

# The Model Code of Conduct

for Local Councils  
in NSW

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2018



## **THE MODEL CODE OF CONDUCT FOR LOCAL COUNCILS IN NSW**

2018

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# Part 1: Introduction



This *Model Code of Conduct for Local Councils in NSW* (“the Model Code of Conduct”) is made under section 440 of the *Local Government Act 1993* (“LGA”) and the *Local Government (General) Regulation 2005* (“the Regulation”).

The Model Code of Conduct sets the minimum standards of conduct for council officials. It is prescribed by regulation to assist council officials to:

- understand and comply with 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 local government.

Section 440 of the LGA requires every council (including county councils) and joint organisation to adopt a code of conduct that incorporates the provisions of the Model Code of Conduct. A council’s or joint organisation’s adopted code of conduct may also include provisions that supplement the Model Code of Conduct and that extend its application to persons that are not “council officials” for the purposes of the Model Code of Conduct (eg volunteers, contractors and members of wholly advisory committees).

A council’s or joint organisation’s adopted code of conduct has no effect to the extent that it is inconsistent with the Model Code of Conduct. However, a council’s or joint organisation’s adopted code of conduct may prescribe requirements that are more onerous than those prescribed in the Model Code of Conduct.

Councillors, administrators, members of staff of councils, delegates of councils, (including members of council committees that are delegates of a council) and any other person a council’s adopted code of conduct applies to, must comply with the applicable provisions of their council’s code of conduct. It is the personal responsibility of council officials to comply with the standards in the code and to regularly review their personal circumstances and conduct 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 LGA. The LGA 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 a council’s code of conduct may give rise to disciplinary action.

Note: References in the Model Code of Conduct to councils are also to be taken as references to county councils and joint organisations.

Note: In adopting the Model Code of Conduct, joint organisations should adapt it to substitute the terms “board” for “council”, “chairperson” for “mayor”, “voting representative” for “councillor” and “executive officer” for “general manager”.

Note: In adopting the Model Code of Conduct, county councils should adapt it to substitute the term “chairperson” for “mayor” and “member” for “councillor”.

# Part 2: Definitions



In this code the following terms have the following meanings:

administrator	an administrator of a council appointed under the LGA other than an administrator appointed under section 66
committee	see the definition of “council committee”
complaint	a code of conduct complaint made for the purposes of clauses 4.1 and 4.2 of the Procedures
council	includes county councils and joint organisations
council committee	a committee established by a council comprising of councillors, staff or other persons that the council has delegated functions to
council committee member	a person other than a councillor or member of staff of a council who is a member of a council committee other than a wholly advisory committee
council official	includes councillors, members of staff of a council, administrators, council committee members, delegates of council and, for the purposes of clause 4.16, council advisers
councillor	any person elected or appointed to civic office, including the mayor and includes members and chairpersons of county councils and voting representatives of the boards of joint organisations and chairpersons of joint organisations
conduct	includes acts and omissions
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	a person referred to in clause 4.8
election campaign	includes council, state and federal election campaigns
environmental planning instrument	has the same meaning as it has in the <i>Environmental Planning and Assessment Act 1979</i>
general manager	includes the executive officer of a joint organisation
joint organisation	a joint organisation established under section 4000 of the LGA
LGA	the <i>Local Government Act 1993</i>
local planning panel	a local planning panel constituted under the <i>Environmental Planning and Assessment Act 1979</i>
mayor	includes the chairperson of a county council or a joint organisation

members of staff of a council	includes members of staff of county councils and joint organisations
the Office	Office of Local Government
personal information	information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion
the Procedures	the <i>Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW</i> prescribed under the Regulation
the Regulation	the <i>Local Government (General) Regulation 2005</i>
voting representative	a voting representative of the board of a joint organisation
wholly advisory committee	a council committee that the council has not delegated any functions to





# Part 3: General Conduct Obligations

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## General conduct

- 3.1 You must not conduct yourself in a manner that:
- a) is likely to bring the council or other council officials into disrepute
  - b) is contrary to statutory requirements or the council’s administrative requirements or policies
  - c) is improper or unethical
  - d) is an abuse of power
  - e) causes, comprises or involves intimidation or verbal abuse
  - f) involves the misuse of your position to obtain a private benefit
  - g) constitutes harassment or bullying behaviour under this code, or is unlawfully discriminatory.
- 3.2 You must act lawfully and honestly, and exercise a reasonable degree of care and diligence in carrying out your functions under the LGA or any other Act (*section 439*).

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## Fairness and equity

- 3.3 You must consider issues consistently, promptly and fairly. You must deal with matters in accordance with established procedures, in a non-discriminatory manner.
- 3.4 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.
- 3.5 An act or omission in good faith, whether or not it involves error, will not constitute a breach of clauses 3.3 or 3.4.

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## Harassment and discrimination

- 3.6 You must not harass or unlawfully discriminate against others, or support others who harass or unlawfully discriminate against others, on the grounds of sex, pregnancy, breastfeeding, race, age, marital or domestic status, homosexuality, disability, transgender status, infectious disease, carer’s responsibilities or political, religious or other affiliation.
- 3.7 For the purposes of this code, “harassment” is any form of behaviour towards a person that:
- a) is not wanted by the person
  - b) offends, humiliates or intimidates the person, and
  - c) creates a hostile environment.

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## Bullying

- 3.8 You must not engage in bullying behaviour towards others.
- 3.9 For the purposes of this code, “bullying behaviour” is any behaviour in which:
- a) a person or a group of people repeatedly behaves unreasonably towards another person or a group of persons, and
  - b) the behaviour creates a risk to health and safety.
- 3.10 Bullying behaviour may involve, but is not limited to, any of the following types of behaviour:
- a) aggressive, threatening or intimidating conduct
  - b) belittling or humiliating comments
  - c) spreading malicious rumours
  - d) teasing, practical jokes or ‘initiation ceremonies’

- e) exclusion from work-related events
  - f) unreasonable work expectations, including too much or too little work, or work below or beyond a worker's skill level
  - g) displaying offensive material
  - h) pressure to behave in an inappropriate manner.
- 3.11 Reasonable management action carried out in a reasonable manner does not constitute bullying behaviour for the purposes of this code. Examples of reasonable management action may include, but are not limited to:
- a) performance management processes
  - b) disciplinary action for misconduct
  - c) informing a worker about unsatisfactory work performance or inappropriate work behaviour
  - d) directing a worker to perform duties in keeping with their job
  - e) maintaining reasonable workplace goals and standards
  - f) legitimately exercising a regulatory function
  - g) legitimately implementing a council policy or administrative processes.
- a) take reasonable care for your own health and safety
  - b) take reasonable care that your acts or omissions do not adversely affect the health and safety of other persons
  - c) comply, so far as you are reasonably able, with any reasonable instruction that is given to ensure compliance with the WH&S Act and any policies or procedures adopted by the council to ensure workplace health and safety
  - d) cooperate with any reasonable policy or procedure of the council relating to workplace health or safety that has been notified to council staff
  - e) report accidents, incidents, near misses, to the general manager or such other staff member nominated by the general manager, and take part in any incident investigations
  - f) so far as is reasonably practicable, consult, co-operate and coordinate with all others who have a duty under the WH&S Act in relation to the same matter.

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## Work health and safety

- 3.12 All council officials, including councillors, owe statutory duties under the *Work Health and Safety Act 2011* (WH&S Act). You must comply with your duties under the WH&S Act and your responsibilities under any policies or procedures adopted by the council to ensure workplace health and safety. Specifically, you must:

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## Land use planning, development assessment and other regulatory functions

- 3.13 You must ensure that land use planning, development assessment and other regulatory decisions are properly made, and that all parties are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the exercise of land use planning, development assessment and other regulatory functions.

- 3.14 In exercising land use planning, development assessment and other regulatory functions, you must ensure that no action, statement or communication between yourself and others conveys any suggestion of willingness to improperly provide concessions or preferential or unduly unfavourable treatment.

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## Binding caucus votes

- 3.15 You must not participate in binding caucus votes in relation to matters to be considered at a council or committee meeting.
- 3.16 For the purposes of clause 3.15, 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.
- 3.17 Clause 3.15 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.
- 3.18 Clause 3.15 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 or a representative of the council on an external body.

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## Obligations in relation to meetings

- 3.19 You must comply with rulings by the chair at council and committee meetings or other proceedings of the council unless a motion dissenting from the ruling is passed.
- 3.20 You must not engage in bullying behaviour (as defined under this Part) towards the chair, other council officials or any members of the public present during council or committee meetings or other proceedings of the council (such as, but not limited to, workshops and briefing sessions).
- 3.21 You must not engage in conduct that disrupts council or committee meetings or other proceedings of the council (such as, but not limited to, workshops and briefing sessions), or that would otherwise be inconsistent with the orderly conduct of meetings.
- 3.22 If you are a councillor, you must not engage in any acts of disorder or other conduct that is intended to prevent the proper or effective functioning of the council, or of a committee of the council. Without limiting this clause, you must not:
- a) leave a meeting of the council or a committee for the purposes of depriving the meeting of a quorum, or
  - b) submit a rescission motion with respect to a decision for the purposes of voting against it to prevent another councillor from submitting a rescission motion with respect to the same decision, or
  - c) deliberately seek to impede the consideration of business at a meeting.

# Part 4:

## Pecuniary Interests



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## What is a pecuniary interest?

- 4.1 A pecuniary interest is an interest that you have in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to you or a person referred to in clause 4.3.
- 4.2 You will not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision you might make in relation to the matter, or if the interest is of a kind specified in clause 4.6.
- 4.3 For the purposes of this Part, you will have a pecuniary interest in a matter if the pecuniary interest is:
- a) your interest, or
  - b) the interest of your spouse or de facto partner, your relative, or your partner or employer, or
  - c) a company or other body of which you, or your nominee, partner or employer, is a shareholder or member.
- 4.4 For the purposes of clause 4.3:
- a) Your “relative” is any of the following:
    - i) your parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
    - ii) your spouse’s or de facto partner’s parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
    - iii) the spouse or de facto partner of a person referred to in paragraphs (i) and (ii).
  - b) “de facto partner” has the same meaning as defined in section 21C of the *Interpretation Act 1987*.

- 4.5 You will not have a pecuniary interest in relation to a person referred to in subclauses 4.3(b) or (c):
  - a) if you are unaware of the relevant pecuniary interest of your spouse, de facto partner, relative, partner, employer or company or other body, or
  - b) just because the person is a member of, or is employed by, a council or a statutory body, or is employed by the Crown, or
  - c) just because the person is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.

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## What interests do not have to be disclosed?

- 4.6 You do not have to disclose the following interests for the purposes of this Part:
- a) your interest as an elector
  - b) your interest as a ratepayer or person liable to pay a charge
  - c) an interest you have in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to the public generally, or to a section of the public that includes persons who are not subject to this code
  - d) an interest you have in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to your relative by the council in the same manner and subject to the same conditions as apply to persons who are not subject to this code

- e) an interest you have as a member of a club or other organisation or association, unless the interest is as the holder of an office in the club or organisation (whether remunerated or not)
  - f) if you are a council committee member, an interest you have as a person chosen to represent the community, or as a member of a non-profit organisation or other community or special interest group, if you have been appointed to represent the organisation or group on the council committee
  - g) an interest you have relating to a contract, proposed contract or other matter, if the interest arises only because of a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company
  - h) an interest you have arising from the proposed making by the council of an agreement between the council and a corporation, association or partnership, being a corporation, association or partnership that has more than 25 members, if the interest arises because your relative is a shareholder (but not a director) of the corporation, or is a member (but not a member of the committee) of the association, or is a partner of the partnership
  - i) an interest you have arising from the making by the council of a contract or agreement with your relative for, or in relation to, any of the following, but only if the proposed contract or agreement is similar in terms and conditions to such contracts and agreements as have been made, or as are proposed to be made, by the council in respect of similar matters with other residents of the area:
    - i) the performance by the council at the expense of your relative of any work or service in connection with roads or sanitation
    - ii) security for damage to footpaths or roads
    - iii) any other service to be rendered, or act to be done, by the council by or under any Act conferring functions on the council, or by or under any contract
  - j) an interest relating to the payment of fees to councillors (including the mayor and deputy mayor)
  - k) an interest relating to the payment of expenses and the provision of facilities to councillors (including the mayor and deputy mayor) in accordance with a policy under section 252 of the LGA
  - l) an interest relating to an election to the office of mayor arising from the fact that a fee for the following 12 months has been determined for the office of mayor
  - m) an interest of a person arising from the passing for payment of a regular account for the wages or salary of an employee who is a relative of the person
  - n) an interest arising from being covered by, or a proposal to be covered by, indemnity insurance as a councillor or a council committee member
  - o) an interest arising from the appointment of a councillor to a body as a representative or delegate of the council, whether or not a fee or other recompense is payable to the representative or delegate.
- 4.7 For the purposes of clause 4.6, “relative” has the same meaning as in clause 4.4, but includes your spouse or de facto partner.



