



Hurstville City Council

Code of Conduct

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Related Documents

This document should be read in conjunction with:

- Department of Local Government, *The Model Code of Conduct for Local Councils in NSW*, 20 June 2008

MESSAGE FROM THE MAYOR AND GENERAL MANAGER

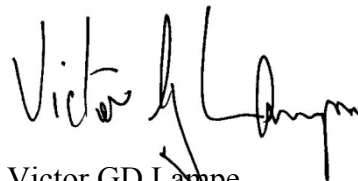
Hurstville City Council is committed to carrying out its functions in the public interest with efficiency, impartiality and integrity.

Acting with honesty and openness when representing the Council, reinforces the expectations that the community and other business and government representatives rightly have when dealing with local government.

This Code of Conduct has been adopted by Council to demonstrate the high standards of conduct and ethics that will be applied by Councillors, Staff and Council's delegates in their public and professional duties.



Vince Badalati
Mayor



Victor GD Lampe
General Manager

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PART 1: CONTEXT

This Part of the Code of Conduct 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

Hurstville City Council's Code of Conduct ('the Code') is based on the *Model Code of Conduct for Local Councils in NSW*, which is made for the purposes of section 440 of the *Local Government Act 1993* ("the Act")¹.

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

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

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

Failure by a councillor to comply with Part 2, the standards of conduct, of council's code of conduct constitutes misbehaviour. The *Local Government Act 1993* provides for suspension of councillors from civic office for up to six months for proven misbehaviour. For further information on misbehaviour refer to Sections 11 and 12 of this Code.

¹ Section 440 of the Act requires every council to adopt a code of conduct that incorporates the provisions of the Model Code. [For the purposes of section 440 of the Act, the Model Code of Conduct comprises all Parts of this document.]

Failure by a member of staff to comply with council's code of conduct may give rise to disciplinary action.

A set of guidelines has also been developed to assist councils to review and enhance their codes of conduct. The guidelines support this Code and provide further information and examples on the provisions in this Code.

2 DEFINITIONS

In this Code of Conduct the following definitions apply:

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| the Act | the Local Government Act 1993 |
| act of disorder | see the definition in clause 256 of the <i>Local Government (General) Regulation 2005</i> |
| conduct review committee | a committee of three or more persons independent of council who are selected from those appointed by council to review allegations of breaches of the code of conduct by councillors or the general manager in accordance with the procedures set out in Sections 12, 13 and 14. |
| conduct reviewer | a person independent of council who is solely selected from those appointed by council to review allegations of breaches of the code of conduct by councillors or the general manager in accordance with the procedures set out in Sections 12, 13 and 14. |
| conflict of interests | a conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty. |
| council official | includes councillors, members of staff of council, administrators appointed under section 256 of the Act, members of council committees, conduct reviewers and delegates of council |
| delegate of council | a person or body, and the individual members of that body, to whom a function of council is delegated |
| designated person | see the definition in section 441 of the Act |
| misbehaviour | see the definition in section 440F of the Act |

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| 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

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

The 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.

4 KEY PRINCIPLES

This Code of Conduct is based on a number of key principles. It sets out standards of conduct that meets these principles and statutory provisions applicable to local government activities. The principles underpin and guide these standards and may be used as an aid in interpreting the substantive provisions of the 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 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.*

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 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?

Conflict of interests

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

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

Political donations and conflict of interests

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

Seeking advice

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

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| Independent Commission Against Corruption | 8281 5999 |
| NSW Ombudsman | 9286 1000 |
| NSW Department 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 councillor to comply with Part 2, the standards of conduct, of council's Code of Conduct constitutes misbehaviour and may constitute a substantial breach for the purposes of section 9 of the ICAC Act 1988. The Local Government Act 1993 provides for suspension of councillors from civic office for up to six months for proven misbehaviour. For further information on misbehaviour refer to Sections 11 and 12 of this Code.

Failure by a member of staff to comply with council's code of conduct may give rise to disciplinary action.

6 GENERAL CONDUCT OBLIGATIONS

General conduct

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

- a) contravenes the Act, associated regulations, council's relevant administrative requirements and policies
- b) is detrimental to the pursuit of the charter of a council
- c) is improper or unethical
- d) is an abuse of power or otherwise amounts to misconduct
- e) causes, comprises or involves intimidation, harassment or verbal abuse
- f) causes, comprises or involves discrimination, disadvantage or adverse treatment in relation to employment
- g) causes, comprises or involves prejudice in the provision of a service to the community. (*Schedule 6A*)

6.2 You must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions under the Act or any other Act. (*section 439*)

6.3 You must treat others with respect at all times.

6.4 Where you are a councillor and have been found in breach of the code of conduct, you must comply with any council resolution requiring you to take action as a result of that breach.

Fairness and equity

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

- 6.6 You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case. You must not take irrelevant matters or circumstances into consideration when making decisions.

Harassment and discrimination

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

Development decisions

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

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) councillors and designated persons lodge an initial and an annual written disclosure of interests that could potentially be in conflict with their public or professional duties (*section 449*)
 - b) councillors 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*)
 - c) designated persons immediately declare, in writing, any pecuniary interest. (*section 459*)
- 7.8 Designated persons are defined at section 441 of the Act, and include, but are not limited to, the general manager and other senior staff of the council.
- 7.9 Where you are a member of staff of council, other than a designated person (as defined by section 441), you must disclose in writing to your supervisor or the general manager, the nature of any pecuniary interest you have in a matter you are dealing with as soon as practicable.

What is a non-pecuniary conflict of interests?

- 7.10 Non-pecuniary interests are private or personal interests the council official has that do not amount to a pecuniary interest as defined in the Act. These commonly arise out of family, or personal relationships, or involvement in sporting, social or other cultural groups and associations and may include an interest of a financial nature.
- 7.11 The matter of a report to council from the conduct review committee/reviewer relates to the public duty of a councillor or the general manager. Therefore, there is no requirement for councillors or the general manager to disclose a conflict of interests in such a matter.
- 7.12 The political views of a councillor do not constitute a private interest.

Managing non-pecuniary conflict of interests

- 7.13 Where you have a non-pecuniary interest that conflicts with your public duty, you must disclose the interest fully and in writing, even if the conflict is not significant. You must do this as soon as practicable.
- 7.14 If a disclosure is made at a council or committee meeting, both the disclosure and the nature of the interest must be recorded in the minutes. This disclosure constitutes disclosure in writing for the purposes of clause 7.13.

- 7.15 How you manage a non-pecuniary conflict of interests will depend on whether or not it is significant.
- 7.16 As a general rule, a non-pecuniary conflict of interests will be significant where a matter does not raise a pecuniary interest but it involves:
- a) a relationship between a council official and another person that is particularly close, for example, parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse, current or former spouse or partner, de facto or other person living in the same household
 - b) other relationships that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship
 - c) an affiliation between the council official and an organisation, sporting body, club, corporation or association that is particularly strong.
- 7.17 If you are a council official, other than a member of staff of council, and you have disclosed that a significant non-pecuniary conflict of interests exists, you must manage it in one of two ways:
- a) remove the source of the conflict, by relinquishing or divesting the interest that creates the conflict, or reallocating the conflicting duties to another council official
 - b) have no involvement in the matter, by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in section 451(2) of the Act apply
- 7.18 If you determine that a non-pecuniary conflict of interests is less than significant and does not require further action, you must provide an explanation of why you consider that the conflict does not require further action in the circumstances.
- 7.19 If you are a member of staff of council, the decision on which option should be taken to manage a non-pecuniary conflict of interests must be made in consultation with your manager.
- 7.20 Despite clause 7.17(b), a councillor who has disclosed that a significant non-pecuniary conflict of interests exists may participate in a decision to delegate council's decision-making role to council staff, or appoint another person or body to make the decision in accordance with the law. This applies whether or not council would be deprived of a quorum if one or more councillors were to manage their conflict of interests by not voting on a matter in accordance with clause 7.17(b) above.

Political donations exceeding \$1,000

- 7.21 Councillors should note that matters before council involving political or campaign donors may give rise to a non-pecuniary conflict of interests.
- 7.22 Councillors should take all reasonable steps to ascertain the source of any political contributions that directly benefit their election campaigns. For

example, councillors should have reasonable knowledge of contributions received by them or their “official agent” (within the meaning of the *Election Funding Act 1981*) that directly benefit their election campaign.

7.23 Where a councillor or the councillor’s ‘official agent’ has received ‘political contributions’ or ‘political donations’, as the case may be, within the meaning of the *Election Funding Act 1981* exceeding \$1,000 which directly benefit their campaign:

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

then the councillor must declare a non-pecuniary conflict of interests, disclose the nature of the interest, and manage the conflict of interests in accordance with clause 7.17(b).

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

7.25 If a councillor has received a donation of the kind referred to in clause 7.23, that councillor is not prevented from participating in a decision to delegate council’s decision-making role to council staff or appointing another person or body to make the decision in accordance with the law (see clause 7.20 above).

Other business or employment

7.26 If you are a member of staff of council considering outside employment or contract work that relates to the business of the council or that might conflict with your council duties, you must notify and seek the approval of the general manager in writing. (*section 353*)

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

- a) conflict with your official duties
- b) involve using confidential information or council resources obtained through your work with the council
- c) require you to work while on council duty
- d) discredit or disadvantage the council.

Personal dealings with council

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

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.

Token gifts and benefits

8.1 Generally speaking, token gifts and benefits include:

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

Gifts and benefits of value

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

Gifts and benefits

8.3 You must not:

- a) seek or accept a bribe or other improper inducement
- b) seek gifts or benefits of any kind
- c) accept any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your public duty
- d) accept any gift or benefit of more than token value
- e) accept an offer of money, regardless of the amount.

8.4 Where you receive a gift or benefit of more than token value that cannot reasonably be refused or returned, this must be disclosed promptly to your supervisor, the Mayor or the general manager. The recipient, supervisor, Mayor or general manager must ensure that any gifts or benefits of more than token value that are received are recorded in a Gifts Register. The gift or benefit must be surrendered to council, unless the nature of the gift or benefit makes this impractical.

- 8.5 You must avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to secure favourable treatment from you or from the council.
- 8.6 You must take all reasonable steps to ensure that your immediate family members do not receive gifts or benefits that give rise to the appearance of being an attempt to secure favourable treatment. Immediate family members ordinarily include parents, spouses, children and siblings.

Improper and undue influence

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

9 RELATIONSHIP BETWEEN COUNCIL OFFICIALS

Obligations of councillors and administrators

9.1 Each council is a body corporate. The councillors or administrator/s are the governing body of the council. The governing body has the responsibility of directing and controlling the affairs of the council in accordance with the Act and is responsible for policy determinations, for example, those relating to industrial relations policy.

9.2 Councillors or administrators must not:

- a) direct council staff other than by giving appropriate direction to the general manager in the performance of council's functions by way of council or committee resolution, or by the Mayor or administrator exercising their power under section 226 of the Act (*section 352*)
- b) in any public or private forum, direct or influence or attempt to direct or influence, any other member of the staff of the council or a delegate of the council in the exercise of the functions of the member or delegate (*Schedule 6A of the Act*)
- c) contact a member of the staff of the council on council related business unless in accordance with the policy and procedures governing the interaction of councillors and council staff that have been authorised by the council and the general manager
- d) contact or issue instructions to any of council's contractors or tenderers, including council's legal advisers, unless by the Mayor or administrator exercising their power under section 226 of the Act. This does not apply to council's external auditors who, in the course of their work, may be provided with information by individual councillors.

Obligations of staff

9.3 The general manager is responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation of the decisions of the council without delay.

9.4 Members of staff of council must:

- a) give their attention to the business of council while on duty
- b) ensure that their work is carried out efficiently, economically and effectively
- c) carry out lawful directions given by any person having authority to give such directions
- d) give effect to the lawful decisions, policies, and procedures of the council, whether or not the staff member agrees with or approves of them.

Obligations during meetings

9.5 You must act in accordance with council's Code of Meeting Practice, if council has adopted one, and the *Local Government (General) Regulation 2005* during council and committee meetings.

- 9.6 You must show respect to the chair, other council officials and any members of the public present during council and committee meetings or other formal proceedings of the council.

