Code.

Council officials must comply with the provisions of Council's Code of Conduct in carrying out their functions. It is the personal responsibility of all Council officials to meet these standards and regularly review their personal circumstances with this in mind. Council contractors and volunteers must also observe the relevant provisions of the Code.

Failure by a *Councillor* to comply with Council's Code of Conduct constitutes misbehaviour. The Act provides for suspension of Councillors from civic office for up

to six (6) months for proven misbehaviour. Failure by a *member of staff* to comply with Council's Code of Conduct may give rise to disciplinary action.

## 2 Definitions

The following definitions apply —

<b>Act of disorder</b>	Refer to definition in clause 256 of the <i>Local Government (General) Regulation 2005</i>
<b>Conduct review committee</b>	A committee of three (3) or more persons independent of Council who are selected from those appointed by Council to review allegations of breaches of the Code of Conduct by Councillors or the General Manager
<b>Conduct Reviewer</b>	A person independent of Council who is solely selected (from those appointed in the Register of Conduct Reviewers) by Council to review allegations of breaches of the Code of Conduct by Councillors or the General Manager
<b>Conflict of interest</b>	A conflict of interest exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty
<b>Council</b>	Coffs Harbour City Council
<b>Council official</b>	Includes Councillors, members of Council, staff administrators (appointed under section 256 of the Act), members of Council committees, Conduct Reviewers and delegates of Council
<b>Delegate of Council</b>	A person or body, and the individual members of that body, to whom a function of Council is delegated
<b>Designated person</b>	See the definition in section 441 of the Act
<b>Misbehaviour</b>	See the definition in section 440F of the Act
<b>Personal information</b>	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

**You**

The term 'you' refers to Council officials, as defined above

### **3 Purpose of the Code of Conduct**

This Code states the minimum requirements of conduct for Council officials in carrying out their functions. It has been developed to assist Council officials to —

- understand the standards of conduct 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.

The community rightly expects Councillors and staff to be honest, reasonable and equitable in their dealings with them and to have the public interest at heart. Staff have the responsibility to serve the Council and to implement the decisions of Council as their employer. Council staff must also know and understand the law relevant to the performance of their official duties.

Equally, Councillors are elected to represent the interests of the residents and ratepayers. As a member of the governing body of the Council, Councillors play a key role in creating and reviewing Council's regulatory policies and objectives. The Code of Conduct is designed to assist Council officials in these functions.

#### **3.1 Who Does the Code of Conduct Apply to?**

The Code of Conduct applies to all Council officials. This means all Councillors, members of staff, administrators, members of Council committees, conduct reviewers and other delegates of Council. Delegates of Council's include any personal body, and the individual members of the body, to whom the function of Council is delegated. This can include Council's contractors, consultants,

volunteers, members of advisory committees and members of section 355 committees, as well as community representatives.

Not all parts of the Code of Conduct will apply to all Council officials. For example sections concerning secondary employment will only apply to Council staff. However persons working with Council, such as contractors, community representatives and volunteers, will be required to observe the provisions of the Code of Conduct that apply to them. In regard to contractors, Council should make provision in contracts to reflect this condition.

It is the personal responsibility of all Council officials to observe the standards of conduct outlined in the Code.

## **4 Key Principles**

This Code is based on a number of key principles which underpin and guide standards of conduct. These principles may be used as an aid in interpreting the substantive provisions of the Code, but do not themselves constitute separate enforceable standards of conduct.

### **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.

### **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.*

### **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.*

### **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.*

### **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.*

### **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.*

### **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 the code of conduct; fully disclosing actual or potential conflict of interests and exercising any conferred power strictly for the purpose for which the power was conferred.*

### **Respect**

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

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

- Is the decision or conduct lawful?
- Is the decision or conduct consistent with Council's policies and with the Code of Conduct?
- What will the outcome be for the employee or Councillor, work colleagues, the Council, persons with whom you are associated and any other parties?
- Do these outcomes raise a conflict of 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?

### 5.1 Conflict of Interest

If you are unsure as to whether or not you have a conflict of interest in relation to a matter, you should consider these 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 interest?
- Do your personal interests conflict with your official role?
- What steps do you need to take (and that a reasonable person would expect you to take) to appropriately manage any conflict of interest?

## **5.2 Political Donations and Conflict of Interest**

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

## **5.3 Seeking Advice**

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, Council's Public Officer, your union representatives, the Department of Local Government, the Ombudsman's Office and the Independent Commission Against Corruption.

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

## PART TWO — STANDARDS OF CONDUCT

This Part of the Code sets out the conduct obligations required of Council officials. These are enforceable standards. Failure by a Councillor to comply with the Code will constitute misbehaviour and may result in suspension from civic office for up to six months (if proven). Failure by a member of staff to comply with the Code may give rise to disciplinary action.

### 6 General Conduct Obligations

You must not conduct yourself in a manner that is likely to bring the Council or holders of civic office into disrepute when carrying out your functions. Specifically, you must not act in a way that —

- contravenes the Act, associated Regulations, Council's relevant administrative requirements and/or policies
- is detrimental to the pursuit of Council's Charter (*section 8*)
- is improper or unethical
- is an abuse of power or otherwise amounts to misconduct
- causes, comprises or involves intimidation, harassment or verbal abuse
- causes, comprises or involves discrimination, disadvantage or adverse treatment in relation to employment
- causes, comprises or involves prejudice in the provision of a service to the community.