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## What disclosures must be made by a designated person?

4.8 Designated persons include:

- a) the general manager
- b) other senior staff of the council for the purposes of section 332 of the LGA
- c) a person (other than a member of the senior staff of the council) who is a member of staff of the council or a delegate of the council and who holds a position identified by the council as the position of a designated person because it involves the exercise of functions (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the person's duty as a member of staff or delegate and the person's private interest
- d) a person (other than a member of the senior staff of the council) who is a member of a committee of the council identified by the council as a committee whose members are designated persons because the functions of the committee involve the exercise of the council's functions (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the member's duty as a member of the committee and the member's private interest.

4.9 A designated person:

- a) must prepare and submit written returns of interests in accordance with clauses 4.21, and
- b) must disclose pecuniary interests in accordance with clause 4.10.

4.10 A designated person must disclose in writing to the general manager (or if the person is the general manager, to the council) the nature of any pecuniary interest the person has in any council matter with which the person is dealing as soon as practicable after becoming aware of the interest.

4.11 Clause 4.10 does not require a designated person who is a member of staff of the council to disclose a pecuniary interest if the interest relates only to the person's salary as a member of staff, or to their other conditions of employment.

4.12 The general manager must, on receiving a disclosure from a designated person, deal with the matter to which the disclosure relates or refer it to another person to deal with.

4.13 A disclosure by the general manager must, as soon as practicable after the disclosure is made, be laid on the table at a meeting of the council and the council must deal with the matter to which the disclosure relates or refer it to another person to deal with.

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## What disclosures must be made by council staff other than designated persons?

4.14 A member of staff of council, other than a designated person, must disclose in writing to their manager or the general manager the nature of any pecuniary interest they have in a matter they are dealing with as soon as practicable after becoming aware of the interest.

4.15 The staff member's manager or the general manager must, on receiving a disclosure under clause 4.14, deal with the matter to which the disclosure relates or refer it to another person to deal with.

## What disclosures must be made by council advisers?

- 4.16 A person who, at the request or with the consent of the council or a council committee, gives advice on any matter at any meeting of the council or committee, must disclose the nature of any pecuniary interest the person has in the matter to the meeting at the time the advice is given. The person is not required to disclose the person's interest as an adviser.
- 4.17 A person does not breach clause 4.16 if the person did not know, and could not reasonably be expected to have known, that the matter under consideration at the meeting was a matter in which they had a pecuniary interest.

## What disclosures must be made by a council committee member?

- 4.18 A council committee member must disclose pecuniary interests in accordance with clause 4.28 and comply with clause 4.29.
- 4.19 For the purposes of clause 4.18, a "council committee member" includes a member of staff of council who is a member of the committee.

## What disclosures must be made by a councillor?

- 4.20 A councillor:
- a) must prepare and submit written returns of interests in accordance with clause 4.21, and

- b) must disclose pecuniary interests in accordance with clause 4.28 and comply with clause 4.29 where it is applicable.

## Disclosure of interests in written returns

- 4.21 A councillor or designated person must make and lodge with the general manager a return in the form set out in schedule 2 to this code, disclosing the councillor's or designated person's interests as specified in schedule 1 to this code within 3 months after:
- a) becoming a councillor or designated person, and
  - b) 30 June of each year, and
  - c) the councillor or designated person becoming aware of an interest they are required to disclose under schedule 1 that has not been previously disclosed in a return lodged under paragraphs (a) or (b).
- 4.22 A person need not make and lodge a return under clause 4.21, paragraphs (a) and (b) if:
- a) they made and lodged a return under that clause in the preceding 3 months, or
  - b) they have ceased to be a councillor or designated person in the preceding 3 months.
- 4.23 A person must not make and lodge a return that the person knows or ought reasonably to know is false or misleading in a material particular.
- 4.24 The general manager must keep a register of returns required to be made and lodged with the general manager.

- 4.25 Returns required to be lodged with the general manager under clause 4.21(a) and (b) must be tabled at the first meeting of the council after the last day the return is required to be lodged.
- 4.26 Returns required to be lodged with the general manager under clause 4.21(c) must be tabled at the next council meeting after the return is lodged.
- 4.27 Information contained in returns made and lodged under clause 4.21 is to be made publicly available in accordance with the requirements of the Government Information (Public Access) Act 2009, the Government Information (Public Access) Regulation 2009 and any guidelines issued by the Information Commissioner.

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## Disclosure of pecuniary interests at meetings

- 4.28 A councillor or a council committee member who has a pecuniary interest in any matter with which the council is concerned, and who is present at a meeting of the council or committee at which the matter is being considered, must disclose the nature of the interest to the meeting as soon as practicable.
- 4.29 The councillor or council committee member must not be present at, or in sight of, the meeting of the council or committee:
  - a) at any time during which the matter is being considered or discussed by the council or committee, or
  - b) at any time during which the council or committee is voting on any question in relation to the matter.
- 4.30 In the case of a meeting of a board of a joint organisation, a voting representative is taken to be present at the meeting for

the purposes of clauses 4.28 and 4.29 where they participate in the meeting by telephone or other electronic means.

- 4.31 A disclosure made at a meeting of a council or council committee must be recorded in the minutes of the meeting.
- 4.32 A general notice may be given to the general manager in writing by a councillor or a council committee member to the effect that the councillor or council committee member, or the councillor's or council committee member's spouse, de facto partner or relative, is:
  - a) a member of, or in the employment of, a specified company or other body, or
  - b) a partner of, or in the employment of, a specified person.

Such a notice is, unless and until the notice is withdrawn or until the end of the term of the council in which it is given (whichever is the sooner), sufficient disclosure of the councillor's or council committee member's interest in a matter relating to the specified company, body or person that may be the subject of consideration by the council or council committee after the date of the notice.

- 4.33 A councillor or a council committee member is not prevented from being present at and taking part in a meeting at which a matter is being considered, or from voting on the matter, merely because the councillor or council committee member has an interest in the matter of a kind referred to in clause 4.6.
- 4.34 A person does not breach clauses 4.28 or 4.29 if the person did not know, and could not reasonably be expected to have known, that the matter under consideration at the meeting was a matter in which they had a pecuniary interest.

- 4.35 Despite clause 4.29, a councillor who has a pecuniary interest in a matter may participate in a decision to delegate consideration of the matter in question to another body or person.
- 4.36 Clause 4.29 does not apply to a councillor who has a pecuniary interest in a matter that is being considered at a meeting 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 portion 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 portion of the council's area, and
  - b) the pecuniary interest arises only because of an interest of the councillor in the councillor's principal place of residence or an interest of another person (whose interests are relevant under clause 4.3) in that person's principal place of residence, and
  - c) the councillor made a special disclosure under clause 4.37 in relation to the interest before the commencement of the meeting.
- 4.37 A special disclosure of a pecuniary interest made for the purposes of clause 4.36(c) must:
- a) be in the form set out in schedule 3 of this code and contain the information required by that form, and
  - b) be laid on the table at a meeting of the council as soon as practicable after the disclosure is made, and the information contained in the special disclosure is to be recorded in the minutes of the meeting.
- 4.38 The Minister for Local Government may, conditionally or unconditionally, allow a councillor or a council committee member who has a pecuniary interest in a matter with which the council is concerned to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion:
- a) that the number of councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business, or
  - b) that it is in the interests of the electors for the area to do so.
- 4.39 A councillor or a council committee member with a pecuniary interest in a matter who is permitted to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter under clause 4.38, must still disclose the interest they have in the matter in accordance with clause 4.28.



# Part 5: Non-Pecuniary Conflicts of Interest



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## What is a non-pecuniary conflict of interest?

- 5.1 Non-pecuniary interests are private or personal interests a council official has that do not amount to a pecuniary interest as defined in clause 4.1 of this code. These commonly arise out of family or personal relationships, or out of involvement in sporting, social, religious or other cultural groups and associations, and may include an interest of a financial nature.
- 5.2 A non-pecuniary conflict of interest exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your official functions in relation to a matter.
- 5.3 The personal or political views of a council official do not constitute a private interest for the purposes of clause 5.2.
- 5.4 Non-pecuniary conflicts of interest must be identified and appropriately managed to uphold community confidence in the probity of council decision-making. The onus is on you to identify any non-pecuniary conflict of interest you may have in matters that you deal with, to disclose the interest fully and in writing, and to take appropriate action to manage the conflict in accordance with this code.
- 5.5 When considering whether or not you have a non-pecuniary conflict of interest in a matter you are dealing with, it is always important to think about how others would view your situation.

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## Managing non-pecuniary conflicts of interest

- 5.6 Where you have a non-pecuniary conflict of interest in a matter for the purposes of clause 5.2, you must disclose the relevant private interest you have in relation to the matter fully and in writing as soon as

practicable after becoming aware of the non-pecuniary conflict of interest and on each occasion on which the non-pecuniary conflict of interest arises in relation to the matter. In the case of members of council staff other than the general manager, such a disclosure is to be made to the staff member's manager. In the case of the general manager, such a disclosure is to be made to the mayor.

- 5.7 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 on each occasion on which the non-pecuniary conflict of interest arises. This disclosure constitutes disclosure in writing for the purposes of clause 5.6.
- 5.8 How you manage a non-pecuniary conflict of interest will depend on whether or not it is significant.
- 5.9 As a general rule, a non-pecuniary conflict of interest will be significant where it does not involve a pecuniary interest for the purposes of clause 4.1, but it involves:
  - a) a relationship between a council official and another person who is affected by a decision or a matter under consideration that is particularly close, such as a current or former spouse or de facto partner, a relative for the purposes of clause 4.4 or another person from the council official's extended family that the council official has a close personal relationship with, or another person living in the same household
  - b) other relationships with persons who are affected by a decision or a matter under consideration 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 (such as a sporting body, club, religious, cultural or charitable organisation, corporation or association) that is affected by a decision or a matter under consideration that is particularly strong. The strength of a council official's affiliation with an organisation is to be determined by the extent to which they actively participate in the management, administration or other activities of the organisation
  - d) membership, as the council's representative, of the board or management committee of an organisation that is affected by a decision or a matter under consideration, in circumstances where the interests of the council and the organisation are potentially in conflict in relation to the particular matter
  - e) a financial interest (other than an interest of a type referred to in clause 4.6) that is not a pecuniary interest for the purposes of clause 4.1
  - f) the conferral or loss of a personal benefit other than one conferred or lost as a member of the community or a broader class of people affected by a decision.
- 5.10 Significant non-pecuniary conflicts of interest must be managed in one of two ways:
- a) by not participating in consideration of, or decision making in relation to, the matter in which you have the significant non-pecuniary conflict of interest and the matter being allocated to another person for consideration or determination, or
  - b) if the significant non-pecuniary conflict of interest arises in relation to a matter under consideration at a council or committee meeting, by managing the conflict of interest as if you had a pecuniary interest in the matter by complying with clauses 4.28 and 4.29.
- 5.11 If you determine that you have a non-pecuniary conflict of interest in a matter that is not significant and does not require further action, when disclosing the interest you must also explain in writing why you consider that the non-pecuniary conflict of interest is not significant and does not require further action in the circumstances.
- 5.12 If you are a member of staff of council other than the general manager, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with and at the direction of your manager. In the case of the general manager, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with and at the direction of the mayor.
- 5.13 Despite clause 5.10(b), a councillor who has a significant non-pecuniary conflict of interest in a matter, may participate in a decision to delegate consideration of the matter in question to another body or person.
- 5.14 Council committee members are not required to declare and manage a non-pecuniary conflict of interest in accordance with the requirements of this Part where it arises from an interest they have as a person chosen to represent the community, or as a member of a non-profit organisation or other community or special interest group, if they have been appointed to represent the organisation or group on the council committee.



## Political donations

- 5.15 Councillors should be aware that matters before council or committee meetings involving their political donors may also give rise to a non-pecuniary conflict of interest.
- 5.16 Where you are a councillor and have received or knowingly benefitted from a reportable political donation:
- a) made by a major political donor in the previous four years, and
  - b) the major political donor has a matter before council,
- you must declare a non-pecuniary conflict of interest in the matter, disclose the nature of the interest, and manage the conflict of interest as if you had a pecuniary interest in the matter by complying with clauses 4.28 and 4.29. A disclosure made under this clause must be recorded in the minutes of the meeting.
- 5.17 For the purposes of this Part:
- a) a “reportable political donation” has the same meaning as it has in section 6 of the *Electoral Funding Act 2018*
  - b) “major political donor” has the same meaning as it has in the *Electoral Funding Act 2018*.
- 5.18 Councillors should note that political donations that are not a “reportable political donation”, 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 interest. Councillors should determine whether or not such conflicts are significant for the purposes of clause 5.9 and take the appropriate action to manage them.
- 5.19 Despite clause 5.16, a councillor who has received or knowingly benefitted from a reportable political donation of the kind referred to in that clause, may participate in a decision to delegate consideration of the matter in question to another body or person.