Inappropriate interactions

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

10 ACCESS TO INFORMATION AND COUNCIL RESOURCES

Councillor and administrator access to information

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

Councillors and administrators to properly examine and consider information

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

Refusal of access to documents

- 10.7 Where the general manager and public officer determine to refuse access to a document sought by a councillor or administrator they must act reasonably. In reaching this decision they must take into account whether or not the document sought is required for the councillor or administrator to perform their civic duty (see clause 10.2). The general manager or public officer must state the reasons for the decision if access is refused.

Use of certain council information

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

Use and security of confidential information

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

10.10 In addition to your general obligations relating to the use of council information, you must:

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

Personal information

10.11 When dealing with personal information you must comply with:

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

Use of council resources

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

10.13 Union delegates and consultative committee members may have reasonable access to council resources for the purposes of carrying out their industrial responsibilities, including but not limited to:

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

10.14 You must be scrupulous in your use of council property, including intellectual property, official services and facilities, and must not permit their misuse by any other person or body.

10.15 You must avoid any action or situation that could create the appearance that council property, official services or public facilities are being improperly used for your benefit or the benefit of any other person or body.

- 10.16 The interests of a councillor in their re-election is considered to be a private interest and as such the reimbursement of travel expenses incurred on election matters is not appropriate. You must not use council letterhead, council crests and other information that could give the appearance it is official council material for these purposes.
- 10.17 You must not convert any property of the council to your own use unless properly authorised.
- 10.18 You must not use council's computer resources to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature.

Councillor access to council buildings

- 10.19 Councillors and administrators are entitled to have access to the council chamber, committee room, mayor's office (subject to availability), 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.
- 10.20 Councillors and administrators must not enter staff-only areas of council buildings without the approval of the general manager (or delegate) or as provided in the procedures governing the interaction of councillors and council staff.
- 10.21 Councillors and administrators must ensure that when they are within a staff area they avoid giving rise to the appearance that they may improperly influence council staff decisions.

11 REPORTING BREACHES

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

Protected disclosures

- 11.3 The *Protected Disclosures Act 1994* aims to encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration and serious and substantial waste in the public sector.
- 11.4 The purpose of that Act is to ensure that public officials who wish to make disclosures under the legislation receive protection from reprisals, and that matters raised in the disclosures are properly investigated.²
- 11.5 If a complaint under this code is or could be a protected disclosure, you must ensure that in dealing with the complaint, you comply with the confidentiality provisions of the Protected Disclosures Act set out in section 22:

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

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

Reporting breaches of the code of conduct

- 11.6 You should report suspected breaches of the code of conduct by councillors, members of staff of council (excluding the general manager) or delegates to the general manager in writing.
- 11.7 Where you believe that the general manager has breached the code of conduct, you should report the matter to the Mayor in writing.

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

- 11.8 Where you believe that an administrator has breached the code of conduct, you should report the matter to the Minister for Local Government in writing.
- 11.9 Councillors should not make allegations of suspected breaches of the code at council meetings or in other public forums.

PART 3: PROCEDURES

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

12 COMPLAINT HANDLING PROCEDURES & SANCTIONS

12.1 Complaints about the conduct of councillors, members of staff of council, members of council committees and delegates of council should be addressed in writing to the general manager.

12.2 Complaints about the conduct of the general manager should be addressed in writing to the Mayor.

Complaint handling procedures – staff, delegate and council committee member conduct (excluding the general manager)

12.3 The general manager is responsible for making enquiries, or causing enquiries to be made, into complaints alleging breach of the code of conduct regarding members of staff of council, delegates of council and/or members of council committees (other than councillors), and will determine such matters.

12.4 Where the general manager has determined not to enquire into the matter, the general manager will give the complainant the reason/s in writing as provided in clause 13.1 of this Code, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith.

12.5 Enquiries made into staff conduct that might give rise to disciplinary action must occur in accordance with the relevant industrial instrument and make provision for procedural fairness including the right of an employee to be represented by their union.

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

12.7 Sanctions for delegates and/or members of council committees depend on the severity, scale and importance of the breach and may include:

- a) censure
- b) requiring the person to apologise to any person adversely affected by the breach
- c) counselling
- d) prosecution for any breach of the law
- e) removing or restricting the person's delegation
- f) removing the person from membership of the relevant council committee
- g) revising any of council's policies, procedures and/or the code of conduct.

Complaint handling procedures – councillor conduct

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

12.9 The general manager must determine either to:

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

Complaint handling procedures – general manager conduct

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

12.11 The Mayor must determine either to:

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

Conduct review committee/reviewer

12.12 Council must resolve to appoint persons independent of council to comprise the members of a conduct review committee and/or to act as sole conduct reviewers.

- 12.13 The members of the conduct review committee and/or the persons acting as sole conduct reviewers should be appropriately qualified persons of high standing in the community. These persons do not need to be residents of the local government area of the council that has appointed them.
- 12.14 The conduct review committee, members of such committee and sole conduct reviewers may act in that role for more than one council.
- 12.15 The general manager, or in the case of complaints about the general manager, the Mayor, will undertake the following functions in relation to the conduct review committee/reviewer:
- provide procedural advice when requested
 - ensure adequate resources are provided, including providing secretariat support
 - attend meetings of the conduct review committee if so requested by the committee, and then in an advisory capacity only
 - provide advice about council processes if requested to do so but not so as to take part in the decision making process
 - if attending the conduct review committee meeting to provide advice, must not be present at, or in sight of, the meeting when a decision is taken.
- 12.16 Where a matter is to be considered by the conduct review committee/reviewer, then in each case, the general manager, or Mayor in the case of complaints about the general manager, acting in their capacity as advisor, will either convene a conduct review committee and select its members from those appointed by council or alternatively select a sole conduct reviewer from those appointed by council.
- 12.17 The conduct review committee/reviewer will operate in accordance with the operating guidelines at Section 14 of this code.
- 12.18 The conduct review committee/reviewer operating guidelines (Section 14) are the minimum requirements for the operation of conduct review committees/reviewers. Council may supplement the guidelines, but any additional provisions should not be inconsistent with the guidelines.
- 12.19 The conduct review committee/reviewer is responsible for making enquiries into complaints made under clause 11.1 alleging breaches of the code of conduct by councillors and/or the general manager and must determine either to:
- a) not make enquiries into the complaint and give the complainant the reason/s in writing as provided in clause 13.1 of this Code, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith, or
 - b) resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, making recommendations to the general manager, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing, or
 - c) make enquiries into the complaint, or

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

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

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

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

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

Sanctions

12.24 Before a council can impose a sanction it must make a determination that a councillor or the general manager has breached the code of conduct.

12.25 Where the council finds that a councillor or general manager has breached the code, it may decide by resolution to:

- a) censure the councillor for misbehaviour in accordance with section 440G of the Act
- b) require the councillor or general manager to apologise to any person adversely affected by the breach
- c) counsel the councillor or general manager
- d) make public findings of inappropriate conduct
- e) prosecute for any breach of law.

Councillor misbehaviour

12.26 Under section 440G a council may by resolution at a meeting formally censure a councillor for misbehaviour.

12.27 Under section 440H, the process for the suspension of a councillor from civic office can be initiated by a request made by council to the Director General of the Department of Local Government.

12.28 The first ground on which a councillor may be suspended from civic office is where the councillor's behaviour has been disruptive over a period, involving more than one incident of misbehaviour during that period, and the pattern of behaviour during that period is of such a sufficiently serious nature as to warrant the councillor's suspension.

12.29 Council cannot request suspension on this ground unless during the period concerned the councillor has been:

- formally censured for incidents of misbehaviour on two or more occasions, or
- expelled from a meeting of the council or a committee of the council for an incident of misbehaviour on at least one occasion.

12.30 The second ground on which a councillor may be suspended from civic office is where the councillor's behaviour has involved one incident of misbehaviour that is of such a sufficiently serious nature as to warrant the councillor's suspension.

12.31 Council cannot request suspension on this ground unless the councillor has been:

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

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

Reporting on complaints

12.33 The general manager must report annually to council on code of conduct complaints. This report should include, as a minimum, a summary of the:

- a) number of complaints received,
- b) nature of the issues raised by complainants, and
- c) outcomes of complaints.

13 COMPLAINT ASSESSMENT CRITERIA

- 13.1 The general manager or Mayor, in the case of a complaint about the general manager, will assess a complaint alleging a breach of the code of conduct to determine if the matter should be referred to the conduct review committee/reviewer. In assessing the complaint, the general manager and Mayor will have regard to the following grounds:
- a) whether there is any prima facie evidence of a breach of the code of conduct
 - b) whether the subject matter of the complaint relates to conduct that is associated with the carrying out of the functions of civic office or duties as general manager
 - c) whether the complaint is trivial, frivolous, vexatious or not made in good faith
 - d) whether the conduct the subject of the complaint could reasonably constitute a breach of the code of conduct
 - e) whether the complaint raises issues that require investigation by another person or body, such as referring the matter to the Department of Local Government, the NSW Ombudsman, the Independent Commission Against Corruption or the NSW Police
 - f) whether there is an alternative and satisfactory means of redress
 - g) how much time has elapsed since the events the subject of the complaint took place
 - h) how serious the complaint is and the significance it has for council
 - i) whether the complaint is one of a series indicating a pattern of conduct.
- 13.2 Complaints that are assessed as not having sufficient grounds to warrant referral to the conduct review committee/reviewer or that are to be referred to a more appropriate person or body can be finalised by the general manager or the Mayor, in the case of complaints about the general manager.
- 13.3 If a matter is referred to the conduct review committee/reviewer, then the conduct review committee/reviewer should use the above criteria in clause 13.1 for its initial assessment of the complaint and determination of the course to follow in dealing with the complaint.

14 CONDUCT REVIEW COMMITTEE/REVIEWER OPERATING GUIDELINES³

14.1 Jurisdiction of the conduct review committee/reviewer

The complaint handling function of the conduct review committee/reviewer is limited to consideration of, making enquiries into and reporting on complaints made under clause 11.1, about councillors and/or the general manager.

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

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

14.2 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 conduct review committee meeting to provide advice, must not be present at, or in sight of, the meeting when a decision is taken.

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

14.3 Composition of the conduct review committee

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

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

³ The operating guidelines have been adapted from the Ku-ring-gai Council Conduct Committee Guidelines – 25 October 2006

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.

14.4 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 of the conduct review committee it must be adjourned to a time and date that is specified.

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

Business may be conducted by video-conference or teleconference.

14.5 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.

14.6 Procedures of the conduct review committee/reviewer

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 operating guidelines.

14.7 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 -

- a) provide the person the subject of the complaint with a reasonable opportunity to respond to the substance of the allegation
- b) provide the person the subject of the complaint with an opportunity to place before the conduct review committee/reviewer or person undertaking the enquiry any information the person considers relevant to the enquiry
- c) provide the person the subject of the complaint with an opportunity to address the conduct review committee/reviewer in person
- d) hear all parties to a matter and consider submissions before deciding the substance of any complaint
- e) make reasonable enquiries before making any recommendations
- f) act fairly and without prejudice or bias
- g) ensure that no person decides a case in which they have a conflict of interests
- h) conduct the enquiries without undue delay.⁴

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

14.8 Complaint handling procedures

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

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

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

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

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

⁴ NSW Ombudsman, Investigating complaints, A manual for investigators, June 2004.

14.9 Findings and recommendations of the conduct review committee/reviewer

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

- a) censure the councillor for misbehaviour
- b) require the councillor or general manager to apologise to any person adversely affected by the breach
- c) counsel the councillor or general manager
- d) make public findings of inappropriate conduct
- e) prosecute for any breach of the law
- f) revise any of council's policies, procedures and/or the code of conduct.