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*)

You must treat others with respect at all times.

Where you are a Councillor and have been found in breach of the Code of Conduct, you must comply with any Council resolution requiring you to take action as a result of that breach.

## **6.1 Fairness and Equity**

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

## **6.2 Harassment and Discrimination**

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

## **6.3 Development Decisions**

You must ensure that development decisions are properly made and that parties involved in the development process are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the development assessment process. 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.

## **6.4 Appointments to Other Organisations**

Council officials may be appointed on or nominated by the Council to be a member of another body or organisation (for example, appointment to a regional Organisation of Councils). If you are appointed to another organisation, you will be bound by both Council's Code of Conduct and any rules of conduct of the organisation to which you are appointed.

## **6.5 Child Protection**

Under the *Ombudsman Act 1974*, the General Manager is responsible for ensuring that systems are in place for recording and responding to all allegations of a child protection nature against a Council official. The General Manager is required to determine which allegations and convictions are to be notified to the Ombudsman (as a reportable allegation or conviction), and which matters are exempt from notification.

For further information, please refer to any Council policies on working with children and child protection matters.

## 7 Conflict of Interest

A conflict of interest exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty. Private interests can be of two types — pecuniary or non-pecuniary.

You must avoid or appropriately manage any conflict of interest. The onus is on you to identify a conflict of interest and take the appropriate action to manage the conflict in favour of your public duty. Any conflict of interest must be managed to uphold the probity of Council decision-making. When considering whether or not you have a conflict of interest, it is always important to think about how others would view your situation.

### 7.1 What is a Pecuniary Interest?

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*)

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*)

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

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

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 Council.

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 that you are dealing with as soon as practicable.

## **7.2 What is a Non-pecuniary Conflict of Interest?**

Non-pecuniary interests are private or personal interests that a 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. However, the political views of a Councillor do not constitute a private interest.

Similarly a report to Council from a Conduct Review Committee/Reviewer relates to the public duty of a Councillor or the General Manager. Therefore, there is no requirement for Councillors or the General Manager to disclose a conflict of interest in such matters.

## **7.3 Managing Non-pecuniary Conflict of Interest**

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.

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 Act.

How you manage a non-pecuniary conflict of interest will depend on whether or not it is significant. As a general rule, a non-pecuniary conflict of interest will be significant where a matter does not raise a pecuniary interest but it involves —

- 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
- 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
- an affiliation between the Council official and an organisation, sporting body, club, corporation or association that is particularly strong.

If you are a Council official (other than a member of staff) and you have disclosed that a significant non-pecuniary conflict of interest exists, you must manage it either by —

- removing the source of the conflict, by relinquishing or divesting the interest that creates the conflict, or reallocating the conflicting duties to another Council official
- having 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).

If you determine that a non-pecuniary conflict of interest 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.

If you are a member of staff, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with your manager or the Manager of Governance and Legal Services.

A Councillor who has disclosed that a significant non-pecuniary conflict of interest exists may still participate in a decision to delegate Council's decision-making role to Council staff, or to 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 interest by not voting on a matter.

#### **7.4 Political Donations Exceeding \$1,000**

Councillors should note that matters before Council involving political or campaign donors may give rise to a non-pecuniary conflict of interest. Councillors should take all reasonable steps to ascertain the source of any political contributions that directly benefit their election campaigns. For example, Councillors should have reasonable knowledge of contributions received by them or their “official agent” (within the meaning of the *Election Funding Act 1981*) that directly benefit their election campaign.

Where a Councillor or the Councillor’s “official agent” has received “political contributions” or “political donations” within the meaning of the *Election Funding Act 1981* exceeding \$1,000 which directly benefit their campaign —

- from a political or campaign donor or related entity in the previous four (4) years; and
- where the political or campaign donor or related entity has a matter before Council,

then the Councillor must declare a non-pecuniary conflict of interest, disclose the nature of the interest, and manage the conflict.

Councillors should note that political contributions below \$1,000, or political contributions to a registered political party or group by which a Councillor is endorsed, may still give rise to a non-pecuniary conflict of interest. Councillors should determine whether or not such conflicts are significant and take the appropriate action to manage them.

Councillors who have received political donations are not prevented from participating in decisions to delegate Council’s decision-making role to Council staff or from appointing another person or body to make the decision in accordance with the law.

## 7.5 Lobbying

Councillors and staff should be aware that at some time they are likely to be lobbied by a wide range of people including individuals, organisations, companies and developers.

The Code of Conduct and the Act recognise that appropriate lobbying of Councillors is a normal part of the democratic system, and that Councillors have a representative role in considering the views of the constituents and communicating with them (*section 232(2)*).

Generally, inappropriate and unlawful conduct on the part of someone lobbying a Council official usually involves an attempt to obtain preferential consideration or treatment based on factors other than the merits of a matter (ICAC, *Lobbying Local Government Councillors*, 2006).