## Loss of quorum as a result of compliance with this Part

- 5.20 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 interest 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 portion 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 portion of the council’s area, and
  - b) the non-pecuniary conflict of interest arises only because of an interest that a person has in that person’s principal place of residence, and
  - c) the councillor discloses the interest they have in the matter that would otherwise have precluded their participation in consideration of the matter under this Part in accordance with clause 5.6.
- 5.21 The Minister for Local Government may, conditionally or unconditionally, allow a councillor or a council committee member who is precluded under this Part from participating in the consideration of a matter to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion:

- a) that the number of councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business, or
- b) that it is in the interests of the electors for the area to do so.

5.22 Where the Minister exempts a councillor or committee member from complying with a requirement under this Part under clause 5.21, the councillor or committee member must still disclose any interests they have in the matter the exemption applies to, in accordance with clause 5.6.

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## Other business or employment

- 5.23 The general manager must not engage, for remuneration, in private employment, contract work or other business outside the service of the council without the approval of the council.
- 5.24 A member of staff must not engage, for remuneration, in private employment, contract work or other business outside the service of the council that relates to the business of the council or that might conflict with the staff member's council duties unless they have notified the general manager in writing of the employment, work or business and the general manager has given their written approval for the staff member to engage in the employment, work or business.
- 5.25 The general manager may at any time prohibit a member of staff from engaging, for remuneration, in private employment, contract work or other business outside the service of the council that relates to the business of the council, or that might conflict with the staff member's council duties.

5.26 A member of staff must not engage, for remuneration, in private employment, contract work or other business outside the service of the council if prohibited from doing so.

5.27 Members of staff must ensure that any outside employment, work or business they engage in will not:

- a) conflict with their official duties
- b) involve using confidential information or council resources obtained through their work with the council including where private use is permitted
- c) require them to work while on council duty
- d) discredit or disadvantage the council
- e) pose, due to fatigue, a risk to their health or safety, or to the health and safety of their co-workers.

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## Personal dealings with council

- 5.28 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 development 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.
- 5.29 You must undertake any personal dealings you have with the council in a manner that is consistent with the way other members of the community deal with the council. You must also ensure that you disclose and appropriately manage any conflict of interest you may have in any matter in accordance with the requirements of this code.



# Part 6:

# Personal Benefit



- 6.1 For the purposes of this Part, a gift or a benefit is something offered to or received by a council official or someone personally associated with them for their personal use and enjoyment.
- 6.2 A reference to a gift or benefit in this Part does not include:
- a) a political donation for the purposes of the *Electoral Funding Act 2018*
  - b) a gift provided to the council as part of a cultural exchange or sister-city relationship that is not converted for the personal use or enjoyment of any individual council official or someone personally associated with them
  - c) attendance by a council official at a work-related event or function for the purposes of performing their official duties, or
  - d) free or subsidised meals, beverages or refreshments of token value provided to council officials in conjunction with the performance of their official duties such as, but not limited to:
    - i) the discussion of official business
    - ii) work-related events such as council-sponsored or community events, training, education sessions or workshops
    - iii) conferences
    - iv) council functions or events
    - v) social functions organised by groups, such as council committees and community organisations.

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## Gifts and benefits

- 6.3 You must avoid situations that would give rise to the appearance that a person or body is attempting to secure favourable treatment from you or from the council, through the provision of gifts, benefits or hospitality of any kind to you or someone personally associated with you.
- 6.4 A gift or benefit is deemed to have been accepted by you for the purposes of this Part, where it is received by you or someone personally associated with you.

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

- 6.5 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) subject to clause 6.7, accept any gift or benefit of more than token value as defined by clause 6.9
  - e) accept an offer of cash or a cash-like gift as defined by clause 6.13, regardless of the amount
  - f) participate in competitions for prizes where eligibility is based on the council being in or entering into a customer-supplier relationship with the competition organiser
  - g) personally benefit from reward points programs when purchasing on behalf of the council.

- 6.6 Where you receive a gift or benefit of any value other than one referred to in clause 6.2, you must disclose this promptly to your manager or the general manager in writing. The recipient, manager, or general manager must ensure that, at a minimum, the following details are recorded in the council's gift register:
- a) the nature of the gift or benefit
  - b) the estimated monetary value of the gift or benefit
  - c) the name of the person who provided the gift or benefit, and
  - d) the date on which the gift or benefit was received.
- 6.7 Where you receive a gift or benefit of more than token value that cannot reasonably be refused or returned, the gift or benefit must be surrendered to the council, unless the nature of the gift or benefit makes this impractical.

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## Gifts and benefits of token value

- 6.8 You may accept gifts and benefits of token value. Gifts and benefits of token value are one or more gifts or benefits received from a person or organisation over a 12-month period that, when aggregated, do not exceed a value of \$50. They include, but are not limited to:
- a) invitations to and attendance at local social, cultural or sporting events with a ticket value that does not exceed \$50
  - b) gifts of alcohol that do not exceed a value of \$50
  - c) ties, scarves, coasters, tie pins, diaries, chocolates or flowers or the like
  - d) prizes or awards that do not exceed \$50 in value.

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## Gifts and benefits of more than token value

- 6.9 Gifts or benefits that exceed \$50 in value are gifts or benefits of more than token value for the purposes of clause 6.5(d) and, subject to clause 6.7, must not be accepted.
- 6.10 Gifts and benefits of more than token value include, but are not limited to, tickets to major sporting events (such as international matches or matches in national sporting codes) with a ticket value that exceeds \$50, corporate hospitality at a corporate facility at major sporting events, free or discounted products or services for personal use provided on terms that are not available to the general public or a broad class of persons, the use of holiday homes, artworks, free or discounted travel.
- 6.11 Where you have accepted a gift or benefit of token value from a person or organisation, you must not accept a further gift or benefit from the same person or organisation or another person associated with that person or organisation within a single 12-month period where the value of the gift, added to the value of earlier gifts received from the same person or organisation, or a person associated with that person or organisation, during the same 12-month period would exceed \$50 in value.
- 6.12 For the purposes of this Part, the value of a gift or benefit is the monetary value of the gift or benefit inclusive of GST.

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## “Cash-like gifts”

6.13 For the purposes of clause 6.5(e), “cash-like gifts” include but are not limited to, gift vouchers, credit cards, debit cards with credit on them, prepayments such as phone or internet credit, lottery tickets, memberships or entitlements to discounts that are not available to the general public or a broad class of persons.

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## Improper and undue influence

6.14 You must not use your position to influence other council officials in the performance of their official functions 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 proper exercise of their role as prescribed under the LGA.

6.15 You must not take advantage (or seek to take advantage) of your status or position with council, or of functions you perform for council, in order to obtain a private benefit for yourself or for any other person or body.

# Part 7: Relationships Between Council Officials





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## Obligations of councillors and administrators

- 7.1 Each council is a body politic. The councillors or administrator/s are the governing body of the council. Under section 223 of the LGA, the role of the governing body of the council includes the development and endorsement of the strategic plans, programs, strategies and policies of the council, including those relating to workforce policy, and to keep the performance of the council under review.
- 7.2 Councillors or administrators must not:
- a) direct council staff other than by giving appropriate direction to the general manager by way of council or committee resolution, or by the mayor or administrator exercising their functions under section 226 of the LGA
  - 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 staff member or delegate
  - 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 the council's contractors, including the council's legal advisers, unless by the mayor or administrator exercising their functions under section 226 of the LGA.

- 7.3 Despite clause 7.2, councillors may contact the council's external auditor or the chair of the council's audit risk and improvement committee to provide information reasonably necessary for the external auditor or the audit, risk and improvement committee to effectively perform their functions.

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## Obligations of staff

- 7.4 Under section 335 of the LGA, the role of the general manager includes conducting the day-to-day management of the council in accordance with the strategic plans, programs, strategies and policies of the council, implementing without undue delay, lawful decisions of the council and ensuring that the mayor and other councillors are given timely information and advice and the administrative and professional support necessary to effectively discharge their official functions.
- 7.5 Members of staff of council must:
- a) give their attention to the business of the council while on duty
  - b) ensure that their work is carried out ethically, efficiently, economically and effectively
  - c) carry out reasonable and 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 interfere with the performance of their official duties.

## Inappropriate interactions

- 7.6 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 matters relating to broader workforce policy), grievances, workplace investigations and disciplinary matters
  - b) council staff approaching councillors and administrators to discuss individual or operational staff matters (other than matters relating to broader workforce policy), grievances, workplace investigations and disciplinary matters
  - c) subject to clause 8.6, council staff refusing to give information that is available to other councillors to a particular councillor
  - d) councillors and administrators who have lodged an application with the council, discussing the matter with council staff in staff-only areas of the council
  - e) councillors and administrators approaching members of local planning panels or discussing any application that is either before the panel or that will come before the panel at some future time, except during a panel meeting where the application forms part of the agenda and the councillor has a right to be heard by the panel at the meeting
  - f) councillors and administrators being overbearing or threatening to council staff
  - g) council staff being overbearing or threatening to councillors or administrators
  - h) councillors and administrators making personal attacks on council staff or engaging in conduct towards staff that would be contrary to the general conduct provisions in Part 3 of this code in public forums including social media
  - i) councillors and administrators directing or pressuring council staff in the performance of their work, or recommendations they should make
  - j) 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
  - k) council staff meeting with applicants or objectors alone AND outside office hours to discuss planning applications or proposals
  - l) councillors attending on-site inspection meetings with lawyers and/or consultants engaged by the council associated with current or proposed legal proceedings unless permitted to do so by the council's general manager or, in the case of the mayor or administrator, unless they are exercising their functions under section 226 of the LGA.



# Part 8:

## Access to Information and Council Resources

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## Councillor and administrator access to information

- 8.1 The general manager is responsible for ensuring that councillors and administrators can access information necessary for the performance of their official functions. The general manager and public officer are also responsible for ensuring that members of the public can access publicly available council information under the *Government Information (Public Access) Act 2009* (the GIPA Act).
- 8.2 The general manager must provide councillors and administrators with the information necessary to effectively discharge their official functions.
- 8.3 Members of staff of council must provide full and timely information to councillors and administrators sufficient to enable them to exercise their official functions and in accordance with council procedures.
- 8.4 Members of staff of council who provide any information to a particular councillor in the performance of their official functions must also make it available to any other councillor who requests it and in accordance with council procedures.
- 8.5 Councillors and administrators who have a private interest only in council information have the same rights of access as any member of the public.
- 8.6 Despite clause 8.4, councillors and administrators who are precluded from participating in the consideration of a matter under this code because they have a conflict of interest in the matter, are not entitled to request access to council information in relation to the matter unless the information is otherwise

available to members of the public, or the council has determined to make the information available under the GIPA Act.

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## Councillors and administrators to properly examine and consider information

- 8.7 Councillors and administrators must ensure that they comply with their duty under section 439 of the LGA to act honestly and exercise a reasonable degree of care and diligence by properly examining and considering all the information provided to them relating to matters that they are required to make a decision on.

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## Refusal of access to information

- 8.8 Where the general manager or public officer determine to refuse access to information requested by a councillor or administrator, they must act reasonably. In reaching this decision they must take into account whether or not the information requested is necessary for the councillor or administrator to perform their official functions (see clause 8.2) and whether they have disclosed a conflict of interest in the matter the information relates to that would preclude their participation in consideration of the matter (see clause 8.6). The general manager or public officer must state the reasons for the decision if access is refused.

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## Use of certain council information

- 8.9 In regard to information obtained in your capacity as a council official, you must:
- a) subject to clause 8.14, 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 access 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.

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## Use and security of confidential information

- 8.10 You must maintain the integrity and security of confidential information in your possession, or for which you are responsible.
- 8.11 In addition to your general obligations relating to the use of council information, you must:
- a) only access confidential information that you have been authorised to access and only do so for the purposes of exercising your official functions
  - b) protect confidential information
  - c) only release confidential information if you have authority to do so
  - d) only use confidential information for the purpose for which it is intended to be used

- e) not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person
- f) not use confidential information with the intention to cause harm or detriment to the council or any other person or body
- g) not disclose any confidential information discussed during a confidential session of a council or committee meeting or any other confidential forum (such as, but not limited to, workshops or briefing sessions).