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

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

14.10 Amendment of the operating guidelines

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



Hurstville
City Council

Code of Conduct

Released: 7 March 2013

Document Status and Version Control

Ownership and Version Control

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| 1.0 | 20 June 2008 | Bruce Cooke | Original Model |
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| 2.0 | 7 February 2013 | Warren Park | Revised Model Code of Conduct adopted by Council |
| 2.1 | 7 March 2013 | Warren Park | Supplementary provisions adopted by Council. Message revised. |

Related Documents

This document should be read in conjunction with:

- Division of Local Government, Procedures For The Administration Of The Model Code Of Conduct for Local Councils in NSW, March 2013

*Note: **Blue text** throughout this document indicate supplementary provisions added by Hurstville City Council to the Model Code of Conduct issued by the Division of Local Government.*

MESSAGE FROM THE MAYOR AND GENERAL MANAGER

Hurstville City Council is committed to carrying out its functions in the public interest with efficiency, impartiality and integrity.

Acting with honesty and openness when representing the Council, reinforces the expectations that the community and other business and government representatives rightly have when dealing with local government.

This Code of Conduct has been adopted by Council to demonstrate the high standards of conduct and ethics that will be applied by Councillors, Staff and Council's delegates in their public and professional duties.

The Local Government Act 1993 (Act) requires every council to adopt a Code of Conduct that incorporates the provisions of The Model Code of Conduct for Local Councils in NSW.

This Code of Conduct uses the Division of Local Government's Model Code of Conduct for Local Councils in NSW as a basis, and supplements it with specific provisions relevant to Hurstville City Council and strengthens other mandatory provisions in the DLG Model Code.

This Code should be read in conjunction with the Local Government Act. However, nothing in this Code overrides or affects the Act or any other law.

The following guidelines, statements, policies, codes and procedures have been developed and should be referenced in conjunction with this Code:

- Privacy Management Plan
- Procurement Policy and Procedures
- Internal Reporting Policy
- Secondary Employment Administration Policy
- Code of Meeting Practice
- WHS Policy
- Fitness for Duty Administration Policy & Procedures
- Electronic Communication Administration Policy
- Public Access to Information Policy



Mr Victor G D Lampe
General Manager



Councillor J Jacovou
Mayor of the City of Hurstville

COUNCIL VALUES

Council has adopted a set of Values. They determine how we deal with our customers, our work colleagues and how we approach our work. They define the culture of the organisation. In order to understand the Values more clearly, a concise statement which qualified the 'Value' word has been developed. Council's Values are:

Honesty and Integrity

We are mindful of acting in the public interest and are open, honest, fair and ethical in dealing with others.

Customer Focus

We focus on our customers by understanding their needs and delivering quality service in a responsive manner.

Teamwork

We respect and support each other through a cross-organisational approach to ensure we deliver the best outcomes.

Professionalism

We take pride in our work and value innovation to achieve continual improvement.

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PART 1 INTRODUCTION

This Model Code of Conduct for Local Councils in NSW (“the Model Code of Conduct”) is made for the purposes of section 440 of the *Local Government Act 1993* (“the Act”). Section 440 of the Act requires every council to adopt a code of conduct that incorporates the provisions of the Model Code. For the purposes of section 440 of the Act, the Model Code of Conduct comprises all parts of this document.

Councillors, administrators, members of staff of council, independent conduct reviewers, members of council committees including the conduct review committee and delegates of the council must comply with the applicable provisions of council’s code of conduct in carrying out their functions as council officials. It is the personal responsibility of council officials to comply with the standards in the code and regularly review their personal circumstances with this in mind.

Failure by a councillor to comply with the standards of conduct prescribed under this code constitutes misconduct for the purposes of the Act. The Act provides for a range of penalties that may be imposed on councillors for misconduct, including suspension or disqualification from civic office.

Failure by a member of staff to comply with council’s code of conduct may give rise to disciplinary action.

A better conduct guide has also been developed to assist councils to review and enhance their codes of conduct. This guide supports this code and provides further information on the provisions in this code.

Note: *Section 440(7) of the Local Government Act states that a council must, within 12 months after each ordinary election, review its adopted code and make such adjustments as it considers appropriate.*

PART 2 PURPOSE OF THE CODE OF CONDUCT

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

The Model Code of Conduct has been developed to assist council officials to:

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

PART 3 GENERAL CONDUCT OBLIGATIONS

General conduct

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

- a) Contravenes the Act, associated regulations, council’s relevant administrative requirements and policies
- b) is detrimental to the pursuit of the charter of a council
- c) is improper or unethical
- d) is an abuse of power or otherwise amounts to misconduct
- e) causes, comprises or involves intimidation, harassment or verbal abuse

- f) causes, comprises or involves discrimination, disadvantage or adverse treatment in relation to employment
- g) causes, comprises or involves prejudice in the provision of a service to the community. (*Schedule 6A*)
- h) is unreasonable, unjust, or oppressive;
- i) may cause any reasonable person unwarranted offence or embarrassment;
- j) may give rise to the reasonable suspicion or appearance of improper conduct or partial performance of your public or professional duties;
- k) is contrary to law or otherwise engage in wrong conduct
- l) is outside of your delegated authority.

3.2 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*)

3.3 You must treat each other, council officers and members of the public with decorum, courtesy, compassion, sensitivity and respect at all times.

Fairness and equity

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

Further,

- You must always act in the public interest.
- You must not act for an ulterior purpose or on irrelevant grounds.
- You must take all reasonable steps to ensure that the information upon which decisions or actions are based is factually correct and that all relevant information has been obtained.

Note: *The general law requires all decision-makers to act fairly, reasonably and otherwise lawfully. That means, among other things, that decision-makers must act strictly within the powers conferred or imposed, and strictly for the purpose for which those powers were conferred or imposed.*

Note: *Council has developed Sexual Harassment and Workplace Bullying Guidelines.*

3.5 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.

Harassment and discrimination

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

Development decisions

3.7 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.

3.8 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.

Binding caucus votes

- 3.9 You must not participate in binding caucus votes in relation to matters to be considered at a council or committee meeting.
- 3.10 For the purposes of clause 3.9, a binding caucus vote is a process whereby a group of councillors are compelled by a threat of disciplinary or other adverse action to comply with a predetermined position on a matter before the council or committee irrespective of the personal views of individual members of the group on the merits of the matter before the council or committee.
- 3.11 Clause 3.9 does not prohibit councillors from discussing a matter before the council or committee prior to considering the matter in question at a council or committee meeting or from voluntarily holding a shared view with other councillors on the merits of a matter.
- 3.12 Clause 3.9 does not apply to a decision to elect the Mayor or Deputy Mayor or to nominate a person to be a member of a council committee.

Fitness for Duty

- 3.13 Councillors, delegates, staff, volunteers, contractors working for or representing Council are required at all times to be fit for work, in accordance with Council's Fitness for Duty Administration Policy.

The objectives of the Policy are:

- To provide staff and contractors with a safe and healthy workplace.
- To provide preventative and remedial approaches aimed at promoting personal and corporate well being.
- To comply with the requirements of WH&S legislation.
- To comply with Council's Code of Conduct.
- To comply with Council's Work Health and Safety Policy, procedures and safe work method statements.

Health, Wellbeing and Safety

- 3.14 In the conduct of Council business, you must ensure the health, safety and well being of all other persons is maintained.

The Work Health & Safety Act 2011 requires all Council officials to take reasonable care for the health, safety and welfare of people who are in the place of work.

Councillors and Council staff should ensure that council's premises are adequate to ensure the health, safety and well being of other council officials and members of the public in accordance with their obligations under the Work Health & Safety Act 2011.

You must, while undertaking your duties as a Councillor or a member of staff, at a Council workplace, co-operate 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, you must, as appropriate:

- minimise any risks to health and safety in the workplace by removing hazards where possible;
- isolate hazards that cannot be removed and report them to a supervisor or other appropriate person;

- **observe safety and security directives of management;**
- advise the General Manager of potential safety problems and report hazards and incidents.

Appointments to Other Organisations

3.15 You may be appointed or nominated by the council as a member of another body or organisation (For example, appointment to a regional organisation of Councils or Joint Regional Planning Panel.) If so, you will be bound by the rules of conduct of both organisations.

Public Comment by Council Staff

3.16 As a member of the community, council staff have a right to enter into public debate in their private capacity. However, Council staff must take care not to give the impression that their comments are made on behalf of council, Council staff will need to clearly state that such public comment reflects personal opinion. Public comment or statements on council matters should only be made in accordance with Council Policy (Electronic Communication Administration Policy).

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

- a. interviews with the media
- b. public speaking engagements
- c. expressing views in letters to the media or in notices, articles or any other medium

You must refrain from making any public statement which insults or makes personal reflections on or imputes improper motives to any other council official.

You must at all times promote a positive image of Council and local government generally when dealing with the public.

Media Contact/Public Comment by Councillors

3.17 It is recognised that Councillors, as members of the community, have the right to make public comment and enter into public debate on political and social issues, care is to be taken not to convey the impression that personal comments are the official Council comments and must clearly state that their expressed view is a personal view unless Councillors are specifically requested to speak on behalf of Council by the Mayor.

The Councillor must refrain from making any public statement which insults or makes personal reflections on or imputes improper motives to any other council official.

The Councillor must at all times promote a positive image of Council and local government generally when dealing with the public.

Child Protection

3.18 The Child Protection Act provides substantial requirements for the reporting of suspected and actual child abuse as well as checks for criminal history of employees of Council. Working with children checks are carried out for all staff positions within Council responsible for supervising or working with children.

Council staff must in relation to their interaction with children, conduct themselves in a manner which ensures the safety and wellbeing of children is always maintained at a high standard and in accordance with Council Policy.

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.

You have a responsibility to report to the General Manager any allegations or convictions that occur within the workplace.

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.

Lobbying

3.19 Lobbying is a two way process between Council officials and lobbyists. It is essential that the difference between appropriate and inappropriate lobbying is clearly understood as it is important not to undermine the public's confidence by engaging in any way in lobbying which could be considered inappropriate or unlawful. Generally, inappropriate or unlawful conduct on the part of someone lobbying a Councillor or staff member usually involves an attempt to obtain preferential consideration or treatment.

The Code of Conduct and the Act both recognise that appropriate lobbying of councillors is a normal part of the democratic process; however, it is in the public interest that lobbying is done fairly and does not undermine public confidence in council decision making. The Independent Commission Against Corruption (ICAC) has produced a publication regarding the lobbying of Councillors. The ICAC publication is available on the ICAC website.

Tendering

3.20 You must not be involved in any presentation on behalf of any tenderer whether it involves a cost or not.

You must not discuss with a tenderer or prospective tenderer any aspect of a tender for a contract to be let by Council, except where a staff member or delegate has been authorised to respond to enquiries relating to the tender.

Council's policy on tendering can be obtained from our website or by contacting the Manager Corporate Governance and Records.

Council Support

3.21 A council official who honestly and faithfully observes the requirements of this Code and any relevant law is entitled to expect the publicly expressed support of his or her Council and colleagues against unfair allegations of dishonesty or partial performance of his or her public or professional duties.

Regulatory or Development Decisions

3.22 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.

3.23 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.

3.24 You must refrain from offering support to affected parties prior to the normal assessment or

review processes of Council being undertaken.

Behavioural ideals for Councillors

3.25 Councillors should strive to meet Council's own behavioural ideals by:

- avoiding, so far as possible, derogatory references to the past conduct or positions of fellow councillors.
- not making derogatory comments or imputing improbable motives of fellow councillors, council officers or members of the public, either in public or in published material.
- using appropriate language consistent with the community expectations for an elected official.
- conducting yourself at Meetings in accordance with Council's Code of Meeting Practice.

PART 4 CONFLICT OF INTERESTS

Council has adopted a Conflicts of Interest Policy which should be read in conjunction with this section.

- 4.1 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.
- 4.2 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.
- 4.3 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.
- 4.4 Private interests can be of two types: pecuniary or non-pecuniary.

What is a pecuniary interest?

- 4.5 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*)
- 4.6 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*)
- 4.7 Pecuniary interests are regulated by Chapter 14, Part 2 of the Act. The Act requires that:
- a) councillors and designated persons lodge an initial and an annual written disclosure of interests that could potentially be in conflict with their public or professional duties (*section 449*)
 - b) councillors 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*)
 - c) designated persons immediately declare, in writing, any pecuniary interest. (*section 459*)
- 4.8 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.