Council officials need to be aware of the difference between appropriate and inappropriate lobbying, and to demonstrate transparency in all decision-making processes. Transparency can be ensured by —

- keeping records of meetings
- holding meetings in locations such as Council's offices
- ensuring other people are present
- making sure that any information obtained when being lobbied is available to Council staff and other Councillors

To avoid placing yourself in an inappropriate or unlawful situation, if you have any doubts about the appropriateness of requests being made, you should require that the request be written to the General Manager. The General Manager can then ensure that the request is evaluated by Council staff and report to Council on the consequences of granting the request.

## 7.6 Caucus Votes

Binding Caucus votes on matters is inconsistent with the obligation of each Council official to consider the merits of the matter before them. Political group or meetings must not be used to decide how Councillors or Council officials should vote on matters like development applications, particularly where there are specific statutory considerations for each decision-maker to consider.

## **7.7 Other Business or Employment**

If you are a member of Council staff 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*)

As a member of staff, you must ensure that any outside employment or business you engage in will not —

- conflict with your official duties
- involve using confidential information or resources obtained through your work with the Council
- require you to work while on Council duty
- discredit or disadvantage the Council.

## **7.8 Personal Dealings with Council**

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 also avoid any action that could lead members of the public to believe that you are seeking or receiving preferential treatment.

## **7.9 Public Comment**

As a Council official you need to know whether you are permitted to make public comment on behalf of the Council or not. If you are in doubt, authorisation should be obtained from the General Manager. Public comment includes public speaking engagements (including comments on radio and television), expressing views in letters to the press, or in books or notices or on the Internet, where it is reasonably foreseeable that the publication or circulation will enter into the public domain.

As a member of the community, Council officials have the right to enter into public debate in a private capacity. However, Council officials must take care not to give the impression that their comments are made on behalf of Council. Council staff and Councillors will need to clearly state that the public comment reflects only personal opinion. Public comment or statements on Council matters should only be made in accordance with Council's media policy.

Council officials (including Councillors) should ensure that they clarify whether or not they are acting on behalf of Council and/or in their public capacity when speaking publicly or attending functions, to avoid situations where this might be directly implied or indirectly inferred that they are representing Council.

For further information on your responsibilities, please refer to any media or public comment policies of Council.

## 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.

### 8.1 Token Gifts and Benefits

Generally speaking, token gifts and benefits include —

- free or subsidised meals, beverages or refreshments provided in conjunction with —
  - the discussion of official business
  - Council work related events such as training, education sessions, workshops
  - conferences
  - Council functions or events
  - social functions organised by groups, such as Council committees and community organisations.
- invitations to and attendance at local social, cultural or sporting events
- 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)
- ties, scarves, coasters, tie pins, diaries, chocolates or flowers.

Notwithstanding this, 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

- frequent use of facilities such as gyms, use of holiday homes, free or discounted travel

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.

Where you receive a gift or benefit of more than token value that cannot reasonably be refused or returned, this must be disclosed promptly to your Director (staff and Council delegates), the Mayor (for Councillors) or the General Manager (for Senior and Executive staff). The recipient, Director, Mayor or General Manager must ensure that any gifts or benefits of more than token value that are received are recorded in a Gifts Register. The gift or benefit must be surrendered to Council, unless the nature of the gift or benefit makes this impractical.

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.

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 (including de facto spouses), children and siblings.

## **8.2 Improper and Undue Influence**

You must not use your position to influence other Council officials in the performance of their public or professional duties to obtain a private benefit for yourself or for somebody else. A Councillor will not be in breach of this clause where they seek to

influence other Council officials through the appropriate exercise of their representative functions.

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.

### **8.3 Sponsorship**

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

For further information on your responsibilities, please refer to any Council policies concerning sponsorship.

## 9 Relationship Between Council Officials

### 9.1 Obligations of Councillors and Administrators

Councillors or administrator/s are the governing body of the Council. The governing body has the responsibility of directing and controlling the affairs of the Council in accordance with the Act and is responsible for certain policy determination (*section 165*).

Councillors or administrators must not —

- direct Council staff (other than by giving appropriate direction to the General Manager) in the performance of Council's functions by way of Council or committee resolution, or by the Mayor or administrator exercising their power under section 226 of the Act (*section 352*)
- 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*)
- 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
- contact or issue instructions to any of Council's contractors or tenderers, including Council's legal advisers, unless by the Mayor or administrator exercising their power under section 226 of the Act. This does not apply to Council's external auditors who, in the course of their work, may be provided with information by individual Councillors.

### 9.2 Obligations of Staff

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.

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

### **9.3 Obligations During Meetings**

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. 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 Council.

### **9.4 Inappropriate Interactions**

You must not engage in any of the following inappropriate interactions —

- Councillors and administrators approaching staff and staff organisations to discuss individual staff matters and not broader industrial policy issues.
- Council staff approaching Councillors and administrators to discuss individual staff matters and not broader industrial policy issues.
- Council staff refusing to give information that is available to other Councillors to a particular Councillor.
- Councillors and administrators who have lodged a development application with Council, discussing the matter with Council staff in staff-only areas of the Council.
- Councillors and administrators being overbearing or threatening to Council staff.
- Councillors and administrators making personal attacks on Council staff in a public forum.