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## Personal information

- 8.12 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) the council's privacy management plan
  - e) the Privacy Code of Practice for Local Government

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## Use of council resources

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

- 8.14 Union delegates and consultative committee members may have reasonable access to council resources and information 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.
- 8.15 You must be scrupulous in your use of council property, including intellectual property, official services, facilities, technology and electronic devices and must not permit their misuse by any other person or body.
- 8.16 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.
- 8.17 You must not use council resources (including council staff), property or facilities for the purpose of assisting your election campaign or the election campaigns 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.
- 8.18 You must not use the council letterhead, council crests, council email or social media or other information that could give the appearance it is official council material:
- a) for the purpose of assisting your election campaign or the election campaign of others, or
  - b) for other non-official purposes.
- 8.19 You must not convert any property of the council to your own use unless properly authorised.
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- ## Internet access and use of social media
- 8.20 You must not use council's computer resources or mobile or other devices to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature, or that could otherwise lead to criminal penalty or civil liability and/or damage the council's reputation.
- 8.21 You must not use social media to post or share comments, photos, videos, electronic recordings or other information that:
- a) is offensive, humiliating, threatening or intimidating to other council officials or those that deal with the council
  - b) contains content about the council that is misleading or deceptive
  - c) divulges confidential council information
  - d) breaches the privacy of other council officials or those that deal with council
  - e) contains allegations of suspected breaches of this code or information about the consideration of a matter under the Procedures, or
  - f) could be perceived to be an official comment on behalf of the council where you have not been authorised to make such comment.

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## Council record keeping

- 8.22 You must comply with the requirements of the *State Records Act 1998* and the council's records management policy.
- 8.23 All information created, sent and received in your official capacity is a council record and must be managed in accordance with the requirements of the *State Records Act 1998* and the council's approved records management policies and practices.
- 8.24 All information stored in either soft or hard copy on council supplied resources (including technology devices and email accounts) is deemed to be related to the business of the council and will be treated as council records, regardless of whether the original intention was to create the information for personal purposes.
- 8.25 You must not destroy, alter, or dispose of council information or records, unless authorised to do so. If you need to alter or dispose of council information or records, you must do so in consultation with the council's records manager and comply with the requirements of the *State Records Act 1998*.

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## Councillor access to council buildings

- 8.26 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.
- 8.27 Councillors and administrators must not enter staff-only areas of council buildings without the approval of the general manager (or their delegate) or as provided for in the procedures governing the interaction of councillors and council staff.
- 8.28 Councillors and administrators must ensure that when they are within a staff only area they refrain from conduct that could be perceived to improperly influence council staff decisions.





# Part 9: Maintaining the Integrity of this Code

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## Complaints made for an improper purpose

- 9.1 You must not make or threaten to make a complaint or cause a complaint to be made alleging a breach of this code for an improper purpose.
- 9.2 For the purposes of clause 9.1, 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 bully, 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 the Procedures
  - g) to take reprisal action against a person for making a complaint alleging a breach of this code
  - h) to take reprisal action against a person for exercising a function prescribed under the Procedures
  - i) to prevent or disrupt the effective administration of this code under the Procedures.

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## Detrimental action

- 9.3 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 alleging a breach of this code.
- 9.4 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 the Procedures.
- 9.5 For the purposes of clauses 9.3 and 9.4, a 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.

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## Compliance with requirements under the Procedures

- 9.6 You must not engage in conduct that is calculated to impede or disrupt the consideration of a matter under the Procedures.
- 9.7 You must comply with a reasonable and lawful request made by a person exercising a function under the Procedures. A failure to make a written or oral submission invited under the Procedures will not constitute a breach of this clause.
- 9.8 You must comply with a practice ruling made by the Office under the Procedures.

- 9.9 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.

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## Disclosure of information about the consideration of a matter under the Procedures

- 9.10 All allegations of breaches of this code must be dealt with under and in accordance with the Procedures.
- 9.11 You must not allege breaches of this code other than by way of a complaint made or initiated under the Procedures.
- 9.12 You must not make allegations about, or disclose information about, suspected breaches of this code at council, committee or other meetings, whether open to the public or not, or in any other forum, whether public or not.
- 9.13 You must not disclose information about a complaint you have made alleging a breach of this code or a matter being considered under the Procedures except for the purposes of seeking legal advice, unless the disclosure is otherwise permitted under the Procedures.
- 9.14 Nothing under this Part prevents a person from making a public interest disclosure to an appropriate public authority or investigative authority under the *Public Interest Disclosures Act 1994*.

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## Complaints alleging a breach of this Part

- 9.15 Complaints alleging a breach of this Part by a councillor, the general manager or an administrator are to be managed by the Office. This clause does not prevent the Office from referring an alleged breach of this Part back to the council for consideration in accordance with the Procedures.
- 9.16 Complaints alleging a breach of this Part by other council officials are to be managed by the general manager in accordance with the Procedures.



**Schedule 1:  
Disclosures of Interest and Other  
Matters in Written Returns  
Submitted Under Clause 4.21**

# Part 1: Preliminary

## Definitions

1. For the purposes of the schedules to this code, the following definitions apply:

*address* means:

- a) in relation to a person other than a corporation, the last residential or business address of the person known to the councillor or designated person disclosing the address, or
- b) in relation to a corporation, the address of the registered office of the corporation in New South Wales or, if there is no such office, the address of the principal office of the corporation in the place where it is registered, or
- c) in relation to any real property, the street address of the property.

*de facto partner* has the same meaning as defined in section 21C of the *Interpretation Act 1987*.

*disposition of property* means a conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, including the following:

- a) the allotment of shares in a company
- b) the creation of a trust in respect of property
- c) the grant or creation of a lease, mortgage, charge, easement, licence, power, partnership or interest in respect of property
- d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of a debt, contract or chose in action, or of an interest in respect of property

- e) the exercise by a person of a general power of appointment over property in favour of another person
- f) a transaction entered into by a person who intends by the transaction to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of another person.

*gift* means a disposition of property made otherwise than by will (whether or not by instrument in writing) without consideration, or with inadequate consideration, in money or money's worth passing from the person to whom the disposition was made to the person who made the disposition, but does not include a financial or other contribution to travel.

*interest* means:

- a) in relation to property, an estate, interest, right or power, at law or in equity, in or over the property, or
- b) in relation to a corporation, a relevant interest (within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth) in securities issued or made available by the corporation.

*listed company* means a company that is listed within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth.

*occupation* includes trade, profession and vocation.

*professional or business association* means an incorporated or unincorporated body or organisation having as one of its objects or activities the promotion of the economic interests of its members in any occupation.

*property* includes money.

*return date* means:

- a) in the case of a return made under clause 4.21(a), the date on which a person became a councillor or designated person
- b) in the case of a return made under clause 4.21(b), 30 June of the year in which the return is made
- c) in the case of a return made under clause 4.21(c), the date on which the councillor or designated person became aware of the interest to be disclosed.

*relative* includes any of the following:

- a) a person's spouse or de facto partner
- b) a person's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
- c) a person's spouse's or de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
- d) the spouse or de facto partner of a person referred to in paragraphs (b) and (c).

*travel* includes accommodation incidental to a journey.

---

## Matters relating to the interests that must be included in returns

2. *Interests etc. outside New South Wales:* A reference in this schedule or in schedule 2 to a disclosure concerning a corporation or other thing includes any reference to a disclosure concerning a corporation registered, or other thing arising or received, outside New South Wales.
3. *References to interests in real property:* A reference in this schedule or in schedule 2 to real property in which a councillor or designated person has an interest includes a reference to any real property situated in Australia in which the councillor or designated person has an interest.
4. *Gifts, loans etc. from related corporations:* For the purposes of this schedule and schedule 2, gifts or contributions to travel given, loans made, or goods or services supplied, to a councillor or designated person by two or more corporations that are related to each other for the purposes of section 50 of the *Corporations Act 2001* of the Commonwealth are all given, made or supplied by a single corporation.



## Part 2: Pecuniary interests to be disclosed in returns

### Real property

5. A person making a return under clause 4.21 of this code must disclose:
  - a) the street address of each parcel of real property in which they had an interest on the return date, and
  - b) the street address of each parcel of real property in which they had an interest in the period since 30 June of the previous financial year, and
  - c) the nature of the interest.
6. An interest in a parcel of real property need not be disclosed in a return if the person making the return had the interest only:
  - a) as executor of the will, or administrator of the estate, of a deceased person and not as a beneficiary under the will or intestacy, or
  - b) as a trustee, if the interest was acquired in the ordinary course of an occupation not related to their duties as the holder of a position required to make a return.
7. An interest in a parcel of real property need not be disclosed in a return if the person ceased to hold the interest prior to becoming a councillor or designated person.
8. For the purposes of clause 5 of this schedule, “interest” includes an option to purchase.

### Gifts

9. A person making a return under clause 4.21 of this code must disclose:
  - a) a description of each gift received in the period since 30 June of the previous financial year, and
  - b) the name and address of the donor of each of the gifts.
10. A gift need not be included in a return if:
  - a) it did not exceed \$500, unless it was among gifts totalling more than \$500 made by the same person during a period of 12 months or less, or
  - b) it was a political donation disclosed, or required to be disclosed, under Part 3 of the *Electoral Funding Act 2018*, or
  - c) the donor was a relative of the donee, or
  - d) subject to paragraph (a), it was received prior to the person becoming a councillor or designated person.
11. For the purposes of clause 10 of this schedule, the amount of a gift other than money is an amount equal to the value of the property given.

### Contributions to travel

12. A person making a return under clause 4.21 of this code must disclose:
  - a) the name and address of each person who made any financial or other contribution to the expenses of any travel undertaken by the person in the period since 30 June of the previous financial year, and
  - b) the dates on which the travel was undertaken, and
  - c) the names of the states and territories, and of the overseas countries, in which the travel was undertaken.

13. A financial or other contribution to any travel need not be disclosed under this clause if it:
- a) was made from public funds (including a contribution arising from travel on free passes issued under an Act or from travel in government or council vehicles), or
  - b) was made by a relative of the traveller, or
  - c) was made in the ordinary course of an occupation of the traveller that is not related to their functions as the holder of a position requiring the making of a return, or
  - d) did not exceed \$250, unless it was among gifts totalling more than \$250 made by the same person during a 12-month period or less, or
  - e) was a political donation disclosed, or required to be disclosed, under Part 3 of the *Electoral Funding Act 2018*, or
  - f) was made by a political party of which the traveller was a member and the travel was undertaken for the purpose of political activity of the party in New South Wales, or to enable the traveller to represent the party within Australia, or
  - g) subject to paragraph (d) it was received prior to the person becoming a councillor or designated person.
14. For the purposes of clause 13 of this schedule, the amount of a contribution (other than a financial contribution) is an amount equal to the value of the contribution.

---

## Interests and positions in corporations

15. A person making a return under clause 4.21 of this code must disclose:
- a) the name and address of each corporation in which they had an interest or held a position (whether remunerated or not) on the return date, and
  - b) the name and address of each corporation in which they had an interest or held a position in the period since 30 June of the previous financial year, and
  - c) the nature of the interest, or the position held, in each of the corporations, and
  - d) a description of the principal objects (if any) of each of the corporations, except in the case of a listed company.
16. An interest in, or a position held in, a corporation need not be disclosed if the corporation is:
- a) formed for the purpose of providing recreation or amusement, or for promoting commerce, industry, art, science, religion or charity, or for any other community purpose, and
  - b) required to apply its profits or other income in promoting its objects, and
  - c) prohibited from paying any dividend to its members.
17. An interest in a corporation need not be disclosed if the interest is a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company.
18. An interest or a position in a corporation need not be disclosed if the person ceased to hold the interest or position prior to becoming a councillor or designated person.

---

## Interests as a property developer or a close associate of a property developer

19. A person making a return under clause 4.21 of this code must disclose whether they were a property developer, or a close associate of a corporation that, or an individual who, is a property developer, on the return date.
20. For the purposes of clause 19 of this schedule:

*close associate*, in relation to a corporation or an individual, has the same meaning as it has in section 53 of the *Electoral Funding Act 2018*.

*property developer* has the same meaning as it has in Division 7 of Part 3 of the *Electoral Funding Act 2018*.

---

## Positions in trade unions and professional or business associations

21. A person making a return under clause 4.21 of the code must disclose:
- a) the name of each trade union, and of each professional or business association, in which they held any position (whether remunerated or not) on the return date, and
  - b) the name of each trade union, and of each professional or business association, in which they have held any position (whether remunerated or not) in the period since 30 June of the previous financial year, and
  - c) a description of the position held in each of the unions and associations.

22. A position held in a trade union or a professional or business association need not be disclosed if the person ceased to hold the position prior to becoming a councillor or designated person.

---

## Dispositions of real property

23. A person making a return under clause 4.21 of this code must disclose particulars of each disposition of real property by the person (including the street address of the affected property) in the period since 30 June of the previous financial year, under which they wholly or partly retained the use and benefit of the property or the right to re-acquire the property.
24. A person making a return under clause 4.21 of this code must disclose particulars of each disposition of real property to another person (including the street address of the affected property) in the period since 30 June of the previous financial year, that is made under arrangements with, but is not made by, the person making the return, being a disposition under which the person making the return obtained wholly or partly the use of the property.
25. A disposition of real property need not be disclosed if it was made prior to a person becoming a councillor or designated person.