- 4.9 Where you are a member of staff of council, other than a designated person (as defined by section 441), you must disclose in writing to your supervisor or the general manager, the nature of any pecuniary interest you have in a matter you are dealing with as soon as practicable.

What are non-pecuniary interests?

- 4.10 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.

- 4.11 The political views of a councillor do not constitute a private interest.

Managing non-pecuniary conflict of interests

- 4.12 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.

- 4.13 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 4.12.

- 4.14 How you manage a non-pecuniary conflict of interests will depend on whether or not it is significant.

- 4.15 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.

- 4.16 If you are a council official, other than a member of staff of council, and you have disclosed that a significant non-pecuniary conflict of interests exists, you must manage it in one of two ways:

- a) remove the source of the conflict, by relinquishing or divesting the interest that creates the conflict, or reallocating the conflicting duties to another council official
- b) have no involvement in the matter, by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in section 451(2) of the Act apply.

- 4.17 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.

- 4.18 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.
- 4.19 Despite clause 4.16(b), a councillor who has disclosed that a significant non-pecuniary conflict of interests exists may participate in a decision to delegate council's decision-making role to council staff through the general manager, or appoint another person or body to make the decision in accordance with the law. This applies whether or not council would be deprived of a quorum if one or more councillors were to manage their conflict of interests by not voting on a matter in accordance with clause 4.16(b) above.

Reportable political donations

- 4.20 Councillors should note that matters before council involving political or campaign donors may give rise to a non-pecuniary conflict of interests.
- 4.21 Where a councillor has received or knowingly benefitted from a reportable political donation:
- a) made by a major political donor in the previous four years, and
 - b) where the major political donor has a matter before council,
- then the councillor must declare a non-pecuniary conflict of interests, disclose the nature of the interest, and manage the conflict of interests in accordance with clause 4.16(b).
- 4.22 For the purposes of this Part:
- a) a "reportable political donation" is a "reportable political donation" for the purposes of section 86 of the *Election Funding, Expenditure and Disclosures Act 1981*,
 - b) a "major political donor" is a "major political donor" for the purposes of section 84 of the *Election Funding, Expenditure and Disclosures Act 1981*.
- 4.23 Councillors should note that political donations below \$1,000, or political donations to a registered political party or group by which a councillor is endorsed, may still give rise to a non-pecuniary conflict of interests. Councillors should determine whether or not such conflicts are significant and take the appropriate action to manage them.
- 4.24 If a councillor has received or knowingly benefitted from a reportable political donation of the kind referred to in clause 4.21, that councillor is not prevented from participating in a decision to delegate council's decision-making role to council staff through the general manager or appointing another person or body to make the decision in accordance with the law (see clause 4.19 above).

Loss of quorum as a result of compliance with this Part

- 4.25 Where a majority of councillors are precluded under this Part from consideration of a matter the council or committee must resolve to delegate consideration of the matter in question to another person.
- 4.26 Where a majority of councillors are precluded under this Part from consideration of a matter and the matter in question concerns the exercise of a function that may not be delegated under section 377 of the Act, the councillors may apply in writing to the Chief Executive to be exempted from complying with a requirement under this Part relating to the management of a non-pecuniary conflict of interests.
- 4.27 The Chief Executive will only exempt a councillor from complying with a requirement under this Part where:
- a) compliance by councillors with a requirement under the Part in relation to a matter

- will result in the loss of a quorum, and
- b) the matter relates to the exercise of a function of the council that may not be delegated under section 377 of the Act.

4.28 Where the Chief Executive exempts a councillor from complying with a requirement under this Part, the councillor must still disclose any interests they have in the matter the exemption applies to in accordance with the requirements of this Part.

4.29 A councillor, who would otherwise be precluded from participating in the consideration of a matter under this Part because they have a non-pecuniary conflict of interests in the matter, is permitted to participate in consideration of the matter, if:

- a) the matter is a proposal relating to
 - i) the making of a principal environmental planning instrument applying to the whole or a significant part of the council's area, or
 - ii) the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant part of the council's area, and
- b) the councillor declares any interest they have in the matter that would otherwise have precluded their participation in consideration of the matter under this Part.

Other business or employment

4.30 If you are a member of staff of council considering outside employment or contract work that relates to the business of the council or that might conflict with your council duties, you must notify and seek the approval of the general manager in writing. (*section 353*)

4.31 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.

Note: *Council has adopted a Secondary Employment Administration Policy. The purpose of the Policy is to ensure council staff are aware of their requirements. A copy of the Policy is available on the intranet.*

Personal dealings with council

4.32 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.

Club/Organisation Membership

4.33 If you are a member of a club or other organisation, for example, sporting, religious, community group, you should consider whether your membership gives rise to a conflict of interests in council matters that may affect the club or organisation. The greater your involvement with the club or organisation, the greater likelihood of a real or perceived conflict of interests will be present.

Case Study

A councillor is a member of a large metropolitan club. He is not, however, active in the club or involved with the management of the club. In this situation the councillor merely enjoys the facilities of the club as a privilege of membership.

Should a matter relating to the club arise at council, it is appropriate that the councillor inform the council of his membership. It is unlikely, however, that his interest as a club member would conflict with his role as a councillor representing the view of residents and ratepayers generally. He could therefore participate in the decision making process.

If the councillor was, however, an office holder in the club, the interest may constitute a pecuniary interest.

Personal Relationships

4.33 You should consider the depth of a personal relationship in deciding whether or not it gives rise to a conflict of interests.

Sponsorships

4.35 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 or influence a council decision.

You must never ask for or receive any personal benefits from a sponsorship arrangement. All sponsorship arrangements shall be undertaken in accordance with Council's Sponsorship Policy.

Lobbying

4.36 You must consider evidence and arguments put by any organisation or individual in order to perform your duties effectively. In relation to planning matters, councillors must not respond to oral requests for concessions and require a written application to be made to the general manager for evaluation by council staff and reporting to council of all the consequences of granting the request.

Former Council Officials

4.37 You must be careful in your dealings with former council officials and make sure that you do not give them, or appear to give them, favourable treatment or access to confidential or privileged information.

Former council officials must not use, or take advantage of confidential information obtained in the course of their official duties that may lead to gain or profit. At the end of your Involvement with council, you must:

- a) return all council property, documents or items (keys, mobile phones, laptops etc) in accordance with Council's Civic Office Expenses Policy
- b) not make public or otherwise use any confidential information gained as a consequence of your involvement with council.

You must not use your position to obtain opportunities for future employment.

Staff Political Participation

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

Senior staff

4.39 Senior staff must comply with Section 341 of the Local Government Act in relation to bankruptcy and similar provisions.

Procurement and Tender Assessment Process

4.40 If you are a member of staff and about to become engaged in the assessment of tenders or quotations, then before you undertake any assessment, you must first consider if you have any pecuniary or non-pecuniary interest in the suppliers under consideration. You must make a written declaration of your interests to your Manager. If you have an interest to declare, then you should indicate the action taken to resolve any perceived conflicts.

Recruitment Process of Council

4.41 If you are a member of staff and about to become engaged in the recruitment process for a position on Council, then before you undertake any assessment, you must first consider if you have business or friendship, kinship or any other affiliations with the applicants under consideration for the position. You must make a written declaration of your interests to your Manager. If you have an interest to declare, then you should indicate the action taken to resolve any perceived conflicts.

Preclusion from Contracting with Council

4.42 An employee shall not be engaged as a contractor within 6 months of ceasing employment with Council. The General Manager has delegated authority based on written recommendation from a Director, to appoint an ex-employee as a contractor within the exclusion period.

A current employee of Council shall not be engaged as a contractor to Council.

A declaration must be made if contracting involves work by a Council employee through a related entity such as a sub-contract.

A declaration must be made if contract work involves any person who is related to you who could be perceived to have any involvement leading to a conflict of interest with the contract work. The declaration must state what action was taken to resolve any such conflict.

A declaration and statement on conflict resolution must be provided when an employee resigns and becomes engaged to work as an employee of an existing supplier. A suitable resolution may involve not working on Council related matters for the 6 month exclusion period or providing a compelling case for an exemption to the exclusionary period from the Contract Manager from Council.

Property dealings

4.43 Staff and Councillors shall notify the General Manager prior to undertaking dealing in land, business or property within the Council area, other than selling or purchasing the principal place of residence.

PART 5 PERSONAL BENEFIT

All Council officials must comply with Council's Gifts and Benefits Policy which enhances the requirements of the Code. Further information on the management of gifts and benefits and a declaration form are contained in the Policy. The value placed on Token Gifts is an amount of \$50 or less.

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.

Gifts and benefits

- 5.1 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.
- 5.2 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.

Token gifts and benefits

- 5.3 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
 - e) prizes of token value.
 - f) free or subsidised meals, of a modest nature, and/or beverages provided infrequently (and/or reciprocally) at special events such as "Christmas Party's" or the like, provided the event is not for you exclusively or a small/select number of guests
 - g) Gain advantage from frequent flyer benefits or any other benefits that may be accumulated by undertaking travel and/or other purchases on behalf of Hurstville City Council

Note: *Guidelines to assist in compliance with this section of this Code is included in Council's Gifts and Benefits Policy.*

Gifts and benefits of value

- 5.4 Notwithstanding clause 5.3, 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.

How are offers of gifts and benefits to be dealt with?

- 5.5 You must not:
- a) seek or accept a bribe or other improper inducement
 - b) seek gifts or benefits of any kind
 - c) accept any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your public

duty

- d) accept any gift or benefit of more than token value unless approved by the General Manager in accordance with the Gifts and Benefits Policy
- e) accept an offer of cash or a cash-like gift, regardless of the amount.
- f) accept an offer of gift certificates or complimentary (free) air travel and the like, regardless of the amount.

- 5.6 For the purposes of clause 5.5(e), a “cash-like gift” includes but is not limited to gift vouchers, credit cards, debit cards with credit on them, prepayments such as phone or internal credit, memberships or entitlements to discounts.
- 5.7 Where you receive a gift or benefit of more than token value that cannot reasonably be refused or returned, this must be disclosed promptly to your supervisor, the Mayor or the general manager. The recipient, supervisor, Mayor or general manager must ensure that any gifts or benefits of more than token value that are received are recorded in a Gifts Register. The gift or benefit must be surrendered to council, unless the nature of the gift or benefit makes this impractical.

Improper and undue influence

- 5.8 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.
- 5.9 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.

Prizes

- 5.10 Whether you may keep a prize depends upon whether you won it while acting in your official capacity or not. Prizes won while representing Council may be perceived as a personal benefit connected to carrying out your official duties and should be graciously declined or handed into the Council. (For example, prizes won at conferences where attendance was paid for by Council.) Prizes won in your personal life, while unconnected with your official duties, may present an actual or perceived benefit and should be declared to your Manager. Entry conditions in official Council competitions do not allow employees and immediate family members to participate.

Bribes

- 5.11 If a bribe or other improper inducement is offered to you, you must immediately report the matter to the General Manager, to enable the General Manager to fulfill his/her obligations pursuant to Section 11 of the Independent Commission Against Corruption Act 1998. Such a report must be in writing and be provided to the General Manager as soon as possible following the incident.

Family members

- 5.12 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. If a gift is outside the normal gift-giving pattern of your personal relationships, you should consider whether external factors may be at play before accepting the gift.

Regulatory functions

- 5.13 Notwithstanding the provisions in this section relating to gifts and benefits, all Council

officers exercising regulatory and procurement functions need to exercise greater care when considering the acceptance gifts and benefits, where those officers are dealing with persons seeking the exercise of Council's decision-making discretion or who have sought the exercise of the Council's decision-making discretion particularly within the previous 12 months.

Case Study

Over a period of time, one local council employee was involved in a series of inspections to registered premises. During the period, the owner of the premises offered the employee a number of gifts including a present for the employee's new born child. The employee accepted the gifts as he felt they were offered as unconditional and genuine tokens of appreciation for his work. He did not interpret the gifts as attempts to gain his favour. In accepting the gifts he did not contravene the council's code of conduct.

Later the owner of the premises made an application for variation to the conditions of his licence. The employee, dutifully, was not compromised by the gifts, and made a recommendation that was not in the owner's interests. After the recommendation was made, the owner complained to the council about the employee accepting the gifts.