- Councillors and administrators directing or pressuring Council staff in the performance of their work or recommendations they should make.
- Council staff providing *ad hoc* advice to Councillors and administrators without recording or documenting the interaction as they would if the advice was provided to a member of the community.
- Council staff meeting with developers alone AND outside office hours to discuss development applications or proposals.
- Councillors attending on-site inspection meetings with lawyers and/or consultants engaged by Council associated with current or proposed legal proceedings unless permitted to do so by Council's General Manager or, in the case of the Mayor or administrator, exercising their power under section 226 of the Act.

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**

### **10.1 Councillor and Administrator Access to Information**

The General Manager and Public Officer are responsible for ensuring that members of the public, Councillors and administrators can gain access to the documents available under section 12 of the Act. The General Manager must provide Councillors and administrators with information sufficient to enable them to carry out their civic office functions.

Members of Council staff must provide full and timely information to Councillors and administrators sufficient to enable them to carry out their civic office functions and in accordance with Council procedures. Members of Council staff 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.

Councillors and administrators who have a private (as distinct from civic) interest in a document of Council have the same rights of access as any member of the public.

### **10.2 Councillors and Administrators to Properly Examine and Consider Information**

Councillors and administrators must properly examine and consider all the information provided to them relating to matters that they are dealing with to enable them to make a decision on the matter in accordance with Council's charter (*section 8*).

### **10.3 Refusal of Access to Documents**

Where the General Manager or Public Officer determine to refuse access to a document sought by a Councillor or administrator, they must act reasonably. In reaching this decision they must take into account whether or not the document sought is required for the Councillor or administrator to perform their civic duty. The General Manager or Public Officer must state the reasons for the decision if access is refused.

#### **10.4 Use of Certain Council Information**

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

- only access Council information needed for Council business
- not use that Council information for private purposes
- 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 which you have by virtue of your office or position with Council
- only release Council information in accordance with established Council policies and procedures and in compliance with relevant legislation.

#### **10.5 Use and Security of Confidential Information**

You must maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible. In addition to your general obligations relating to the use of Council information, you must —

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

## 10.6 Personal Information

When dealing with personal information you must comply with the —

- *Privacy and Personal Information Protection Act 1998*
- *Health Records and Information Privacy Act 2002*
- Information Protection Principles and Health Privacy Principles
- Council's Privacy Management Plan
- Privacy Code of Practice for Local Government

## 10.7 Use of Council Resources

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.

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 —

- the representation of members with respect to disciplinary matters
- the representation of employees with respect to grievances and disputes
- functions associated with the role of the local consultative committee.

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.

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.

The interests of a Councillor in their re-election is considered to be a private interest and as such the reimbursement of travel expenses incurred on election matters is not appropriate. You must not use Council letterhead, Council crests and other information that could give the appearance it is official Council material for these purposes.

You must not convert any property of the Council to your own use unless properly authorised.

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.

## **10.8 Councillor Access to Council Buildings**

Councillors and administrators are entitled to have access to the Council chamber, committee room, Mayor's office (subject to availability), Councillors' rooms, and public areas of Council's buildings during normal business hours and for meetings. Councillors and administrators needing access to these facilities at other times must obtain authority from the General Manager.

Councillors and administrators must not enter staff-only areas of Council buildings without the approval of the General Manager (or delegate) or as provided in the procedures governing the interaction of Councillors and Council staff. Councillors and administrators must ensure that when they are within a staff area they avoid giving rise to the appearance that they may improperly influence Council staff decisions.

## 11 Reporting Breaches

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

### 11.1 Protected Disclosures

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. 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.<sup>1</sup>

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.'*

Further information on making a protected disclosure is available in Council's *Complaint and Other Feedback Policy Operational Guidelines* (2008).

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<sup>1</sup> Protected Disclosures Guidelines, 5<sup>th</sup> Edition, NSW Ombudsman, May 2004, Annexure 2.

## **11.2 Reporting Breaches of the Code of Conduct**

You should report suspected breaches of the Code of Conduct by Councillors, members of Council staff (excluding the General Manager) or Council delegates to the General Manager in writing.

Where you believe that the General Manager has breached the Code of Conduct, you should report the matter to the Mayor in writing.

Where you believe that an administrator has breached the Code of Conduct, you should report the matter to the Minister for Local Government in writing.

Councillors and other Council officials should not make allegations of suspected breaches of the Code at Council meetings or in other public forums.

## **PART 3 — PROCEDURES**

*This Part of the Code contains the complaint handling procedures, complaint assessment criteria and the guidelines for the Conduct Review Committee/Reviewer.*

*This Part should be used to guide the management of complaints.*

### **12 Complaint Handling Procedures & Sanctions**

Complaints about the conduct of Councillors, members of Council staff, members of Council committees and delegates of Council should be addressed in writing to the General Manager. Complaints about the conduct of the General Manager should be addressed in writing to the Mayor. Complaints about the conduct of an administrator should be made in writing to the Director-General of the Department of Local Government.