---

## Sources of income

26. A person making a return under clause 4.21 of this code must disclose:
- a) each source of income that the person reasonably expects to receive in the period commencing on the first day after the return date and ending on the following 30 June, and
  - b) each source of income received by the person in the period since 30 June of the previous financial year.
27. A reference in clause 26 of this schedule to each source of income received, or reasonably expected to be received, by a person is a reference to:
- a) in relation to income from an occupation of the person:
    - i) a description of the occupation, and
    - ii) if the person is employed or the holder of an office, the name and address of their employer, or a description of the office, and
    - iii) if the person has entered into a partnership with other persons, the name (if any) under which the partnership is conducted, or
  - b) in relation to income from a trust, the name and address of the settlor and the trustee, or
  - c) in relation to any other income, a description sufficient to identify the person from whom, or the circumstances in which, the income was, or is reasonably expected to be, received.
28. The source of any income need not be disclosed by a person in a return if the amount of the income received, or reasonably expected to be received, by the person from that source did not exceed \$500, or is not reasonably expected to exceed \$500, as the case may be.
29. The source of any income received by the person that they ceased to receive prior to becoming a councillor or designated person need not be disclosed.
30. A fee paid to a councillor or to the mayor or deputy mayor under sections 248 or 249 of the LGA need not be disclosed.

---

## Debts

31. A person making a return under clause 4.21 of this code must disclose the name and address of each person to whom the person was liable to pay any debt:
- a) on the return date, and
  - b) at any time in the period since 30 June of the previous financial year.
32. A liability to pay a debt must be disclosed by a person in a return made under clause 4.21 whether or not the amount, or any part of the amount, to be paid was due and payable on the return date or at any time in the period since 30 June of the previous financial year, as the case may be.
33. A liability to pay a debt need not be disclosed by a person in a return if:
- a) the amount to be paid did not exceed \$500 on the return date or in the period since 30 June of the previous financial year, as the case may be, unless:

- i) the debt was one of two or more debts that the person was liable to pay to one person on the return date, or at any time in the period since 30 June of the previous financial year, as the case may be, and
  - ii) the amounts to be paid exceeded, in the aggregate, \$500, or
- b) the person was liable to pay the debt to a relative, or
- c) in the case of a debt arising from a loan of money the person was liable to pay the debt to an authorised deposit-taking institution or other person whose ordinary business includes the lending of money, and the loan was made in the ordinary course of business of the lender, or
- d) in the case of a debt arising from the supply of goods or services:
- i) the goods or services were supplied in the period of 12 months immediately preceding the return date, or were supplied in the period since 30 June of the previous financial year, as the case may be, or
  - ii) the goods or services were supplied in the ordinary course of any occupation of the person that is not related to their duties as the holder of a position required to make a return, or
- e) subject to paragraph (a), the debt was discharged prior to the person becoming a councillor or designated person.

---

## Discretionary disclosures

34. A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision of this Schedule.

# Schedule 2: Form of Written Return of Interests Submitted Under Clause 4.21

## ‘Disclosures by councillors and designated persons’ return

1. The pecuniary interests and other matters to be disclosed in this return are prescribed by Schedule 1 of the *Model Code of Conduct for Local Councils in NSW* (the Model Code of Conduct).
2. If this is the first return you have been required to lodge with the general manager after becoming a councillor or designated person, do not complete Parts C, D and I of the return. All other parts of the return should be completed with appropriate information based on your circumstances at the return date, that is, the date on which you became a councillor or designated person.
3. If you have previously lodged a return with the general manager and you are completing this return for the purposes of disclosing a new interest that was not disclosed in the last return you lodged with the general manager, you must complete all parts of the return with appropriate information for the period from 30 June of the previous financial year or the date on which you became a councillor or designated person, (whichever is the later date), to the return date which is the date you became aware of the new interest to be disclosed in your updated return.
4. If you have previously lodged a return with the general manager and are submitting a new return for the new financial year, you must complete all parts of the return with appropriate information for the 12-month period commencing on 30 June of the previous year to 30 June this year.
5. This form must be completed using block letters or typed.

6. If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.
7. If there are no pecuniary interests or other matters of the kind required to be disclosed under a heading in this form, the word “NIL” is to be placed in an appropriate space under that heading.

## Important information

This information is being collected for the purpose of complying with clause 4.21 of the Model Code of Conduct.

You must not lodge a return that you know or ought reasonably to know is false or misleading in a material particular (see clause 4.23 of the Model Code of Conduct). Complaints about breaches of these requirements are to be referred to the Office of Local Government and may result in disciplinary action by the council, the Chief Executive of the Office of Local Government or the NSW Civil and Administrative Tribunal.

The information collected on this form will be kept by the general manager in a register of returns. The general manager is required to table all returns at a council meeting.

Information contained in returns made and lodged under clause 4.21 is to be made publicly available in accordance with the requirements of the *Government Information (Public Access) Act 2009*, the *Government Information (Public Access) Regulation 2009* and any guidelines issued by the Information Commissioner.

You have an obligation to keep the information contained in this return up to date. If you become aware of a new interest that must be disclosed in this return, or an interest that you have previously failed to disclose, you must submit an updated return within three months of becoming aware of the previously undisclosed interest.

Disclosure of pecuniary interests and other matters by *[full name of councillor or designated person]*

as at *[return date]*

in respect of the period from *[date]* to *[date]*

*[councillor's or designated person's signature]*

*[date]*

### A. Real Property

Street address of each parcel of real property in which I had an interest at the return date/at any time since 30 June	Nature of interest
--	--------------------

### B. Sources of income

1 Sources of income I reasonably expect to receive from an occupation in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from an occupation at any time since 30 June

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
---------------------------	--	--

2 Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from a trust since 30 June

Name and address of settlor	Name and address of trustee
-----------------------------	-----------------------------

3 Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June

Sources of other income I received at any time since 30 June

*[Include description sufficient to identify the person from whom, or the circumstances in which, that income was received]*

### C. Gifts

Description of each gift I received at any time since 30 June	Name and address of donor
---	---------------------------



### D. Contributions to travel

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time since 30 June	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel was undertaken
---	--------------------------------------	---

### E. Interests and positions in corporations

Name and address of each corporation in which I had an interest or held a position at the return date/at any time since 30 June	Nature of interest (if any)	Description of position (if any)	Description of principal objects (if any) of corporation (except in case of listed company)
---	-----------------------------	----------------------------------	---

### F. Were you a property developer or a close associate of a property developer on the return date? (Y/N)

### G. Positions in trade unions and professional or business associations

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at the return date/at any time since 30 June	Description of position
---	-------------------------

### H. Debts

Name and address of each person to whom I was liable to pay any debt at the return date/at any time since 30 June

### I. Dispositions of property

1 Particulars of each disposition of real property by me (including the street address of the affected property) at any time since 30 June as a result of which I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time

2 Particulars of each disposition of property to a person by any other person under arrangements made by me (including the street address of the affected property), being dispositions made at any time since 30 June, as a result of which I obtained, either wholly or in part, the use and benefit of the property

### J. Discretionary disclosures

**Schedule 3:  
Form of Special Disclosure of  
Pecuniary Interest Submitted  
Under Clause 4.37**

1. This form must be completed using block letters or typed.
2. If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.

---

## Important information

This information is being collected for the purpose of making a special disclosure of pecuniary interests under clause 4.36(c) of the *Model Code of Conduct for Local Councils in NSW* (the Model Code of Conduct).

The special disclosure must relate only to a pecuniary interest that a councillor has in the councillor's principal place of residence, or an interest another person (whose interests are relevant under clause 4.3 of the Model Code of Conduct) has in that person's principal place of residence.

Clause 4.3 of the Model Code of Conduct states that you will have a pecuniary interest in a matter because of the pecuniary interest of your spouse or your de facto partner or your relative or because your business partner or employer has a pecuniary interest. You will also have a pecuniary interest in a matter because you, your nominee, your business partner or your employer is a member of a company or other body that has a pecuniary interest in the matter.

"Relative" is defined by clause 4.4 of the Model Code of Conduct as meaning your, your spouse's or your de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child and the spouse or de facto partner of any of those persons.

You must not make a special disclosure that you know or ought reasonably to know is false or misleading in a material particular. Complaints about breaches of these requirements are to be referred to the Office of Local Government and may result in disciplinary action by the Chief Executive of the Office of Local Government or the NSW Civil and Administrative Tribunal.

This form must be completed by you before the commencement of the council or council committee meeting at which the special disclosure is being made. The completed form must be tabled at the meeting. Everyone is entitled to inspect it. The special disclosure must be recorded in the minutes of the meeting.

**Special disclosure of pecuniary interests by** *[full name of councillor]*

in the matter of *[insert name of environmental planning instrument]*

which is to be considered at a meeting of the *[name of council or council committee (as the case requires)]*

to be held on the      day of      20 .

**Pecuniary interest**

**Address of the affected principal place of residence of the councillor or an associated person, company or body (the identified land)**

Relationship of identified land to councillor  
*[Tick or cross one box.]*

- The councillor has an interest in the land (e.g. is the owner or has another interest arising out of a mortgage, lease, trust, option or contract, or otherwise).
- An associated person of the councillor has an interest in the land.
- An associated company or body of the councillor has an interest in the land.

**Matter giving rise to pecuniary interest<sup>1</sup>**

Nature of the land that is subject to a change in zone/planning control by the proposed LEP (the subject land)<sup>2</sup>

*[Tick or cross one box]*

- The identified land.
- Land that adjoins or is adjacent to or is in proximity to the identified land.

Current zone/planning control

*[Insert name of current planning instrument and identify relevant zone/planning control applying to the subject land]*

**1** Clause 4.1 of the Model Code of Conduct provides that 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. A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter, or if the interest is of a kind specified in clause 4.6 of the Model Code of Conduct.

**2** A pecuniary interest may arise by way of a change of permissible use of land adjoining, adjacent to or in proximity to land in which a councillor or a person, company or body referred to in clause 4.3 of the Model Code of Conduct has a proprietary interest.

---

*Proposed change of zone/planning control*

*[Insert name of proposed LEP and identify proposed change of zone/planning control applying to the subject land]*

---

Effect of proposed change of zone/planning control on councillor or associated person

*[Insert one of the following: "Appreciable financial gain" or "Appreciable financial loss"]*

---

*[If more than one pecuniary interest is to be declared, reprint the above box and fill in for each additional interest.]*

Councillor's signature

Date

[This form is to be retained by the council's general manager and included in full in the minutes of the meeting]



# Model Code of Conduct

for Local Councils  
in NSW

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2020



## **MODEL CODE OF CONDUCT FOR LOCAL COUNCILS IN NSW**

2020

### **ACCESS TO SERVICES**

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# Part 1: Introduction



This *Model Code of Conduct for Local Councils in NSW* (“the Model Code of Conduct”) is made under section 440 of the *Local Government Act 1993* (“LGA”) and the *Local Government (General) Regulation 2005* (“the Regulation”).

The Model Code of Conduct sets the minimum standards of conduct for council officials. It is prescribed by regulation to assist council officials to:

- understand and comply with 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 local government.

Section 440 of the LGA requires every council (including county councils) and joint organisation to adopt a code of conduct that incorporates the provisions of the Model Code of Conduct. A council’s or joint organisation’s adopted code of conduct may also include provisions that supplement the Model Code of Conduct and that extend its application to persons that are not “council officials” for the purposes of the Model Code of Conduct (eg volunteers, contractors and members of wholly advisory committees).

A council’s or joint organisation’s adopted code of conduct has no effect to the extent that it is inconsistent with the Model Code of Conduct. However, a council’s or joint organisation’s adopted code of conduct may prescribe requirements that are more onerous than those prescribed in the Model Code of Conduct.

Councillors, administrators, members of staff of councils, delegates of councils, (including members of council committees that are delegates of a council) and any other person a council’s adopted code of conduct applies to, must comply with the applicable provisions of their council’s code of conduct. It is the personal responsibility of council officials to comply with the standards in the code and to regularly review their personal circumstances and conduct 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 LGA. The LGA 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 a council’s code of conduct may give rise to disciplinary action.

**Note:** References in the Model Code of Conduct to councils are also to be taken as references to county councils and joint organisations.

**Note:** In adopting the Model Code of Conduct, joint organisations should adapt it to substitute the terms “board” for “council”, “chairperson” for “mayor”, “voting representative” for “councillor” and “executive officer” for “general manager”.

**Note:** In adopting the Model Code of Conduct, county councils should adapt it to substitute the term “chairperson” for “mayor” and “member” for “councillor”.