Although the employee accepted the gifts in good faith, he nevertheless placed himself in a vulnerable position. While each of these gifts was of modest value, when viewed in total, the value of the gifts seemed quite substantial. The owner also alleged the employee had accepted bribes.

The employee's acceptance of the gifts could also be used as circumstantial evidence of bribery. Furthermore, the employee could not rely on the fact that he made a decision he would have made, regardless of the gifts, as a defence to bribery.

PART 6 RELATIONSHIP BETWEEN COUNCIL OFFICIALS

Obligations of councillors and administrators

- 6.1 Each council is a body politic. The councillors or administrator/s are the governing body of the council. The governing body has the responsibility of directing and controlling the affairs of the council in accordance with the Act and is responsible for policy determinations, for example, those relating to workforce policy.
- 6.2 Councillors or administrators must not:
- a) direct council staff other than by giving appropriate direction to the general manager in the performance of council's functions by way of council or committee resolution, or by the Mayor or administrator exercising their power under section 226 of the Act (*section 352*)
 - b) in any public or private forum, direct or influence or attempt to direct or influence, any other member of the staff of the council or a delegate of the council in the exercise of the functions of the member or delegate (*Schedule 6A of the Act*)
 - c) contact a member of the staff of the council on council related business unless in accordance with the policy and procedures governing the interaction of councillors and council staff that have been authorised by the council and the general manager

Note: *Council's Councillor Handbook outlines a list of Council staff that may be contacted by Councillors to investigate matters under their jurisdiction. No other Council staff member*

may be contacted. Councillors should contact the relevant Director if an appropriate staff member is not identified.

- d) contact or issue instructions to any of council's contractors or tenderers, including council's legal advisers, unless by the Mayor or administrator exercising their power under section 226 of the Act. This does not apply to council's external auditors or the Chair of council's audit committee who may be provided with any information by individual councillors reasonably necessary for the external auditor or audit committee to effectively perform their functions.

Case Study

A councillor was driving down a local street in her ward and noticed that the nature strips in front of several houses were very unkempt. She immediately contacted a Team Leader whom she knew quite well by mobile phone and requested that Council personnel mow the strip as a matter of urgency as it was disturbing the general environmental amenity.

This contact was inappropriate as councillors must refrain from directing council staff. In this situation the Team Leader correctly and politely referred the councillor to the General Manager.

Obligations of staff

- 6.3 The general manager is responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation of the decisions of the council without delay.
- 6.4 Members of staff of council must:
- a) give their attention to the business of council while on duty
 - b) ensure that their work is carried out efficiently, economically and effectively
 - c) carry out lawful directions given by any person having authority to give such directions
 - d) give effect to the lawful decisions, policies, and procedures of the council, whether or not the staff member agrees with or approves of them
 - e) ensure that any participation in political activities outside the service of the council does not conflict with the performance of their official duties.
 - f) when exercising a regulatory, inspection or other discretionary function in relation to members of the public, a member of staff must notify the General Manager when dealing with relatives and close friends, and disqualify themselves from the dealing.
 - g) when making decisions or taking actions under delegated authority a member of staff must ensure that:
 - i. the decision or action is within their delegated authority as specified by the relevant instrument of delegation;
 - ii. all decision making requirements and procedures required by the delegation are complied with;
 - iii. the decision or action is in accordance with the spirit and the letter of any relevant legislation; and
 - iv. any decisions and the evidence upon which they are based are properly documented.

Obligations during meetings

- 6.5 You must act in accordance with council's Code of Meeting Practice, if council has adopted one, and the *Local Government (General) Regulation 2005* during council and committee meetings.

- 6.6 You must show respect to the chair, other council officials and any members of the public present during council and committee meetings or other formal proceedings of the council.

Inappropriate interactions

- 6.7 You must not engage in any of the following inappropriate interactions:
- a) Councillors and administrators approaching staff and staff organisations to discuss individual or operational staff matters other than broader workforce policy issues.
 - b) Council staff approaching councillors and administrators to discuss individual or operational staff matters other than broader workforce policy issues.
 - c) Council staff refusing to give information that is available to other councillors to a particular councillor.
 - d) Councillors and administrators who have lodged a development application with council, discussing the matter with council staff in staff- only areas of the council.
 - e) Councillors and administrators being overbearing or threatening to council staff.
 - f) Councillors and administrators making personal attacks on council staff in a public forum.
 - g) Councillors and administrators directing or pressuring council staff in the performance of their work, or recommendations they should make.
 - h) Council staff providing ad hoc advice to councillors and administrators without recording or documenting the interaction as they would if the advice was provided to a member of the community.
 - i) Council staff meeting with applicants or objectors alone AND outside office hours to discuss applications or proposals.
 - j) Councillors attending on-site inspection meetings with lawyers and/or consultants engaged by council associated with current or proposed legal proceedings unless permitted to do so by council's general manager or, in the case of the Mayor or administrator, exercising their power under section 226 of the Act.
 - k) Councillors attending site visits with developers alone to discuss development applications or proposals or hold private meetings, briefings or discussions in respect to development applications or proposals, unless they are accompanied by another Councillor or staff member. The Councillors/staff member is to submit a written record of the meeting and discussions held for such to be placed on Council's file. You must ensure that no action, statement or communication between yourself and others (such as applicants, objectors or third parties) conveys any suggestion of willingness to provide improper concessions or preferential treatment.

PART 7 ACCESS TO INFORMATION AND COUNCIL RESOURCES

Councillor and administrator access to information

- 7.1 The general manager and public officer are responsible for ensuring that members of the public, councillors and administrators can gain access to the documents available under the *Government Information (Public Access) Act 2009*.
- 7.2 The general manager must provide councillors and administrators with information sufficient to enable them to carry out their civic office functions.
- 7.3 Members of staff of council must provide full and timely information to councillors and administrators sufficient to enable them to carry out their civic office functions and in accordance with council procedures.

- 7.4 Members of staff of council who provide any information to a particular councillor in the performance of their civic duties must also make it available to any other councillor who requests it and in accordance with council procedures.
- 7.5 Councillors and administrators who have a private (as distinct from civic) interest in a document of council have the same rights of access as any member of the public.

Note: *Certain documents, or parts of documents, relating to personal matters concerning particular individuals, the personal hardship of any resident or ratepayer, trade secrets, which you have access to as a Councillor as well as matters the disclosure of which would constitute an offence under the Act or found an action of breach of confidence, are not to be disclosed, unless with the authority of Council.*

Councillors and administrators to properly examine and consider information

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

Note: *Council has developed a Public Access to Information Administration Policy which outlines a process for Councillors to access Information under Government Information (Public Access) Act if the information sought is not available as Council business.*

Refusal of access to documents

- 7.7 Where the general manager and public officer determine to refuse access to a document sought by a councillor or administrator they must act reasonably. In reaching this decision they must take into account whether or not the document sought is required for the councillor or administrator to perform their civic duty (see clause 7.2). The general manager or public officer must state the reasons for the decision if access is refused.

Use of certain council information

- 7.8 In regard to information obtained in your capacity as a council official, you must:
- a) only access council information needed for council business
 - b) not use that council information for private purposes
 - c) not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for yourself, or any other person or body, from any information to which you have by virtue of your office or position with council
 - d) only release council information in accordance with established council policies and procedures and in compliance with relevant legislation.
 - e) *discussions with the press about Council business by staff, contractors and volunteers require the prior approval by the General Manager.*

Use and security of confidential information

- 7.9 You must maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible.
- 7.10 In addition to your general obligations relating to the use of council information, you must:
- a) protect confidential information
 - b) only release confidential information if you have authority to do so
 - c) only use confidential information for the purpose it is intended to be used
 - d) not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person
 - e) not use confidential information with the intention to cause harm or detriment to your council or any other person or body

- f) not disclose any information discussed during a confidential session of a council meeting.
- g) avoid investments or business activities in relation to which your potential access to confidential information might reasonably be perceived as giving you an unfair or improper advantage over other people. E.g. *Undertaking business with companies that submit Development Applications to Council for determination.*

Note: *This also applies to contractors, consultants, agents or advisers and their contracts should state that they are under an obligation not to use confidential information in ways which are an abuse of their role, function or position, or which put them in a position which is inconsistent with their legal and professional obligations to the council.*

Further, if you have access to confidential or sensitive information as part of a local government function, you are in a position of absolute trust, and have a 'fiduciary duty' to Council to keep confidential the information to which you have access. Refer to Section 664 of the Act for more information.

Personal information

- 7.11 When dealing with personal information you must comply with:
- a) *the Privacy and Personal Information Protection Act 1998*
 - b) *the Health Records and Information Privacy Act 2002*
 - c) the Information Protection Principles and Health Privacy Principles
 - d) council's privacy management plan
 - e) the Privacy Code of Practice for Local Government
 - f) **Council's Public Access to Information Administration Policy**

Use of council resources

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

Note: *Council has adopted a Civic Office Expenses Policy which outlines facilities available to Councillors in addition an Electronic Communication Administration Policy outlining requirements and responsibilities when utilising electronic media. Further the Division of Local Government issues Circulars from time to time reminding Councillors of their responsibilities in using Council resources particularly at election periods.*

- 7.13 Union delegates and consultative committee members may have reasonable access to council resources for the purposes of carrying out their industrial responsibilities, including but not limited to:
- a) the representation of members with respect to disciplinary matters
 - b) the representation of employees with respect to grievances and disputes
 - c) functions associated with the role of the local consultative committee.

- 7.14 You must be scrupulous in your use of council property, including intellectual property, official services and facilities, and must not permit their misuse by any other person or body.

Note: *You must not make use of the council logo or similar intellectual property of the Council without first obtaining the written approval of the Council to such use.*

- 7.15 You must avoid any action or situation that could create the appearance that council

property, official services or public facilities are being improperly used for your benefit or the benefit of any other person or body.

- 7.16 You must not use council resources, property or facilities for the purpose of assisting your election campaign or the election campaign of others unless the resources, property or facilities are otherwise available for use or hire by the public and any publicly advertised fee is paid for use of the resources, property or facility.
- 7.17 You must not use council letterhead, council crests and other information that could give the appearance it is official council material for:
- a) the purpose of assisting your election campaign or the election campaign of others, or
 - b) for other non-official purposes.
- 7.18 You must not convert any property of the council to your own use unless properly authorised.
- 7.19 You must not use council's computer resources to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature.

Councillor access to council buildings

- 7.20 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.
- 7.21 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.
- 7.22 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.

Note: *At present Councillors have access to the Civic Centre during the following hours (8.30am to 4.30pm on normal business days) and in attending meetings of or on behalf of Council.*

- 7.23 Councillors have additional access to the Councillors Suite and Office on the First Floor and External Office in MacMahon St and the Civic Centre basement 24 hours a day, 7 days a week and limited access to the Mayoral Suite and General Manager's Office between 8:30am to 5:00pm Monday to Friday. The times mentioned for access to the Mayoral Suite and General Manager's Office may be altered at any time at the discretion of the General Manager.
- 7.24 Councillors and administrators are not to use entry cards in a manner or for a purpose not otherwise authorised by this Code of Conduct or by Council, including the purpose of gaining access to any part of Council premises to which access is otherwise denied or excluded by this Code. It will be considered a breach of this Code if you provide your access card/key to any family member or other person to access any Council property at any time.

Information Technology

- 7.25 Councillors must comply with any Council 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.

PART 8 MAINTAINING THE INTEGRITY OF THIS CODE

- 8.1 You must not conduct yourself in a manner that is likely to undermine confidence in the integrity of this code or its administration.

Complaints made for an improper purpose

- 8.2 You must not make a complaint or cause a complaint to be made under this code for an improper purpose.

- 8.3 For the purposes of clause 8.2, a complaint is made for an improper purpose where it is trivial, frivolous, vexatious or not made in good faith, or where it otherwise lacks merit and has been made substantially for one or more of the following purposes:

- a) to intimidate or harass another council official
- b) to damage another council official's reputation
- c) to obtain a political advantage
- d) to influence a council official in the exercise of their official functions or to prevent or disrupt the exercise of those functions
- e) to influence the council in the exercise of its functions or to prevent or disrupt the exercise of those functions
- f) to avoid disciplinary action under this code
- g) to take reprisal action against a person for making a complaint under this code except as may be otherwise specifically permitted under this code
- h) to take reprisal action against a person for exercising a function prescribed under the procedures for the administration of this code except as may be otherwise specifically permitted under this code
- i) to prevent or disrupt the effective administration of this code.