#### **12.1 Complaint Handling Procedures – Conduct of Staff, Delegates and Council Committee Members (excluding General Manager)**

The General Manager is responsible for making enquiries, or causing enquiries to be made, into complaints alleging breach of the Code of Conduct regarding members of Council staff, delegates of Council and/or members of Council committees (other than Councillors) and the General Manager will determine such matters.

Where the General Manager has determined not to enquire into the matter, the General Manager will give the complainant the reason/s in writing. Those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith.

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.

Sanctions for staff depend upon the severity, scale and importance of the breach, and must be determined in accordance with any relevant industrial instruments or contracts.

Sanctions for delegates and/or members of Council committees depend on the severity, scale and importance of the breach and may include —

- censure
- requiring the person to apologise to any person adversely affected by the breach
- counselling
- prosecution for any breach of the law
- removing or restricting the person's delegation
- removing the person from membership of the relevant Council committee
- revising any of Council's policies, procedures and/or the Code of Conduct.

## **12.2 Complaint Handling Procedures — Councillor Conduct**

The General Manager is responsible for assessing complaints alleging breaches of the Code of Conduct by Councillors. In accordance with the assessment criteria provided in this Code, the General Manager will determine whether to refer the matter to the Conduct Review Committee/Reviewer.

The General Manager must determine either to —

- take no further action and give the complainant the reason/s in writing. 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
- 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
- discontinue the assessment in the circumstances where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing, or
- refer the matter to the Conduct Review Committee/Reviewer.

### **12.3 Complaint Handling Procedures — General Manager Conduct**

The Mayor is responsible for assessing complaints, alleging breaches of the Code of Conduct by the General Manager (in accordance with the assessment criteria provided in this Code), in order to determine whether to refer the matter to the Conduct Review Committee/Reviewer.

The Mayor must determine either to —

- take no further action and give the complainant the reason/s in writing. 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
- 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
- discontinue the assessment in the circumstances where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing, or
- refer the matter to the Conduct Review Committee/Reviewer.

### **12.4 Conduct Review Committee/Reviewer**

Council must resolve to appoint persons independent of Council onto Council's Register of Conduct Reviewers to comprise the members of a Conduct Review Committee and/or to act as sole Conduct Reviewers.

The members of the Conduct Review Committee and/or the persons acting as sole Conduct Reviewers should be appropriately qualified persons of high standing in the community. These persons do not need to be residents of the local government area of the Council that has appointed them. The Conduct Review Committee, members of such committee and sole Conduct Reviewers may act in that role for more than one Council.

The General Manager — or in the case of complaints about the General Manager, the Mayor — will undertake the following functions in relation to the Conduct Review Committee/Reviewer —

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

Where a matter is to be considered by the Conduct Review Committee/Reviewer, then in each case, the General Manager — or Mayor in the case of complaints about the General Manager — acting in their capacity as advisor, will either convene a Conduct Review Committee and select its members from those appointed by Council on the Register of Conduct Reviewers or alternatively select a sole Conduct Reviewer from the Register.

The Conduct Review Committee/Reviewer will operate in accordance with the guidelines at Section 14 of this Code.

The Conduct Review Committee/Reviewer is responsible for making enquiries into complaints alleging breaches of the Code of Conduct by Councillors and/or the General Manager, and must determine either to —

- not make enquiries into the complaint and give the complainant the reason/s in writing. 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
- resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, making recommendations to the General Manager, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing, or

- make enquiries into the complaint, or
- engage another appropriately qualified person to make enquiries into the complaint, or
- not make enquiries or discontinue making enquiries where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing. Despite any other provision of this Code, this will constitute finalisation of such matters and no further action is required.

Where the Conduct Review Committee/Reviewer conducts enquiries or causes enquiries to be conducted, the Conduct Review Committee/Reviewer must make findings on whether, in its view, the conduct referred to it comprises a breach of the Code of Conduct.

Where the Conduct Review Committee/Reviewer makes findings, the Conduct Review Committee/Reviewer may recommend that Council take any actions provided for in this Code of Conduct that it considers reasonable in the circumstances.

Where the Conduct Review Committee/Reviewer makes findings, the Conduct Review Committee/Reviewer will report its findings, and the reasons for those findings, in writing to the Council, the complainant and the person subject of the complaint. However, the Conduct Review Committee/Reviewer will report its findings and any recommendations to Council only when it has completed its deliberations.

The primary role of the Conduct Review Committee/Reviewer is to establish the facts of the allegation. The Conduct Review Committee/Reviewer will make findings of fact and may make recommendations that Council takes action. The Council is the appropriate body to determine whether or not a breach of the Code has occurred, and has discretion as to whether or not a sanction should be applied.

The findings or report of the Conduct Review Committee/Reviewer will generally be dealt with in an open session of Council. Council can only close a meeting to the public if the matter is one which meets the requirements of section 10A(2) of the Act. In most cases, a report from the Conduct Review Committee/Reviewer will not meet those requirements.

Councillors need to ensure that there is no re-hearing of the evidence when considering the report of a Conduct Review Committee/Reviewer in a Council meeting. Debate should focus on the outcome of the Reviewer's enquiries and the appropriateness of any sanctions to be applied (where there is a finding of a breach of the Code of Conduct).