# Part 2: Definitions



In this code the following terms have the following meanings:

administrator	an administrator of a council appointed under the LGA other than an administrator appointed under section 66
committee	see the definition of “council committee”
complaint	a code of conduct complaint made for the purposes of clauses 4.1 and 4.2 of the Procedures.
conduct	includes acts and omissions
council	includes county councils and joint organisations
council committee	a committee established by a council comprising of councillors, staff or other persons that the council has delegated functions to and the council’s audit, risk and improvement committee
council committee member	a person other than a councillor or member of staff of a council who is a member of a council committee other than a wholly advisory committee, and a person other than a councillor who is a member of the council’s audit, risk and improvement committee
council official	includes councillors, members of staff of a council, administrators, council committee members, delegates of council and, for the purposes of clause 4.16, council advisers
councillor	any person elected or appointed to civic office, including the mayor and includes members and chairpersons of county councils and voting representatives of the boards of joint organisations and chairpersons of joint organisations
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	a person referred to in clause 4.8
election campaign	includes council, state and federal election campaigns
environmental planning instrument	has the same meaning as it has in the <i>Environmental Planning and Assessment Act 1979</i>
general manager	includes the executive officer of a joint organisation
joint organisation	a joint organisation established under section 4000 of the LGA
LGA	<i>Local Government Act 1993</i>
local planning panel	a local planning panel constituted under the <i>Environmental Planning and Assessment Act 1979</i>
mayor	includes the chairperson of a county council or a joint organisation

members of staff of a council	includes members of staff of county councils and joint organisations
the Office	Office of Local Government
personal information	information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion
the Procedures	the <i>Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW</i> prescribed under the Regulation
the Regulation	the <i>Local Government (General) Regulation 2005</i>
voting representative	a voting representative of the board of a joint organisation
wholly advisory committee	a council committee that the council has not delegated any functions to



# Part 3:

## General Conduct Obligations



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## General conduct

- 3.1 You must not conduct yourself in a manner that:
- a) is likely to bring the council or other council officials into disrepute
  - b) is contrary to statutory requirements or the council’s administrative requirements or policies
  - c) is improper or unethical
  - d) is an abuse of power
  - e) causes, comprises or involves intimidation or verbal abuse
  - f) involves the misuse of your position to obtain a private benefit
  - g) constitutes harassment or bullying behaviour under this code, or is unlawfully discriminatory.
- 3.2 You must act lawfully and honestly, and exercise a reasonable degree of care and diligence in carrying out your functions under the LGA or any other Act. (*section 439*).

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## Fairness and equity

- 3.3 You must consider issues consistently, promptly and fairly. You must deal with matters in accordance with established procedures, in a non-discriminatory manner.
- 3.4 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.
- 3.5 An act or omission in good faith, whether or not it involves error, will not constitute a breach of clauses 3.3 or 3.4.

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## Harassment and discrimination

- 3.6 You must not harass or unlawfully discriminate against others, or support others who harass or unlawfully discriminate against others, on the grounds of age, disability, race (including colour, national or ethnic origin or immigrant status), sex, pregnancy, marital or relationship status, family responsibilities or breastfeeding, sexual orientation, gender identity or intersex status or political, religious or other affiliation.
- 3.7 For the purposes of this code, “harassment” is any form of behaviour towards a person that:
- a) is not wanted by the person
  - b) offends, humiliates or intimidates the person, and
  - c) creates a hostile environment.

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## Bullying

- 3.8 You must not engage in bullying behaviour towards others.
- 3.9 For the purposes of this code, “bullying behaviour” is any behaviour in which:
- a) a person or a group of people repeatedly behaves unreasonably towards another person or a group of persons, and
  - b) the behaviour creates a risk to health and safety.
- 3.10 Bullying behaviour may involve, but is not limited to, any of the following types of behaviour:
- a) aggressive, threatening or intimidating conduct
  - b) belittling or humiliating comments

- c) spreading malicious rumours
  - d) teasing, practical jokes or 'initiation ceremonies'
  - e) exclusion from work-related events
  - f) unreasonable work expectations, including too much or too little work, or work below or beyond a worker's skill level
  - g) displaying offensive material
  - h) pressure to behave in an inappropriate manner.
- 3.11 Reasonable management action carried out in a reasonable manner does not constitute bullying behaviour for the purposes of this code. Examples of reasonable management action may include, but are not limited to:
- a) performance management processes
  - b) disciplinary action for misconduct
  - c) informing a worker about unsatisfactory work performance or inappropriate work behaviour
  - d) directing a worker to perform duties in keeping with their job
  - e) maintaining reasonable workplace goals and standards
  - f) legitimately exercising a regulatory function
  - g) legitimately implementing a council policy or administrative processes.
- a) take reasonable care for your own health and safety
  - b) take reasonable care that your acts or omissions do not adversely affect the health and safety of other persons
  - c) comply, so far as you are reasonably able, with any reasonable instruction that is given to ensure compliance with the WHS Act and any policies or procedures adopted by the council to ensure workplace health and safety
  - d) cooperate with any reasonable policy or procedure of the council relating to workplace health or safety that has been notified to council staff
  - e) report accidents, incidents, near misses, to the general manager or such other staff member nominated by the general manager, and take part in any incident investigations
  - f) so far as is reasonably practicable, consult, co-operate and coordinate with all others who have a duty under the WHS Act in relation to the same matter.

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## Land use planning, development assessment and other regulatory functions

- 3.13 You must ensure that land use planning, development assessment and other regulatory decisions are properly made, and that all parties are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the exercise of land use planning, development assessment and other regulatory functions.

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## Work health and safety

- 3.12 All council officials, including councillors, owe statutory duties under the *Work Health and Safety Act 2011* (WHS Act). You must comply with your duties under the WHS Act and your responsibilities under any policies or procedures adopted by the council to ensure workplace health and safety. Specifically, you must:

- 3.14 In exercising land use planning, development assessment and other regulatory functions, you must ensure that no action, statement or communication between yourself and others conveys any suggestion of willingness to improperly provide concessions or preferential or unduly unfavourable treatment.

## Binding caucus votes

- 3.15 You must not participate in binding caucus votes in relation to matters to be considered at a council or committee meeting.
- 3.16 For the purposes of clause 3.15, 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.
- 3.17 Clause 3.15 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.
- 3.18 Clause 3.15 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 or a representative of the council on an external body.

## Obligations in relation to meetings

- 3.19 You must comply with rulings by the chair at council and committee meetings or other proceedings of the council unless a motion dissenting from the ruling is passed.
- 3.20 You must not engage in bullying behaviour (as defined under this Part) towards the chair, other council officials or any members of the public present during council or committee meetings or other proceedings of the council (such as, but not limited to, workshops and briefing sessions).
- 3.21 You must not engage in conduct that disrupts council or committee meetings or other proceedings of the council (such as, but not limited to, workshops and briefing sessions), or that would otherwise be inconsistent with the orderly conduct of meetings.
- 3.22 If you are a councillor, you must not engage in any acts of disorder or other conduct that is intended to prevent the proper or effective functioning of the council, or of a committee of the council. Without limiting this clause, you must not:
- a) leave a meeting of the council or a committee for the purposes of depriving the meeting of a quorum, or
  - b) submit a rescission motion with respect to a decision for the purposes of voting against it to prevent another councillor from submitting a rescission motion with respect to the same decision, or
  - c) deliberately seek to impede the consideration of business at a meeting.

# Part 4:

## Pecuniary Interests



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## What is a pecuniary interest?

- 4.1 A pecuniary interest is an interest that you have in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to you or a person referred to in clause 4.3.
- 4.2 You will not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision you might make in relation to the matter, or if the interest is of a kind specified in clause 4.6.
- 4.3 For the purposes of this Part, you will have a pecuniary interest in a matter if the pecuniary interest is:
- (a) your interest, or
  - (b) the interest of your spouse or de facto partner, your relative, or your partner or employer, or
  - (c) a company or other body of which you, or your nominee, partner or employer, is a shareholder or member.
- 4.4 For the purposes of clause 4.3:
- (a) Your “relative” is any of the following:
    - i) your parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
    - ii) your spouse’s or de facto partner’s parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
    - iii) the spouse or de facto partner of a person referred to in paragraphs (i) and (ii).
  - (b) “de facto partner” has the same meaning as defined in section 21C of the *Interpretation Act 1987*.

- 4.5 You will not have a pecuniary interest in relation to a person referred to in subclauses 4.3(b) or (c):
- (a) if you are unaware of the relevant pecuniary interest of your spouse, de facto partner, relative, partner, employer or company or other body, or
  - (b) just because the person is a member of, or is employed by, a council or a statutory body, or is employed by the Crown, or
  - (c) just because the person is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.

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## What interests do not have to be disclosed?

- 4.6 You do not have to disclose the following interests for the purposes of this Part:
- (a) your interest as an elector
  - (b) your interest as a ratepayer or person liable to pay a charge
  - (c) an interest you have in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to the public generally, or to a section of the public that includes persons who are not subject to this code
  - (d) an interest you have in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to your relative by the council in the same manner and subject to the same conditions as apply to persons who are not subject to this code

- (e) an interest you have as a member of a club or other organisation or association, unless the interest is as the holder of an office in the club or organisation (whether remunerated or not)
  - (f) if you are a council committee member, an interest you have as a person chosen to represent the community, or as a member of a non-profit organisation or other community or special interest group, if you have been appointed to represent the organisation or group on the council committee
  - (g) an interest you have relating to a contract, proposed contract or other matter, if the interest arises only because of a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company
  - (h) an interest you have arising from the proposed making by the council of an agreement between the council and a corporation, association or partnership, being a corporation, association or partnership that has more than 25 members, if the interest arises because your relative is a shareholder (but not a director) of the corporation, or is a member (but not a member of the committee) of the association, or is a partner of the partnership
  - (i) an interest you have arising from the making by the council of a contract or agreement with your relative for, or in relation to, any of the following, but only if the proposed contract or agreement is similar in terms and conditions to such contracts and agreements as have been made, or as are proposed to be made, by the council in respect of similar matters with other residents of the area:
    - i) the performance by the council at the expense of your relative of any work or service in connection with roads or sanitation
    - ii) security for damage to footpaths or roads
    - iii) any other service to be rendered, or act to be done, by the council by or under any Act conferring functions on the council, or by or under any contract
  - (j) an interest relating to the payment of fees to councillors (including the mayor and deputy mayor)
  - (k) an interest relating to the payment of expenses and the provision of facilities to councillors (including the mayor and deputy mayor) in accordance with a policy under section 252 of the LGA,
  - (l) an interest relating to an election to the office of mayor arising from the fact that a fee for the following 12 months has been determined for the office of mayor
  - (m) an interest of a person arising from the passing for payment of a regular account for the wages or salary of an employee who is a relative of the person
  - (n) an interest arising from being covered by, or a proposal to be covered by, indemnity insurance as a councillor or a council committee member
  - (o) an interest arising from the appointment of a councillor to a body as a representative or delegate of the council, whether or not a fee or other recompense is payable to the representative or delegate.
- 4.7 For the purposes of clause 4.6, “relative” has the same meaning as in clause 4.4, but includes your spouse or de facto partner.

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## What disclosures must be made by a designated person?

4.8 Designated persons include:

- (a) the general manager
- (b) other senior staff of the council for the purposes of section 332 of the LGA
- (c) a person (other than a member of the senior staff of the council) who is a member of staff of the council or a delegate of the council and who holds a position identified by the council as the position of a designated person because it involves the exercise of functions (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the person's duty as a member of staff or delegate and the person's private interest
- (d) a person (other than a member of the senior staff of the council) who is a member of a committee of the council identified by the council as a committee whose members are designated persons because the functions of the committee involve the exercise of the council's functions (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the member's duty as a member of the committee and the member's private interest.

4.9 A designated person:

- (a) must prepare and submit written returns of interests in accordance with clauses 4.21, and
- (b) must disclose pecuniary interests in accordance with clause 4.10.

- 4.10 A designated person must disclose in writing to the general manager (or if the person is the general manager, to the council) the nature of any pecuniary interest the person has in any council matter with which the person is dealing as soon as practicable after becoming aware of the interest.
- 4.11 Clause 4.10 does not require a designated person who is a member of staff of the council to disclose a pecuniary interest if the interest relates only to the person's salary as a member of staff, or to their other conditions of employment.
- 4.12 The general manager must, on receiving a disclosure from a designated person, deal with the matter to which the disclosure relates or refer it to another person to deal with.
- 4.13 A disclosure by the general manager must, as soon as practicable after the disclosure is made, be laid on the table at a meeting of the council and the council must deal with the matter to which the disclosure relates or refer it to another person to deal with.

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## What disclosures must be made by council staff other than designated persons?

- 4.14 A member of staff of council, other than a designated person, must disclose in writing to their manager or the general manager the nature of any pecuniary interest they have in a matter they are dealing with as soon as practicable after becoming aware of the interest.
- 4.15 The staff member's manager or the general manager must, on receiving a disclosure under clause 4.14, deal with the matter to which the disclosure relates or refer it to another person to deal with.

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## What disclosures must be made by council advisers?

- 4.16 A person who, at the request or with the consent of the council or a council committee, gives advice on any matter at any meeting of the council or committee, must disclose the nature of any pecuniary interest the person has in the matter to the meeting at the time the advice is given. The person is not required to disclose the person's interest as an adviser.
- 4.17 A person does not breach clause 4.16 if the person did not know, and could not reasonably be expected to have known, that the matter under consideration at the meeting was a matter in which they had a pecuniary interest.