Detrimental action

- 8.4 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for a complaint they have made under this code except as may be otherwise specifically permitted under this code.

- 8.5 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for any function they have exercised under this code except as may be otherwise specifically permitted under this code.

- 8.6 For the purposes of clauses 8.4 and 8.5 detrimental action is an action causing, comprising or involving any of the following:
- a) injury, damage or loss
 - b) intimidation or harassment
 - c) discrimination, disadvantage or adverse treatment in relation to employment
 - d) dismissal from, or prejudice in, employment
 - e) disciplinary proceedings.

Compliance with requirements under this code

- 8.7 You must not engage in conduct that is calculated to impede or disrupt the consideration of

a matter under this code.

- 8.8 You must comply with a reasonable and lawful request made by a person exercising a function under this code.
- 8.9 You must comply with a practice ruling made by the Division of Local Government.
- 8.10 Where you are a councillor or the general manager, you must comply with any council resolution requiring you to take action as a result of a breach of this code.

Disclosure of information about the consideration of a matter under this code

- 8.11 You must report breaches of this code in accordance with the reporting requirements under this code.
- 8.12 You must not make allegations of suspected breaches of this code at council meetings or in other public forums.
- 8.13 You must not disclose information about the consideration of a matter under this code except for the purposes of seeking legal advice unless the disclosure is otherwise permitted under this code.

Complaints alleging a breach of this part

- 8.14 Complaints alleging a breach of this Part (Part 8) by a councillor, the general manager or an administrator are to be made to the Division of Local Government.
- 8.15 Complaints alleging a breach of this Part by other council officials are to be made to the general manager.

PART 9 DEFINITIONS

In the Model Code of Conduct the following definitions apply:

| | |
|----------------------------|--|
| the Act | the <i>Local Government Act 1993</i> |
| act of disorder | see the definition in clause 256 of the Local Government (General) Regulation 2005 |
| administrator | an administrator of a council appointed under the Act other than an administrator appointed under section 66 |
| Chief Executive | Chief Executive of the Division of Local Government, Department of Premier and Cabinet |
| committee | a council committee |
| 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 |
| contract | An agreement between two or more parties, especially one that is written and enforceable by law. |
| council committee | a committee established by resolution of council |
| “council committee member” | a person other than a councillor or member of staff of a council who is a member of a council committee |
| council official | includes councillors, members of staff of council, administrators, council committee members, conduct reviewers and delegates of council |
| councillor | a person elected or appointed to civic office and includes a Mayor |
| delegate of council | a person (other than a councillor or member of staff of a council) or body, and the individual members of that body, to whom a function of the council is delegated |
| designated person | see the definition in section 441 of the Act |
| election campaign | includes council, State and Federal election campaigns |
| netiquette | short for network etiquette. Netiquette Guidelines apply to electronic communications (i.e. email and social media) at Council; refer to Council's Electronic Communications Administration Policy. Council's netiquette expectations relate to respect, keeping it clean, no spam and staying on topic etc. |
| personal information | information or an opinion about a person whose identity is apparent, or can be ascertained from the information or opinion |

| | |
|----------------|---|
| public comment | Includes public speaking engagements (Including comments on radio, Internet and television), expressing views in letters to the press or in books or notices or where it is reasonably foreseeable that publication or circulation will enter the public domain. |
| related to you | <ol style="list-style-type: none"> 1. a spouse or; 2. de facto spouse (a person of opposite sex) who lives with the person as a husband or wife on a bona fide domestic basis although not legally married; 3. a child or adult child (including an adopted child, a step child, foster child or ex-nuptial child), parent (including foster parent, step parent and legal guardian), parents of spouse, grandparent, grandchild or sibling (including half, foster and step sibling) of the person or spouse or de facto spouse of the person or; 4. a same sex partner who lives with the person as the de facto partner on a bona fide domestic basis; 5. a relative who is related by blood, marriage or affinity. Affinity means, relationship that one spouse because of marriage, has to blood relatives of the other |
| the Regulation | the Local Government (General) Regulation 2005 |
| you | The term “you” used in the Code of Conduct refers to Council officials, staff and delegates. |

The phrase “this code” used in the Model Code of Conduct refers also to the procedures for the administration of the Model Code of Conduct prescribed under the Local Government (General) Regulation 2005.

PART 10 DISPUTE RESOLUTION PROCEDURES FOR COUNCILLORS (Not being Code of Conduct matters)

General Principles

10.1 Councillors bring diverse backgrounds, competencies, experiences and opinions to the performance of their role. This can lead to expression of different view-points and robust debate. This is a feature of local government and is an indicator of a healthy democracy.

Hurstville City Council believes that local government and good governance are adversely impacted if differences and disputes are inappropriately aired externally, thus also losing community confidence. Hurstville City Council wishes to settle disputes internally wherever possible.

Councillors commit to developing good working relationships and working effectively together at all times. If a dispute arises where Councillors are unable to resolve interpersonal conflicts that adversely affect the operation of the Council, the parties to the dispute agree to work together with openness and transparency to resolve the dispute. This includes the appointment of a mediator where appropriate.

Dispute Management Counselling – Resolution Procedure

10.2 A Councillor who is a party to any disagreement may request the Mayor or the General Manager to arrange dispute management counselling to assist that Councillor in resolving the disagreement. Where more than one Councillor, who is a party to a disagreement, requests dispute management counselling, the counselling may be provided to the individual Councillors and, subject to the agreement of the individual Councillors, to the Councillors jointly.

Pre-Dispute Consultation Process

10.3 Before commencing any formal dispute resolution process, the Councillors who are parties to any disagreement will endeavour to resolve their differences in a courteous and respectful manner, recognising that they have been elected to represent the interests of the community. Councillors may seek assistance in resolving their differences.

Formal Dispute Resolution Procedure - General

10.4 This dispute resolution procedure is intended to be used when Councillors have been unable to resolve an interpersonal conflict and where the situation is unduly affecting the operation of the Council. It is not intended to resolve differences in policy or decision making, which are appropriately resolved through discussion and voting in Council.

The Mayor, as leader of the Council team, has responsibility for supporting and encouraging good Councillor working relationships. If participants are unable to resolve the dispute themselves, the Mayor should consult the General Manager as part of this process.

Dispute Procedure

10.5 A "dispute" will be considered to be declared if the Council resolves that its operation is being impeded because of a dispute between some or all of the Councillors. The Council resolution will state the reasons why public resources should be allocated to resolve the dispute.

If the Mayor or the General Manager receives advice in writing from one or more Councillors stating that:

- a) They are unable to effectively perform their role because of a dispute between Councillors; and
- b) Attempts to resolve the dispute have not been effective, the Mayor or the General Manager will bring the matter to the attention of the Council. The Council will consider whether its operation is being impeded because of the dispute and may then resolve that a dispute be declared. If the Mayor is a party to the dispute, Council will nominate another Councillor to oversee the dispute resolution process.

If a dispute is declared, the Council will, as soon as is practicable:

- a) Approve the appointment of an independent and suitably qualified mediator or conciliator who is acceptable to the Councillors who are the parties in the dispute; or
- b) Request the Local Government and Shires Association of NSW or another appropriate external organisation to identify a suitably qualified mediator or conciliator; or
- c) Decide that a mediator or conciliator will not be appointed and that the matter should be dealt with pursuant to the Procedures for Administration of the Code of Conduct.

Council must appoint a mediator or conciliator unless one of the following applies:

- The dispute is limited to matters of policy and decision making; **or**
- An alternative approach which it can be demonstrated is more appropriate to the particular circumstance is approved.

The mediation and conciliation process must be managed on a strictly confidential basis and information, views and opinions that form part of the process cannot be divulged in any way to any person who is not party to the dispute other than the mediator or conciliator. This confidentiality is essential in order to allow the disputing parties to be full, frank and open in attempting to resolve the dispute.

At the conclusion of the dispute resolution process, the mediator or conciliator will advise the Council of whether the dispute has been resolved or not. No other information or opinion is to be provided by the mediator or the conciliator.

Irrespective of the other provisions in this clause, the Council will not commence a dispute resolution procedure if it appears that the process will extend into a period of less than three months before the election of Councillors as set out in the Act.



CODE OF CONDUCT

September 2017

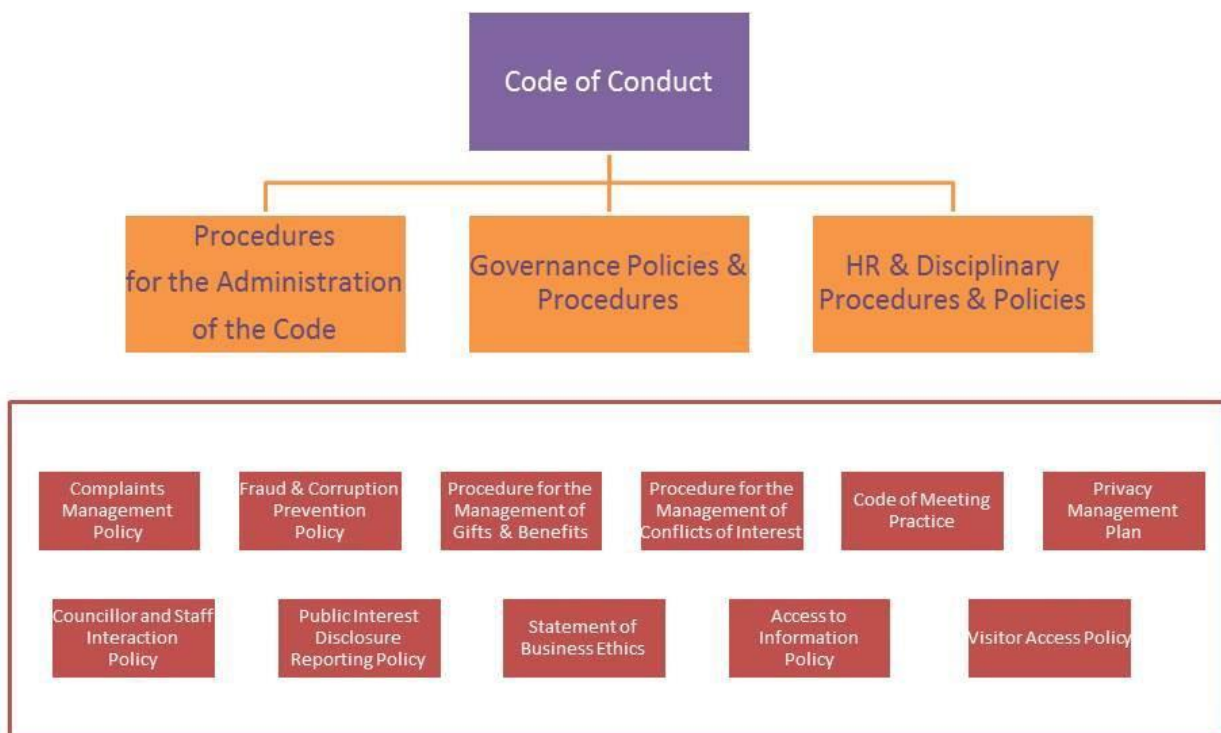
POLICY ADMINISTRATION

| | |
|-------------------------------------|--|
| Dates | Policy approved 07/09/2017 This policy is effective upon its approval. Policy is due for review within 12 months of the ordinary election of Council. |
| Approved by | General Manager & Chief Operating Officer 07/09/2017 (Version 1) Council Resolution CCL169-17 – 7/08/2017 (Version 2) |
| Exhibition Period | 16 June 2017 - 14 July 2017 |
| Policy Owner | Manager Governance and Risk Management, Office of the Chief Operating Officer |
| Related Documents | Procedures for the Administration of the Code of Conduct Code of Meeting Practice Procedure for the Management of Conflicts of Interest Procedure for the Management of Gifts and Benefits Privacy Management Plan Access to Information Policy Fraud and Corruption Prevention Policy Statement of Business Ethics Complaints Policy Public Interest Disclosure Reporting Policy |
| Appendices | ICAC publication Lobbying Local Government Councillors |
| References & Legislation | Local Government Act 1993 Local Government (General) Regulation 2005 |
| Document Identifier | Policy #: Pol-022.02 Doc #: D17/114758 |
| Breaches of Policy | Breaches of any policy will be dealt with and responded to in accordance with adopted codes and/or relevant legislation. |
| Record Keeping | All documents and information obtained in relation to the implementation of this policy will be kept in accordance with the NSW State Records Act 1998, Georges River Council's Corporate Records Policy and adopted internal procedures. |

FORWARD – CODE OF CONDUCT FRAMEWORK

Good governance are the processes and behaviours that ensure an organisation is able to meet its intended purpose, conforms by complying with laws, codes, policies and procedures while meeting community expectations of probity, accountability and transparency.¹

Georges River Council's (Council) Code of Conduct incorporates the provisions of the Office of Local Government's Model Code of Conduct for Local Councils in NSW and includes additional provisions relevant to Council. Council has adopted a Code of Conduct Framework to support good governance in all Council activities. The Code of Conduct is the principal document which forms the foundation for a strong ethical culture. The Code of Conduct Framework includes the Code of Conduct, the Procedures for the Administration of the Code and a number of policies and procedures as detailed below. This suite of documents facilitate the administration of the Code of Conduct. Failure to comply with these policies and procedures could therefore be a breach of the Code of Conduct.