## 12.5 Sanctions

Before a Council can impose a sanction it must make a determination that a Councillor or the General Manager has breached the Code of Conduct. Where Council finds that a Councillor or General Manager has breached the Code, it may decide by resolution to —

- censure the Councillor for misbehaviour in accordance with section 440G of the Act
- require the Councillor or General Manager to apologise to any person adversely affected by the breach
- counsel the Councillor or General Manager
- make public findings of inappropriate conduct; or
- prosecute for any breach of law.

In regard to motions for censure, these must follow the usual notice requirements and must state the grounds on which Council is satisfied that the Councillor should be censured. Generally, this will follow enquiries made into the matter by the Conduct Review Committee/Reviewers, and their corresponding findings and recommendations for such action by Council.

The power of censure should not be seen as a way of stifling proper process and debate at Council meetings, nor of preventing minority representatives from putting forward their views on matters before Council.

## 12.6 Councillor Misbehaviour

Under section 440G of the Act, a Council may (by resolution at a meeting) formally censure a Councillor for misbehaviour. Under section 440H, the process for the suspension of a Councillor from civic office can be initiated by a request made by Council to the Director General of the Department of Local Government.

The first ground on which a Councillor may be suspended from civic office is where the Councillor's behaviour has been disruptive over a period, involving more than one incident of misbehaviour during that period, and the pattern of behaviour during that period is of such a sufficiently serious nature as to warrant the Councillor's suspension. Council cannot request suspension on this ground unless during the period concerned the Councillor has been —

- formally censured for incidents of misbehaviour on two (2) 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 (1) occasion.

The second ground on which a Councillor may be suspended from civic office is where the Councillor's behaviour has involved one (1) incident of misbehaviour that is of such a sufficiently serious nature as to warrant the Councillor's suspension. Council cannot request suspension on this ground unless the Councillor has been —

- formally censured for the incident of misbehaviour concerned, or
- expelled from a meeting of the Council or a committee of the Council for the incident of misbehaviour concerned.

Any referrals by Council to the Director-General of the Department must provide evidence that the above requirements have been met, together with a copy of any reports by Council or Council's Conduct Review Committee/Reviewers, and all other relevant evidence.

Under section 440H, the process for suspension of a Councillor can also be initiated by the Department of Local Government, the Independent Commission Against Corruption or the NSW Ombudsman.

## **12.7 Reporting on Complaints**

The General Manager must report annually to Council on Code of Conduct complaints. This report should include, as a minimum, a summary of the —

- number of complaints received
- nature of the issues raised by complainants
- outcomes of complaints.

The General Manager should be mindful that there may be a need to protect the identity of persons making the complaints when preparing these reports.

### 13 Complaint Assessment Criteria

The General Manager — or the Mayor in complaints about the General Manager — will assess a complaint alleging a breach of the Code of Conduct to determine if the matter should be referred to the Conduct Review Committee/Reviewer. In assessing the complaint, the General Manager and/or the Mayor will have regard to the following —

- whether there is any *prima facie* evidence of a breach of the Code of Conduct
- 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
- whether the complaint is trivial, frivolous, vexatious or not made in good faith
- whether the conduct the subject of the complaint could reasonably constitute a breach of the Code of Conduct
- whether the complaint raises issues that require investigation by another person or body, such as referring the matter to the Department of Local Government, the NSW Ombudsman, the Independent Commission Against Corruption or the NSW Police
- whether there is an alternative and satisfactory means of redress
- how much time has elapsed since the events which are the subject of the complaint took place
- how serious the complaint is and the significance it has for Council
- whether the complaint is one of a series indicating a pattern of conduct.

Complaints that are assessed as not having sufficient grounds to warrant referral to the Conduct Review Committee/Reviewer or that are to be referred to a more appropriate person or body, can be finalised by the General Manager (or the Mayor, in the case of complaints about the General Manager).

If a matter is referred to the Conduct Review Committee/Reviewer, then the Conduct Review Committee/Reviewer should use the above criteria stated in this Code for its

initial assessment of the complaint and for determination of the course to follow in dealing with it.

## **14 Conduct Review Committee/Reviewer Guidelines**

The Conduct Review Committee/Reviewer Guidelines may be added to from time to time or as necessary, and any additional requirements may be further amended or repealed by resolution of the Council.

The Conduct Reviewers must undertake their activities in accordance with these Guidelines and the general provisions of the Code.

### **14.1 Qualifications of Conduct Reviewers and Appointment on Council's Register of Conduct Reviewers**

Persons who will be regarded as suitable for appointment on Council's Register of Conduct Reviewers to review Code of Conduct matters should be —

- independent of Council (i.e. non Council officials and persons who are not current suppliers of significant quantities of goods or services to Council)
- suitably qualified or experienced
- of high standing in the community
- familiar with the requirements of natural justice and procedural fairness
- committed to complying with the provisions of the Code of Conduct and principles of ethical conduct
- willing to act in a conduct review capacity

Persons of suitable experience, standing and/or qualifications may include persons with high-level tertiary qualifications and experience at a senior level in the following disciplines —

- law, legal practice or the judiciary
- business or commerce (including current or former company directors who have experience in governance)
- accounting or auditing (internal or external)
- government, particularly local government including former mayors, General Managers or directors of the Council (but not from Coffs Harbour City Council due to potential conflict of interest).