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## What disclosures must be made by a council committee member?

- 4.18 A council committee member must disclose pecuniary interests in accordance with clause 4.28 and comply with clause 4.29.
- 4.19 For the purposes of clause 4.18, a "council committee member" includes a member of staff of council who is a member of the committee.

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## What disclosures must be made by a councillor?

- 4.20 A councillor:
- (a) must prepare and submit written returns of interests in accordance with clause 4.21, and
  - (b) must disclose pecuniary interests in accordance with clause 4.28 and comply with clause 4.29 where it is applicable.

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## Disclosure of interests in written returns

- 4.21 A councillor or designated person must make and lodge with the general manager a return in the form set out in schedule 2 to this code, disclosing the councillor's or designated person's interests as specified in schedule 1 to this code within 3 months after:
- (a) becoming a councillor or designated person, and
  - (b) 30 June of each year, and
  - (c) the councillor or designated person becoming aware of an interest they are required to disclose under schedule 1 that has not been previously disclosed in a return lodged under paragraphs (a) or (b).
- 4.22 A person need not make and lodge a return under clause 4.21, paragraphs (a) and (b) if:
- (a) they made and lodged a return under that clause in the preceding 3 months, or
  - (b) they have ceased to be a councillor or designated person in the preceding 3 months.



- 4.23 A person must not make and lodge a return that the person knows or ought reasonably to know is false or misleading in a material particular.
- 4.24 The general manager must keep a register of returns required to be made and lodged with the general manager.
- 4.25 Returns required to be lodged with the general manager under clause 4.21(a) and (b) must be tabled at the first meeting of the council after the last day the return is required to be lodged.
- 4.26 Returns required to be lodged with the general manager under clause 4.21(c) must be tabled at the next council meeting after the return is lodged.
- 4.27 Information contained in returns made and lodged under clause 4.21 is to be made publicly available in accordance with the requirements of the *Government Information (Public Access) Act 2009*, the *Government Information (Public Access) Regulation 2009* and any guidelines issued by the Information Commissioner.
- (b) at any time during which the council or committee is voting on any question in relation to the matter.
- 4.30 In the case of a meeting of a board of a joint organisation, a voting representative is taken to be present at the meeting for the purposes of clauses 4.28 and 4.29 where they participate in the meeting by telephone or other electronic means.
- 4.31 A disclosure made at a meeting of a council or council committee must be recorded in the minutes of the meeting.
- 4.32 A general notice may be given to the general manager in writing by a councillor or a council committee member to the effect that the councillor or council committee member, or the councillor's or council committee member's spouse, de facto partner or relative, is:
  - (a) a member of, or in the employment of, a specified company or other body, or
  - (b) a partner of, or in the employment of, a specified person.

Such a notice is, unless and until the notice is withdrawn or until the end of the term of the council in which it is given (whichever is the sooner), sufficient disclosure of the councillor's or council committee member's interest in a matter relating to the specified company, body or person that may be the subject of consideration by the council or council committee after the date of the notice.

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## Disclosure of pecuniary interests at meetings

- 4.28 A councillor or a council committee member who has a pecuniary interest in any matter with which the council is concerned, and who is present at a meeting of the council or committee at which the matter is being considered, must disclose the nature of the interest to the meeting as soon as practicable.
- 4.29 The councillor or council committee member must not be present at, or in sight of, the meeting of the council or committee:
  - (a) at any time during which the matter is being considered or discussed by the council or committee, or
- 4.33 A councillor or a council committee member is not prevented from being present at and taking part in a meeting at which a matter is being considered, or from voting on the matter, merely because the councillor or council committee member has an interest in the matter of a kind referred to in clause 4.6.

- 4.34 A person does not breach clauses 4.28 or 4.29 if the person did not know, and could not reasonably be expected to have known, that the matter under consideration at the meeting was a matter in which they had a pecuniary interest.
- 4.35 Despite clause 4.29, a councillor who has a pecuniary interest in a matter may participate in a decision to delegate consideration of the matter in question to another body or person.
- 4.36 Clause 4.29 does not apply to a councillor who has a pecuniary interest in a matter that is being considered at a meeting 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 portion 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 portion of the council's area, and
  - (b) the pecuniary interest arises only because of an interest of the councillor in the councillor's principal place of residence or an interest of another person (whose interests are relevant under clause 4.3) in that person's principal place of residence, and
  - (c) the councillor made a special disclosure under clause 4.37 in relation to the interest before the commencement of the meeting.
- 4.37 A special disclosure of a pecuniary interest made for the purposes of clause 4.36(c) must:
- (a) be in the form set out in schedule 3 of this code and contain the information required by that form, and
  - (b) be laid on the table at a meeting of the council as soon as practicable after the disclosure is made, and the information contained in the special disclosure is to be recorded in the minutes of the meeting.
- 4.38 The Minister for Local Government may, conditionally or unconditionally, allow a councillor or a council committee member who has a pecuniary interest in a matter with which the council is concerned to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion:
- (a) that the number of councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business, or
  - (b) that it is in the interests of the electors for the area to do so.
- 4.39 A councillor or a council committee member with a pecuniary interest in a matter who is permitted to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter under clause 4.38, must still disclose the interest they have in the matter in accordance with clause 4.28.



# Part 5: Non-Pecuniary Conflicts of Interest



## What is a non-pecuniary conflict of interest?

- 5.1 Non-pecuniary interests are private or personal interests a council official has that do not amount to a pecuniary interest as defined in clause 4.1 of this code. These commonly arise out of family or personal relationships, or out of involvement in sporting, social, religious or other cultural groups and associations, and may include an interest of a financial nature.
- 5.2 A non-pecuniary conflict of interest exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your official functions in relation to a matter.
- 5.3 The personal or political views of a council official do not constitute a private interest for the purposes of clause 5.2.
- 5.4 Non-pecuniary conflicts of interest must be identified and appropriately managed to uphold community confidence in the probity of council decision-making. The onus is on you to identify any non-pecuniary conflict of interest you may have in matters that you deal with, to disclose the interest fully and in writing, and to take appropriate action to manage the conflict in accordance with this code.
- 5.5 When considering whether or not you have a non-pecuniary conflict of interest in a matter you are dealing with, it is always important to think about how others would view your situation.

## Managing non-pecuniary conflicts of interest

- 5.6 Where you have a non-pecuniary conflict of interest in a matter for the purposes of clause 5.2, you must disclose the relevant private interest you have in relation to the matter fully and in writing as soon as practicable after becoming aware of the non-pecuniary conflict of interest and on each occasion on which the non-pecuniary conflict of interest arises in relation to the matter. In the case of members of council staff other than the general manager, such a disclosure is to be made to the staff member's manager. In the case of the general manager, such a disclosure is to be made to the mayor.
- 5.7 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 on each occasion on which the non-pecuniary conflict of interest arises. This disclosure constitutes disclosure in writing for the purposes of clause 5.6.
- 5.8 How you manage a non-pecuniary conflict of interest will depend on whether or not it is significant.
- 5.9 As a general rule, a non-pecuniary conflict of interest will be significant where it does not involve a pecuniary interest for the purposes of clause 4.1, but it involves:
  - a) a relationship between a council official and another person who is affected by a decision or a matter under consideration that is particularly close, such as a current or former spouse or de facto partner, a relative for the purposes of clause 4.4 or another person from the council official's extended family that the council official has a close personal relationship with, or another person living in the same household

- b) other relationships with persons who are affected by a decision or a matter under consideration 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 (such as a sporting body, club, religious, cultural or charitable organisation, corporation or association) that is affected by a decision or a matter under consideration that is particularly strong. The strength of a council official's affiliation with an organisation is to be determined by the extent to which they actively participate in the management, administration or other activities of the organisation.
  - d) membership, as the council's representative, of the board or management committee of an organisation that is affected by a decision or a matter under consideration, in circumstances where the interests of the council and the organisation are potentially in conflict in relation to the particular matter
  - e) a financial interest (other than an interest of a type referred to in clause 4.6) that is not a pecuniary interest for the purposes of clause 4.1
  - f) the conferral or loss of a personal benefit other than one conferred or lost as a member of the community or a broader class of people affected by a decision.
- 5.10 Significant non-pecuniary conflicts of interest must be managed in one of two ways:
- a) by not participating in consideration of, or decision making in relation to, the matter in which you have the significant non-pecuniary conflict of interest and the matter being allocated to another person for consideration or determination, or
  - b) if the significant non-pecuniary conflict of interest arises in relation to a matter under consideration at a council or committee meeting, by managing the conflict of interest as if you had a pecuniary interest in the matter by complying with clauses 4.28 and 4.29.
- 5.11 If you determine that you have a non-pecuniary conflict of interest in a matter that is not significant and does not require further action, when disclosing the interest you must also explain in writing why you consider that the non-pecuniary conflict of interest is not significant and does not require further action in the circumstances.
- 5.12 If you are a member of staff of council other than the general manager, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with and at the direction of your manager. In the case of the general manager, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with and at the direction of the mayor.
- 5.13 Despite clause 5.10(b), a councillor who has a significant non-pecuniary conflict of interest in a matter, may participate in a decision to delegate consideration of the matter in question to another body or person.

5.14 Council committee members are not required to declare and manage a non-pecuniary conflict of interest in accordance with the requirements of this Part where it arises from an interest they have as a person chosen to represent the community, or as a member of a non-profit organisation or other community or special interest group, if they have been appointed to represent the organisation or group on the council committee.

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## Political donations

5.15 Councillors should be aware that matters before council or committee meetings involving their political donors may also give rise to a non-pecuniary conflict of interest.

5.16 Where you are a councillor and have received or knowingly benefitted from a reportable political donation:

- a) made by a major political donor in the previous four years, and
- b) the major political donor has a matter before council,

you must declare a non-pecuniary conflict of interest in the matter, disclose the nature of the interest, and manage the conflict of interest as if you had a pecuniary interest in the matter by complying with clauses 4.28 and 4.29. A disclosure made under this clause must be recorded in the minutes of the meeting.

5.17 For the purposes of this Part:

- a) a “reportable political donation” has the same meaning as it has in section 6 of the *Electoral Funding Act 2018*
- b) “major political donor” has the same meaning as it has in the *Electoral Funding Act 2018*.

5.18 Councillors should note that political donations that are not a “reportable political donation”, 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 interest. Councillors should determine whether or not such conflicts are significant for the purposes of clause 5.9 and take the appropriate action to manage them.

5.19 Despite clause 5.16, a councillor who has received or knowingly benefitted from a reportable political donation of the kind referred to in that clause, may participate in a decision to delegate consideration of the matter in question to another body or person.

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## Loss of quorum as a result of compliance with this Part

5.20 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 interest 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 portion 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 portion of the council’s area, and

- b) the non-pecuniary conflict of interest arises only because of an interest that a person has in that person's principal place of residence, and
- c) the councillor discloses the interest they have in the matter that would otherwise have precluded their participation in consideration of the matter under this Part in accordance with clause 5.6.

5.21 The Minister for Local Government may, conditionally or unconditionally, allow a councillor or a council committee member who is precluded under this Part from participating in the consideration of a matter to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion:

- a) that the number of councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business, or
- b) that it is in the interests of the electors for the area to do so.

5.22 Where the Minister exempts a councillor or committee member from complying with a requirement under this Part under clause 5.21, the councillor or committee member must still disclose any interests they have in the matter the exemption applies to, in accordance with clause 5.6.

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## Other business or employment

5.23 The general manager must not engage, for remuneration, in private employment, contract work or other business outside the service of the council without the approval of the council.

5.24 A member of staff must not engage, for remuneration, in private employment, contract work or other business outside the service of the council that relates to the business of the council or that might conflict with the staff member's council duties unless they have notified the general manager in writing of the employment, work or business and the general manager has given their written approval for the staff member to engage in the employment, work or business.

5.25 The general manager may at any time prohibit a member of staff from engaging, for remuneration, in private employment, contract work or other business outside the service of the council that relates to the business of the council, or that might conflict with the staff member's council duties.

5.26 A member of staff must not engage, for remuneration, in private employment, contract work or other business outside the service of the council if prohibited from doing so.

5.27 Members of staff must ensure that any outside employment, work or business they engage in will not:

- a) conflict with their official duties
- b) involve using confidential information or council resources obtained through their work with the council including where private use is permitted



- c) require them to work while on council duty
- d) discredit or disadvantage the council
- e) pose, due to fatigue, a risk to their health or safety, or to the health and safety of their co-workers.

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## Personal dealings with council

- 5.28 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 development 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.
- 5.29 You must undertake any personal dealings you have with the council in a manner that is consistent with the way other members of the community deal with the council. You must also ensure that you disclose and appropriately manage any conflict of interest you may have in any matter in accordance with the requirements of this code.