¹ Governance Lighthouse – Strategic Early Warning System, Audit Office of New South Wales

PART 1 INTRODUCTION

This Code of Conduct is based on the Model Code of Conduct provided by the NSW Office of Local Government, 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. This adopted code incorporates the provisions of the Model and also contains additional provisions that supplement the provisions of the Model Code.

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

Failure by a Councillor to comply with the standards of conduct prescribed under this Code, constitutes misconduct for the purposes of the Act. The Act provides for a range of penalties that may be imposed on Councillors for misconduct, including suspension or disqualification from civic office. A Councillor who has been suspended on three or more occasions for misconduct, is automatically disqualified from holding civic office for five years.

Failure by a member of staff to comply with Council’s Code of Conduct, may give rise to disciplinary action. Investigations into staff misconduct will be carried out in accordance with the provisions of the NSW Local Government (State) Award 2017.

PART 2

PURPOSE OF THE CODE OF CONDUCT

This Code of Conduct sets the minimum requirements of conduct for Council officials in carrying out their functions. The Model 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

PART 3

GENERAL CONDUCT OBLIGATIONS

General conduct

- 3.1 You must not conduct yourself in carrying out your functions in a manner that is likely to bring the Council or holders of civic office into disrepute. Specifically, you must not act in a way that:
- a) contravenes the Act, associated regulations, Council's relevant administrative requirements and policies
 - b) is detrimental to the pursuit of the charter of a Council
 - c) is improper or unethical
 - d) is an abuse of power or otherwise amounts to misconduct
 - e) causes, comprises or involves intimidation, harassment or verbal abuse
 - f) causes, comprises or involves discrimination, disadvantage or adverse treatment in relation to employment
 - g) causes, comprises or involves prejudice in the provision of a service to the community. (Schedule 6A)
- 3.2 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)
- 3.3 You must treat others with respect at all times.

Fairness and equity

- 3.4 You must consider issues consistently, promptly and fairly. You must deal with matters in accordance with established procedures, in a non-discriminatory manner.
- 3.5 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.

Harassment and Discrimination

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

Development decisions

- 3.7 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.
- 3.8 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.

Binding caucus votes

- 3.9 You must not participate in binding caucus votes in relation to matters to be considered at a Council or Committee meeting.
- 3.10 For the purposes of clause 3.9, a binding caucus vote is a process whereby a group of Councillors are compelled by a threat of disciplinary or other adverse action to comply with a predetermined position on a matter before the Council or Committee irrespective of the personal views of individual members of the group on the merits of the matter before the Council or Committee.
- 3.11 Clause 3.9 does not prohibit Councillors from discussing a matter before the Council or Committee prior to considering the matter in question at a Council or Committee meeting or from voluntarily holding a shared view with other Councillors on the merits of a matter.
- 3.12 Clause 3.9 does not apply to a decision to elect the Mayor or Deputy Mayor or to nominate a person to be a member of a Council committee.

Lobbying

- 3.13 Appropriate lobbying of Councillors is part of the democratic process and is an acceptable feature of the relationship between citizens and their elected representatives. It is however in the public interest that lobbying is done fairly and does not undermine public confidence in Council decision making. Councillors are reminded of their obligations under the ICAC Lobbying Local Government Councillors guide (see Attachment A).
- 3.14 Council officials must also be mindful of inappropriate interactions and the avoidance of situations that may be perceived as or constitute improper and undue influence.

Related Policy: Statement of Business Ethics

PART 4

CONFLICT OF INTERESTS

- 4.1 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.
- 4.2 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.
- 4.3 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.
- 4.4 Private interests can be of two types: pecuniary or non-pecuniary.

What is a pecuniary interest?

- 4.5 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*)
- 4.6 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*)
- 4.7 Pecuniary interests are regulated by Chapter 14, Part 2 of the Act. The Act requires that:
 - a) Councillors and designated persons lodge an initial and an annual written disclosure of interests that could potentially be in conflict with their public or professional duties (*section 449*)
 - b) Councillors 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*)
 - c) designated persons immediately declare, in writing, any pecuniary interest. (*section 459*)
- 4.8 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.
- 4.9 Where you are a member of staff of Council, other than a designated person (as defined by *section 441*), you must disclose in writing to your supervisor or the

General Manager, the nature of any pecuniary interest you have in a matter you are dealing with as soon as practicable.

What are non-pecuniary interests?

- 4.10 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.
- 4.11 The political views of a Councillor do not constitute a private interest.

Managing non-pecuniary conflict of interests

- 4.12 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.
- 4.13 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 4.12.
- 4.14 How you manage a non-pecuniary conflict of interests will depend on whether or not it is significant.
- 4.15 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.
- 4.16 If you are a Council official, other than a member of staff of Council, and you have disclosed that a significant non-pecuniary conflict of interests exists, you must manage it in one of two ways:

- a) remove the source of the conflict, by relinquishing or divesting the interest that creates the conflict, or reallocating the conflicting duties to another Council official
 - b) have no involvement in the matter, by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in section 451(2) of the Act apply.
- 4.17 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.
- 4.18 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.
- 4.19 Despite clause 4.16(b), a Councillor who has disclosed that a significant non-pecuniary conflict of interests exists may participate in a decision to delegate Council's decision-making role to Council staff through the General Manager, or appoint another person or body to make the decision in accordance with the law. This applies whether or not Council would be deprived of a quorum if one or more Councillors were to manage their conflict of interests by not voting on a matter in accordance with clause 4.16(b) above.

Related Policy: Georges River Council Code of Meeting Practice

Related Procedure: Procedures for the Management of Conflicts of Interest

Reportable political donations

- 4.20 Councillors should note that matters before Council involving political or campaign donors may give rise to a non-pecuniary conflict of interests.
- 4.21 Where a Councillor has received or knowingly benefitted from a reportable political donation:
- a) made by a major political donor in the previous four years, and
 - b) where the major political donor has a matter before Council,
- then the Councillor must declare a non-pecuniary conflict of interests, disclose the nature of the interest, and manage the conflict of interests in accordance with clause 4.16(b).
- 4.22 For the purposes of this Part:
- a) a "reportable political donation" is a "reportable political donation" for the purposes of section 86 of the Election Funding, Expenditure and Disclosures Act 1981,

b) a “major political donor” is a “major political donor” for the purposes of section 84 of the Election Funding, Expenditure and Disclosures Act 1981.

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

4.24 If a Councillor has received or knowingly benefitted from a reportable political donation of the kind referred to in clause 4.21, that Councillor is not prevented from participating in a decision to delegate Council’s decision-making role to Council staff through the General Manager or appointing another person or body to make the decision in accordance with the law (see clause 4.19 above).

Loss of quorum as a result of compliance with this Part

4.25 Where a majority of Councillors are precluded under this Part from consideration of a matter the Council or Committee must resolve to delegate consideration of the matter in question to another person.

4.26 Where a majority of Councillors are precluded under this Part from consideration of a matter and the matter in question concerns the exercise of a function that may not be delegated under section 377 of the Act, the Councillors may apply in writing to the Chief Executive to be exempted from complying with a requirement under this Part relating to the management of a non-pecuniary conflict of interests.

4.27 The Chief Executive will only exempt a Councillor from complying with a requirement under this Part where:

- a) compliance by Councillors with a requirement under the Part in relation to a matter will result in the loss of a quorum, and
- b) the matter relates to the exercise of a function of the Council that may not be delegated under section 377 of the Act.

4.28 Where the Chief Executive exempts a Councillor from complying with a requirement under this Part, the Councillor must still disclose any interests they have in the matter the exemption applies to in accordance with the requirements of this Part.

4.29 A Councillor, who would otherwise be precluded from participating in the consideration of a matter under this Part because they have a non-pecuniary conflict of interests in the matter, is permitted to participate in consideration of the matter, if:

- a) the matter is a proposal relating to
 - i. the making of a principal environmental planning instrument applying to the whole or a significant part of the Council’s area, or

- ii. the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant part of the Council's area, and
- b) the non-pecuniary conflict of interests arises only because of an interest that a person has in that person's principal place of residence, and
- c) the Councillor declares the interest they have in the matter that would otherwise have precluded their participation in consideration of the matter under this Part.

Related Policy: Georges River Council Code of Meeting Practice

Related Procedure: Procedures for the Management of Conflicts of Interest

Other business or employment

- 4.30 If you are a member of staff of Council considering outside employment or contract work that relates to the business of the Council or that might conflict with your Council duties, you must notify and seek the approval of the General Manager in writing (section 353).
- 4.31 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

- 4.32 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.

PART 5

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.

Gifts and benefits

- 5.1 Council has an overriding principle that “thanks is enough thanks” for a job well done in the course of a Council official’s service to our community. This principle is important in establishing a culture of polite non acceptance of all forms of gifts, by all Council officials. The principle of “thanks is enough thanks” is applicable to all Council officials, but is particularly applied to all offers of gifts and benefits made to Council staff and contractors.
- 5.2 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 a Council official or from the Council.
- 5.3 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.
- 5.4 The response of Georges River Council staff, towards gifts from customers as expressions of gratitude for a job well done, shall simply be “thanks, but no thanks”, on the basis that “thanks is enough thanks”. In any situation where a gift is offered by a customer, an explanation shall be given to the customer, that whilst their offer is appreciated, staff are not permitted to accept gifts.
- 5.5 The only circumstances in which the acceptance by a staff member of a gift might be approved by the General Manager, will be in the rare event that the giver has indicated that there are strong, cultural influences at work and the giver will be deeply offended by any refusal to accept their gift.
- 5.6 All offers of gifts must be declared in writing, on the appropriate declaration to the General Manager, whether or not they are accepted. Where a gift is accepted by the Council officer in accordance with 5.5 above, it must promptly be declared in writing, on the appropriate declaration to the General Manager who will consider whether the gift can be donated to a charity or another means of appropriate disposal.

Token gifts and benefits

- 5.7 Notwithstanding Council's principle that "thanks is enough thanks", gifts of a "token" nature are sometimes offered to Council officials and must be considered in accordance with the policy. This means that their acceptance or other disposal must be approved by the General Manager. Token gifts and benefits have a value equal to or less than \$20.00 and generally speaking 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
 - e) prizes of token value.

Gifts and benefits of value

- 5.8 Notwithstanding clause 5.7 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 of value will rarely be approved for retention by the General Manager, because they almost inevitably give rise to perceptions that there will be some form of reciprocal action, expected of the Council official who accepts the gift.

How are offers of gifts and benefits to be dealt with?