Ideally, persons should be experienced professionals who have retired less than five (5) years prior to application, or who have been able to demonstrate ongoing professional development, education or research in the area of expertise.

Persons of 'high standing in the community' must be eminent or reputable persons who have good character, conduct themselves with dignity, and adhere to the general principles outlined in Council policies including, but not limited to, cultural diversity and equal opportunity.

These persons do not need to be residents of the Coffs Harbour local government area, and the Conduct Reviewers may act in that role for more than one council.

Council will establish a Register of Conduct Reviewers comprised of suitable persons from which Council can nominate and fulfil the role of Sole Conduct Reviewers or Conduct Review Committee members as necessary. Determination on the suitability of persons for Council's Register of Conduct Reviewers will be at the sole discretion of Council.

Persons with criminal convictions or/and discharged bankrupts are excluded from eligibility for appointment on Council's Register of Conduct Reviewers.

A minimum of five (5) persons will be registered as suitable for Code of Conduct review responsibilities at Coffs Harbour City Council. The Register of Conduct Reviewers will be reviewed as necessary, but at least once within the six (6) month period following a general Council election.

Registration as a Code of Conduct Reviewer does not give rise to any individual right to review a conduct matter nor does it guarantee selection to participate in Council's Code of Conduct review processes. The selection of suitable persons from the Register for participation in Council's Code of Conduct review processes (either individually or as part of the Conduct Review Committee) is at the discretion of the General Manager — or the Mayor in the case of complaints concerning the General Manager — and in accordance with the provisions of this Code.

Council reserves the right to later declare any registered person as 'unsuitable' and remove them from the Register and subsequent eligibility to be a Coffs Harbour City Council Code of Conduct Reviewer.

## **14.2 Appointment and Remuneration of the Conduct Reviewers**

The Conduct Review Committee will be instituted on an *ad hoc* and 'as necessary' basis, with members selected from Council's Register of Conduct Reviewers.

The General Manager — or the Mayor in complaints concerning the General Manager — will decide who will determine the complaint (as either a sole Conduct Reviewer or as part of the Conduct Review Committee for a particular matter). This choice will be based on considerations such as availability and qualifications appropriate to the specific complaint. Wherever possible, the same person/persons shall review a particular complaint until it is determined.

Where a Conduct Reviewer cannot participate in a matter because of a conflict of interest or a reasonable apprehension of bias, then the General Manager or the Mayor will select another person (from Council's Register of Conduct Reviewers) to be a member of the Conduct Review Committee or to act as a sole Conduct Reviewer.

Council recognises that while participation in our conduct review processes is out of a sense of community spirit, such commitment impacts the individual's time and resources. Therefore Council will pay Conduct Reviewers an honorarium of \$500 per complaint reviewed, and any reasonable and actual travel expenses (if claimed). The honorarium covers all costs including the reading and review of complaints, evidence and related documentation; meetings held; and all other related activities.

Wherever possible, Conduct Reviewers will be supported by Council's Governance and Legal Services Unit and secretariat functions in the preparation of reports and documentary evidence required to support determinations.

### **14.3 Jurisdiction of the Conduct Review Committee/Reviewers**

The complaint handling function of the Conduct Review Committee/Reviewer is limited to consideration of, making enquiries into and reporting on complaints appropriately referred to it/them and which have been made about Councillors and/or the General Manager.

The Model Code Guidelines states that the primary role of the Conduct Review Committee/Reviewer is to establish the facts of the allegation (Pt 5.4).

Complaints regarding Pecuniary Interest matters should be reported to the Director General of the Department of Local Government and will not be dealt with by the Conduct Review Committee/Reviewer, or by Council. The Director General of the Department of Local Government can be contacted via [www.dlg.nsw.gov.au](http://www.dlg.nsw.gov.au).

Conduct Reviewers are subject to the provisions of this Code of Conduct.

### **14.4 Role of the General Manager and Mayor**

The General Manager — or in the case of complaints about the General Manager, the Mayor — will undertake the following functions in relation to the Conduct Review Committee/Reviewer —

- provide procedural advice when requested
- ensure adequate resources are provided, including providing secretariat support
- attend meetings of the Conduct Review Committee if so requested by the committee and then in an advisory capacity only
- provide advice about Council processes if requested to do so but not so as to take part in the decision making process

If attending the General Manager or Mayor is attending a Conduct Review Committee meeting to provide advice, they must not be present at, or in sight of, the meeting when a decision is taken.

Where the General Manager — or in the case of complaints about the General Manager, the Mayor — is unable to act as advisor to the Conduct Review

Committee/Reviewer due to a conflict of interest in relation to a complaint, they are to nominate a senior Council officer or Councillor (in the case of complaints about the General Manager) to perform this role. The advisory role of the Mayor and General Manager will be supported by Council's Governance and Legal Services Unit.