- 5.9 You must not:
- a) seek or accept a bribe or other improper inducement

- b) seek gifts or benefits of any kind
 - c) accept any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your public duty
 - d) accept any gift or benefit of more than token value
 - e) accept an offer of cash or a cash-like gift, regardless of the amount.
- 5.10 For the purposes of clause 5.9(e), a “cash-like gift” includes but is not limited to gift vouchers, credit cards, debit cards with credit on them, prepayments such as phone or internal credit, memberships or entitlements to discounts.
- 5.11 Where you receive a gift or benefit of more than token value that cannot reasonably be refused or returned in accordance with clause 5.5 above, this must be disclosed promptly to your supervisor, the Mayor (in the case of a Councillor) or the General Manager. The recipient, supervisor, Mayor or General Manager must ensure that any gifts or benefits of more than token value that are received are recorded in a Gifts Register, whether they are to be retained by the recipient or dealt with some other way by the General Manager. The gift or benefit must be surrendered to Council, unless the nature of the gift or benefit makes this impractical, in the opinion of the General Manager.

Related Procedure: Procedures for the Management of Gifts and Benefits

Improper and undue influence

- 5.12 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.
- 5.13 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.

PART 6

RELATIONSHIP BETWEEN COUNCIL OFFICIALS

Obligations of Councillors and Administrators

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

Related Policy: Georges River Council Councillor and Staff Interaction Policy

Obligations of staff

- 6.3 The General Manager is responsible for the efficient and effective operation of the Council's organisation and for ensuring the implementation of the decisions of the Council without delay.
- 6.4 Members of staff of Council must:
- a) give their attention to the business of Council while on duty

- b) ensure that their work is carried out efficiently, economically and effectively
- c) carry out lawful directions given by any person having authority to give such directions
- d) give effect to the lawful decisions, policies, and procedures of the Council, whether or not the staff member agrees with or approves of them ensure that any participation in political activities outside the service of the Council does not conflict with the performance of their official duties.

Obligations during meetings

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

Related Policy: Georges River Council Code of Meeting Practice

Inappropriate interactions

- 6.7 You must not engage in any of the following inappropriate interactions:
 - a) Councillors and Administrators approaching staff and staff organisations to discuss individual or operational staff matters other than broader workforce policy issues.
 - b) Council staff approaching Councillors and Administrators to discuss individual or operational staff matters other than broader workforce policy issues.
 - c) Council staff refusing to give information that is available to other Councillors to a particular Councillor.
 - d) Councillors and Administrators who have lodged a development application with Council, discussing the matter with Council staff in staff-only areas of the Council.
 - e) Councillors and Administrators being overbearing or threatening to Council staff.
 - f) Councillors and Administrators making personal attacks on Council staff in a public forum.
 - g) Councillors and Administrators directing or pressuring Council staff in the performance of their work, or recommendations they should make.

- h) Council staff providing ad hoc advice to Councillors and Administrators without recording or documenting the interaction as they would if the advice was provided to a member of the community.
- i) Council staff meeting with applicants or objectors alone AND outside office hours to discuss applications or proposals.
- j) Councillors attending on-site inspection meetings with lawyers and/or consultants engaged by Council associated with current or proposed legal proceedings unless permitted to do so by Council's General Manager or, in the case of the Mayor or Administrator, exercising their power under section 226 of the Act.

PART 7

ACCESS TO INFORMATION AND COUNCIL RESOURCES

Councillor and Administrator access to information

- 7.1 The General Manager and public officer are responsible for ensuring that members of the public, Councillors and Administrators can gain access to the documents available under the Government Information (Public Access) Act 2009.
- 7.2 The General Manager must provide Councillors and Administrators with information sufficient to enable them to carry out their civic office functions.
- 7.3 Members of staff of Council must provide full and timely information to Councillors and Administrators sufficient to enable them to carry out their civic office functions and in accordance with Council procedures.
- 7.4 Members of staff of Council who provide any information to a particular Councillor in the performance of their civic duties must also make it available to any other Councillor who requests it and in accordance with Council procedures.
- 7.5 Councillors and Administrators who have a private (as distinct from civic) interest in a document of Council have the same rights of access as any member of the public.

Related Policy: Georges River Council Access to Information Policy

Councillors and Administrators to properly examine and consider information

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

Refusal of access to documents

- 7.7 Where the General Manager and public officer determine to refuse access to a document sought by a Councillor or Administrator they must act reasonably. In reaching this decision they must take into account whether or not the document sought is required for the Councillor or Administrator to perform their civic duty (see clause 7.2). The General Manager or public officer must state the reasons for the decision if access is refused.

Use of certain Council information

- 7.8 In regard to information obtained in your capacity as a Council official, you must:
 - a) only access Council information needed for Council business
 - b) not use that Council information for private purposes

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

Use and security of confidential information

- 7.9 You must maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible.
- 7.10 In addition to your general obligations relating to the use of Council information, you must:
- a) protect confidential information
 - b) only release confidential information if you have authority to do so
 - c) only use confidential information for the purpose it is intended to be used
 - d) not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person
 - e) not use confidential information with the intention to cause harm or detriment to your Council or any other person or body
 - f) not disclose any information discussed during a confidential session of a Council meeting.

Personal information

- 7.11 When dealing with personal information you must comply with:
- a) the Privacy and Personal Information Protection Act 1998
 - b) the Health Records and Information Privacy Act 2002
 - c) the Information Protection Principles and Health Privacy Principles
 - d) Council's privacy management plan
 - e) the Privacy Code of Practice for Local Government

Related Policy: Georges River Council Privacy Management Plan

Use of Council resources

- 7.12 You must use Council resources ethically, effectively, efficiently and carefully in the course of your official duties, and must not use them for private purposes (except when supplied as part of a contract of employment) unless this use is lawfully authorised and proper payment is made where appropriate.
- 7.13 Union delegates and consultative committee members may have reasonable access to Council resources for the purposes of carrying out their industrial responsibilities, including but not limited to:
- a) the representation of members with respect to disciplinary matters
 - b) the representation of employees with respect to grievances and disputes
 - c) functions associated with the role of the local consultative committee.
- 7.14 You must be scrupulous in your use of Council property, including intellectual property, official services and facilities, and must not permit their misuse by any other person or body.
- 7.15 You must avoid any action or situation that could create the appearance that Council property, official services or public facilities are being improperly used for your benefit or the benefit of any other person or body.
- 7.16 You must not use Council resources, property or facilities for the purpose of assisting your election campaign or the election campaign of others unless the resources, property or facilities are otherwise available for use or hire by the public and any publicly advertised fee is paid for use of the resources, property or facility.
- 7.17 You must not use Council letterhead, Council crests and other information that could give the appearance it is official Council material for:
- a) the purpose of assisting your election campaign or the election campaign of others, or
 - b) for other non-official purposes.
- 7.18 You must not convert any property of the Council to your own use unless properly authorised.
- 7.19 You must not use Council's computer resources to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature.

Councillor access to Council buildings

- 7.20 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.
- 7.21 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.
- 7.22 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.

Related Policy: Georges River Council Visitor Access Policy

PART 8

MAINTAINING THE INTEGRITY OF THIS CODE

- 8.1 You must not conduct yourself in a manner that is likely to undermine confidence in the integrity of this code or its administration.
- 8.2 Behaviour which would be considered as an attempt to undermine confidence in the integrity of the code or its administration would include, but is not limited to; any behaviour which includes coercion, threat, promise or inducement undertaken to:
- a) prevent or frustrate an individual from making a complaint under the Code of Conduct
 - b) influence the process or outcome of any referral or investigation of a complaint under the Code of Conduct.

Complaints made for an improper purpose

- 8.3 You must not make a complaint or cause a complaint to be made under this code for an improper purpose.
- 8.4 For the purposes of clause 8.3, a complaint is made for an improper purpose where it is trivial, frivolous, vexatious or not made in good faith, or where it otherwise lacks merit and has been made substantially for one or more of the following purposes:
- a) to intimidate or harass another Council official
 - b) to damage another Council official's reputation
 - c) to obtain a political advantage
 - d) to influence a Council official in the exercise of their official functions or to prevent or disrupt the exercise of those functions
 - e) to influence the Council in the exercise of its functions or to prevent or disrupt the exercise of those functions
 - f) to avoid disciplinary action under this code
 - g) to take reprisal action against a person for making a complaint under this code except as may be otherwise specifically permitted under this code
 - h) to take reprisal action against a person for exercising a function prescribed under the procedures for the administration of this code except as may be otherwise specifically permitted under this code
 - i) to prevent or disrupt the effective administration of this code.

Detrimental action

- 8.5 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for a complaint they have made under this code except as may be otherwise specifically permitted under this code.
- 8.6 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for any function they have exercised under this code except as may be otherwise specifically permitted under this code.
- 8.7 For the purposes of clauses 8.5 and 8.6 detrimental action is an action causing, comprising or involving any of the following:
- a) injury, damage or loss
 - b) intimidation or harassment
 - c) discrimination, disadvantage or adverse treatment in relation to employment
 - d) dismissal from, or prejudice in, employment
 - e) disciplinary proceedings.

Compliance with requirements under this code

- 8.8 You must not engage in conduct that is calculated to impede or disrupt the consideration of a matter under this code.
- 8.9 You must comply with a reasonable and lawful request made by a person exercising a function under this code.
- 8.10 You must comply with a practice ruling made by the Office of Local Government.
- 8.11 Where you are a Councillor or the General Manager, you must comply with any Council resolution requiring you to take action as a result of a breach of this code.

Disclosure of information about the consideration of a matter under this code

- 8.12 You must report breaches of this code in accordance with the reporting requirements under this code.
- 8.13 You must not make allegations of suspected breaches of this code at Council meetings or in other public forums.
- 8.14 You must not disclose information about the consideration of a matter under this code except for the purposes of seeking legal advice unless the disclosure is otherwise permitted under this code.

Complaints alleging a breach of this part

- 8.15 Complaints alleging a breach of this Part (Part 8) by a Councillor, the General Manager or an Administrator are to be made to the Office of Local Government.
- 8.16 Complaints alleging a breach of this Part by other Council officials are to be made to the General Manager.

PART 9

DEFINITIONS

In the Model Code of Conduct the following definitions apply:

| | |
|---------------------------------|--|
| the Act | the Local Government Act 1993 |
| Act of Disorder | see the definition in clause 256 of the Local Government (General) Regulation 2005 |
| Administrator | an Administrator of a Council appointed under the Act other than an Administrator appointed under section 66 |
| Chief Executive | Chief Executive of the Office of Local Government |
| Committee | a Council committee |
| 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 Committee | a committee established by resolution of Council |
| Council Committee member | a person other than a Councillor or member of staff of a Council who is a member of a Council committee |
| Council Official | includes Councillors, members of staff of Council, Administrators, Council committee members, conduct reviewers and delegates of Council |
| Councillor | a person elected or appointed to civic office and includes a Mayor |
| Delegate of Council | a person (other than a Councillor or member of staff of a Council) or body, and the individual members of that body, to whom a function of the Council is delegated |
| Designated Person | see the definition in section 441 of the Act |
| Election Campaign | includes Council, State and Federal election campaigns |

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

the Regulation the Local Government (General) Regulation 2005

The term “you” used in the Code of Conduct refers to Council officials.

The phrase “this code” used in the Code of Conduct refers also to the Procedures for the Administration of the Code of Conduct prescribed under the Local Government (General) Regulation 2005.

VERSION CONTROL AND CHANGE HISTORY

| Version | Amendment Details | Policy Owner | Period Active |
|---------|---|--|-------------------------|
| KCC | Former Kogarah Council Policy discontinued | Kogarah Governance | 26/04/2016 – 06/08/2017 |
| HCC | Former Hurstville Council Policy discontinued | Hurstville Governance | 06/03/2013 – 06/08/2017 |
| 1.0 | Complete new Georges River Council Code of Conduct | Manager Governance and Risk Management | 07/08/2017 – 6/9/2017 |
| 2.0 | Minor amendments to s5.1, 5.2 and 6.2 to reflect the model Code, as suggested by OLG. | Manager Governance and Risk Management | 7/09/2017 |

Attachment A

ICAC Publication "[A Guide for Councillors, Constituents and Other Interested Parties – Re Lobbying Local Government Councillors](#)"