#### **14.5 Composition of the Conduct Review Committee**

Where Council has a Conduct Review Committee, it will comprise three (3) or more appropriately qualified persons of high standing in the community who are independent of the Council, convened and selected as provided for in this Code.

In the circumstances where a member of the Conduct Review Committee cannot participate in a matter, the General Manager — or Mayor in the case of complaints about the General Manager — should select another suitable person from Council's Register of Conduct Reviewers to be established by Council.

The chairperson is to be elected by the members of the Conduct Review Committee. The General Manager — or in the case of complaints about the General Manager, the Mayor — will act in an advisory capacity to the Committee when requested. The Conduct Review Committee will also be supported by Council's Governance and Legal Services Unit as necessary.

#### **14.6 Quorum of the Conduct Review Committee**

A quorum for a meeting of the Conduct Review Committee is the majority of the members of the Conduct Review Committee. If a quorum is not present at a meeting, the Conduct Review Committee must be adjourned to a time and date that is specified. Business is not to be conducted at any meeting of the Conduct Review Committee unless a quorum is present. Business may be conducted by video-conference or teleconference or other technologically appropriate means.

#### **14.7 Voting of the Conduct Review Committee**

Each member of the Conduct Review Committee shall be entitled to one vote in respect of any matter. In the event of equality of votes being cast, the chairperson shall have the casting vote. If the vote on a matter is not unanimous, then this should be noted in any report to Council on its findings.

In relation to any procedural matters relating to the operation of the Conduct Review Committee, the ruling of the chairperson shall be final.

#### **14.8 Procedures**

The General Manager — or Mayor in the case of a complaint about the General Manager — will be responsible for convening the initial meeting of the Conduct Review Committee when there is a complaint to be referred to it.

The Conduct Review Committee/Reviewer will conduct business in the absence of the public. The Conduct Review Committee/Reviewer will keep proper records of deliberations. The Conduct Review Committee shall determine the procedures governing the conduct of its meetings provided such procedures are consistent with these guidelines.

#### **14.9 Venue**

All meetings of the Conduct Review Committee shall be at the Council Chambers. Sole Conduct Reviewers will have access to the Council Chambers for the purpose of reviewing conduct matters as required.

#### **14.10 Procedural Fairness**

In conducting enquiries, the Conduct Review Committee/Reviewer or the person engaged to do so should follow the rules of procedural fairness and must —

- provide the person who is the subject of the complaint with a reasonable opportunity to respond to the substance of the allegation
- provide the person who is the subject of the complaint with an opportunity to place before the Conduct Review Committee/Reviewer (or person undertaking the enquiry) any information that person considers relevant to the enquiry
- provide the person who is the subject of the complaint with an opportunity to address the Conduct Review Committee/Reviewer in person
- hear all parties to a matter and consider submissions before deciding the substance of any complaint

- make reasonable enquiries before making any recommendations
- act fairly and without prejudice or bias
- ensure that no person decides a case in which they have a conflict of interest
- conduct the enquiries without undue delay.<sup>2</sup>

Where the person who is the subject of the complaint declines or fails to take the opportunity provided to respond to the substance of the allegation against them, the Conduct Review Committee/Reviewer should proceed to finalise the matter.

#### **14.11 Complaint Handling Procedures**

In addition to complying with these Guidelines, the Conduct Review Committee/Reviewer will ensure it/they deal with all complaints in accordance with the provisions of this Code.

All persons who are the subject of complaints that are referred to the Conduct Review Committee/Reviewer will receive written information about the process being undertaken to deal with the matter. The Conduct Review Committee/Reviewer will only deal with matters that are referred to it by the General Manager or the Mayor.

Where the Conduct Review Committee/Reviewer determines to make enquiries into the matter, such enquiries should be made without undue delay.

In circumstances where the person who is the subject of the complaint meets with the Conduct Review Committee/Reviewer, they are entitled to bring a support person or legal adviser. That person will act in an advisory and support role to the person affected. They will not speak on behalf of the subject person.

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<sup>2</sup> NSW Ombudsman, Investigating complaints, A manual for investigators, June 2004.

#### **14.12 Findings and Recommendations of the Conduct Review Committee/Reviewer**

Where the Conduct Review Committee/Reviewer conducts enquiries or causes enquiries to be conducted, the Conduct Review Committee/Reviewer must make findings on whether, in its view, the conduct referred to it comprises a breach of the Code of Conduct.

Where the Conduct Review Committee/Reviewer makes findings, the Conduct Review Committee/Reviewer may recommend that Council take any actions provided for in this Code of Conduct that it considers reasonable in the circumstances.

Where the Conduct Review Committee/Reviewer makes findings, the Conduct Review Committee/Reviewer will report its findings, and the reasons for those findings, in writing to the Council, the complainant and the person subject of the complaint. However, the Conduct Review Committee/Reviewer will report its findings and any recommendations to Council only when it has completed its deliberations.

Where the Conduct Review Committee/Reviewer determines that the conduct referred to it comprises a breach of this Code of Conduct it may, in its report to the Council, make recommendations that the Council take any of the following actions —

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

Before making any such recommendations, the Conduct Review Committee/Reviewer shall have regard to the following —

- the seriousness of the breach
- whether the breach can be easily remedied or rectified

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