# Part 6: Personal Benefit



- 6.1 For the purposes of this Part, a gift or a benefit is something offered to or received by a council official or someone personally associated with them for their personal use and enjoyment.
- 6.2 A reference to a gift or benefit in this Part does not include:
- a) items with a value of \$10 or less
  - b) a political donation for the purposes of the *Electoral Funding Act 2018*
  - c) a gift provided to the council as part of a cultural exchange or sister-city relationship that is not converted for the personal use or enjoyment of any individual council official or someone personally associated with them
  - d) a benefit or facility provided by the council to an employee or councillor
  - e) attendance by a council official at a work-related event or function for the purposes of performing their official duties, or
  - f) free or subsidised meals, beverages or refreshments provided to council officials in conjunction with the performance of their official duties such as, but not limited to:
    - i) the discussion of official business
    - ii) work-related events such as council-sponsored or community events, training, education sessions or workshops
    - iii) conferences
    - iv) council functions or events
    - v) social functions organised by groups, such as council committees and community organisations.

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## Gifts and benefits

- 6.3 You must avoid situations that would give rise to the appearance that a person or body is attempting to secure favourable treatment from you or from the council, through the provision of gifts, benefits or hospitality of any kind to you or someone personally associated with you.
- 6.4 A gift or benefit is deemed to have been accepted by you for the purposes of this Part, where it is received by you or someone personally associated with you.

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

- 6.5 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) subject to clause 6.7, accept any gift or benefit of more than token value as defined by clause 6.9
  - e) accept an offer of cash or a cash-like gift as defined by clause 6.13, regardless of the amount
  - f) participate in competitions for prizes where eligibility is based on the council being in or entering into a customer-supplier relationship with the competition organiser
  - g) personally benefit from reward points programs when purchasing on behalf of the council.

6.6 Where you receive a gift or benefit of any value other than one referred to in clause 6.2, you must disclose this promptly to your manager or the general manager in writing. The recipient, manager, or general manager must ensure that, at a minimum, the following details are recorded in the council's gift register:

- a) the nature of the gift or benefit
- b) the estimated monetary value of the gift or benefit
- c) the name of the person who provided the gift or benefit, and
- d) the date on which the gift or benefit was received.

6.7 Where you receive a gift or benefit of more than token value that cannot reasonably be refused or returned, the gift or benefit must be surrendered to the council, unless the nature of the gift or benefit makes this impractical.

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## Gifts and benefits of token value

6.8 You may accept gifts and benefits of token value. Gifts and benefits of token value are one or more gifts or benefits received from a person or organisation over a 12-month period that, when aggregated, do not exceed a value of \$100. They include, but are not limited to:

- a) invitations to and attendance at local social, cultural or sporting events with a ticket value that does not exceed \$100
- b) gifts of alcohol that do not exceed a value of \$100
- c) ties, scarves, coasters, tie pins, diaries, chocolates or flowers or the like
- d) prizes or awards that do not exceed \$100 in value.

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## Gifts and benefits of more than token value

6.9 Gifts or benefits that exceed \$100 in value are gifts or benefits of more than token value for the purposes of clause 6.5(d) and, subject to clause 6.7, must not be accepted.

6.10 Gifts and benefits of more than token value include, but are not limited to, tickets to major sporting events (such as international matches or matches in national sporting codes) with a ticket value that exceeds \$100, corporate hospitality at a corporate facility at major sporting events, free or discounted products or services for personal use provided on terms that are not available to the general public or a broad class of persons, the use of holiday homes, artworks, free or discounted travel.

6.11 Where you have accepted a gift or benefit of token value from a person or organisation, you must not accept a further gift or benefit from the same person or organisation or another person associated with that person or organisation within a single 12-month period where the value of the gift, added to the value of earlier gifts received from the same person or organisation, or a person associated with that person or organisation, during the same 12-month period would exceed \$100 in value.

6.12 For the purposes of this Part, the value of a gift or benefit is the monetary value of the gift or benefit inclusive of GST.

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## “Cash-like gifts”

- 6.13 For the purposes of clause 6.5(e), “cash-like gifts” include, but are not limited to, gift vouchers, credit cards, debit cards with credit on them, prepayments such as phone or internet credit, lottery tickets, memberships or entitlements to discounts that are not available to the general public or a broad class of persons.

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## Improper and undue influence

- 6.14 You must not use your position to influence other council officials in the performance of their official functions 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 proper exercise of their role as prescribed under the LGA.
- 6.15 You must not take advantage (or seek to take advantage) of your status or position with council, or of functions you perform for council, in order to obtain a private benefit for yourself or for any other person or body.

# Part 7: Relationships Between Council Officials

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## Obligations of councillors and administrators

- 7.1 Each council is a body politic. The councillors or administrator/s are the governing body of the council. Under section 223 of the LGA, the role of the governing body of the council includes the development and endorsement of the strategic plans, programs, strategies and policies of the council, including those relating to workforce policy, and to keep the performance of the council under review.
- 7.2 Councillors or administrators must not:
- a) direct council staff other than by giving appropriate direction to the general manager by way of council or committee resolution, or by the mayor or administrator exercising their functions under section 226 of the LGA
  - 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 staff member or delegate
  - 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 the council's contractors, including the council's legal advisers, unless by the mayor or administrator exercising their functions under section 226 of the LGA.

- 7.3 Despite clause 7.2, councillors may contact the council's external auditor or the chair of the council's audit risk and improvement committee to provide information reasonably necessary for the external auditor or the audit, risk and improvement committee to effectively perform their functions.

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## Obligations of staff

- 7.4 Under section 335 of the LGA, the role of the general manager includes conducting the day-to-day management of the council in accordance with the strategic plans, programs, strategies and policies of the council, implementing without undue delay, lawful decisions of the council and ensuring that the mayor and other councillors are given timely information and advice and the administrative and professional support necessary to effectively discharge their official functions.
- 7.5 Members of staff of council must:
- a) give their attention to the business of the council while on duty
  - b) ensure that their work is carried out ethically, efficiently, economically and effectively
  - c) carry out reasonable and 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 interfere with the performance of their official duties.

## Inappropriate interactions

- 7.6 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 matters relating to broader workforce policy), grievances, workplace investigations and disciplinary matters
  - b) council staff approaching councillors and administrators to discuss individual or operational staff matters (other than matters relating to broader workforce policy), grievances, workplace investigations and disciplinary matters
  - c) subject to clause 8.6, council staff refusing to give information that is available to other councillors to a particular councillor
  - d) councillors and administrators who have lodged an application with the council, discussing the matter with council staff in staff-only areas of the council
  - e) councillors and administrators approaching members of local planning panels or discussing any application that is either before the panel or that will come before the panel at some future time, except during a panel meeting where the application forms part of the agenda and the councillor or administrator has a right to be heard by the panel at the meeting
  - f) councillors and administrators being overbearing or threatening to council staff
  - g) council staff being overbearing or threatening to councillors or administrators
  - h) councillors and administrators making personal attacks on council staff or engaging in conduct towards staff that would be contrary to the general conduct provisions in Part 3 of this code in public forums including social media
  - i) councillors and administrators directing or pressuring council staff in the performance of their work, or recommendations they should make
  - j) 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
  - k) council staff meeting with applicants or objectors alone AND outside office hours to discuss planning applications or proposals
  - l) councillors attending on-site inspection meetings with lawyers and/or consultants engaged by the council associated with current or proposed legal proceedings unless permitted to do so by the council's general manager or, in the case of the mayor or administrator, unless they are exercising their functions under section 226 of the LGA.





# Part 8: Access to Information and Council Resources

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## Councillor and administrator access to information

- 8.1 The general manager is responsible for ensuring that councillors and administrators can access information necessary for the performance of their official functions. The general manager and public officer are also responsible for ensuring that members of the public can access publicly available council information under the *Government Information (Public Access) Act 2009* (the GIPA Act).
- 8.2 The general manager must provide councillors and administrators with the information necessary to effectively discharge their official functions.
- 8.3 Members of staff of council must provide full and timely information to councillors and administrators sufficient to enable them to exercise their official functions and in accordance with council procedures.
- 8.4 Members of staff of council who provide any information to a particular councillor in the performance of their official functions must also make it available to any other councillor who requests it and in accordance with council procedures.
- 8.5 Councillors and administrators who have a private interest only in council information have the same rights of access as any member of the public.

- 8.6 Despite clause 8.4, councillors and administrators who are precluded from participating in the consideration of a matter under this code because they have a conflict of interest in the matter, are not entitled to request access to council information in relation to the matter unless the information is otherwise available to members of the public, or the council has determined to make the information available under the GIPA Act.

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## Councillors and administrators to properly examine and consider information

- 8.7 Councillors and administrators must ensure that they comply with their duty under section 439 of the LGA to act honestly and exercise a reasonable degree of care and diligence by properly examining and considering all the information provided to them relating to matters that they are required to make a decision on.

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## Refusal of access to information

- 8.8 Where the general manager or public officer determine to refuse access to information requested by a councillor or administrator, they must act reasonably. In reaching this decision they must take into account whether or not the information requested is necessary for the councillor or administrator to perform their official functions (see clause 8.2) and whether they have disclosed a conflict of interest in the matter the information relates to that would preclude their participation in consideration of the matter (see clause 8.6). The general manager or public officer must state the reasons for the decision if access is refused.

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## Use of certain council information

- 8.9 In regard to information obtained in your capacity as a council official, you must:
- subject to clause 8.14, only access council information needed for council business
  - not use that council information for private purposes
  - not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for yourself, or any other person or body, from any information to which you have access by virtue of your office or position with council
  - only release council information in accordance with established council policies and procedures and in compliance with relevant legislation.

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## Use and security of confidential information

- 8.10 You must maintain the integrity and security of confidential information in your possession, or for which you are responsible.
- 8.11 In addition to your general obligations relating to the use of council information, you must:
- only access confidential information that you have been authorised to access and only do so for the purposes of exercising your official functions
  - protect confidential information
  - only release confidential information if you have authority to do so
  - only use confidential information for the purpose for which it is intended to be used

- not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person
- not use confidential information with the intention to cause harm or detriment to the council or any other person or body
- not disclose any confidential information discussed during a confidential session of a council or committee meeting or any other confidential forum (such as, but not limited to, workshops or briefing sessions).

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## Personal information

- 8.12 When dealing with personal information you must comply with:
- the *Privacy and Personal Information Protection Act 1998*
  - the *Health Records and Information Privacy Act 2002*
  - the Information Protection Principles and Health Privacy Principles
  - the council's privacy management plan
  - the Privacy Code of Practice for Local Government

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## Use of council resources

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

- 8.14 Union delegates and consultative committee members may have reasonable access to council resources and information 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.
- 8.15 You must be scrupulous in your use of council property, including intellectual property, official services, facilities, technology and electronic devices and must not permit their misuse by any other person or body.
- 8.16 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.
- 8.17 You must not use council resources (including council staff), property or facilities for the purpose of assisting your election campaign or the election campaigns 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.
- 8.18 You must not use the council letterhead, council crests, council email or social media or other information that could give the appearance it is official council material:
- a) for the purpose of assisting your election campaign or the election campaign of others, or
  - b) for other non-official purposes.
- 8.19 You must not convert any property of the council to your own use unless properly authorised.
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- ## Internet access
- 8.20 You must not use council's computer resources or mobile or other devices to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature, or that could otherwise lead to criminal penalty or civil liability and/or damage the council's reputation.
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- ## Council record keeping
- 8.21 You must comply with the requirements of the *State Records Act 1998* and the council's records management policy.
- 8.22 All information created, sent and received in your official capacity is a council record and must be managed in accordance with the requirements of the *State Records Act 1998* and the council's approved records management policies and practices.
- 8.23 All information stored in either soft or hard copy on council supplied resources (including technology devices and email accounts) is deemed to be related to the business of the council and will be treated as council records, regardless of whether the original intention was to create the information for personal purposes.
- 8.24 You must not destroy, alter, or dispose of council information or records, unless authorised to do so. If you need to alter or dispose of council information or records, you must do so in consultation with the council's records manager and comply with the requirements of the *State Records Act 1998*.

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## Councillor access to council buildings

- 8.25 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.
- 8.26 Councillors and administrators must not enter staff-only areas of council buildings without the approval of the general manager (or their delegate) or as provided for in the procedures governing the interaction of councillors and council staff.
- 8.27 Councillors and administrators must ensure that when they are within a staff only area they refrain from conduct that could be perceived to improperly influence council staff decisions.



# Part 9: Maintaining the Integrity of this Code



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## Complaints made for an improper purpose

- 9.1 You must not make or threaten to make a complaint or cause a complaint to be made alleging a breach of this code for an improper purpose.
- 9.2 For the purposes of clause 9.1, 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 bully, 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 the Procedures
  - g) to take reprisal action against a person for making a complaint alleging a breach of this code
  - h) to take reprisal action against a person for exercising a function prescribed under the Procedures
  - i) to prevent or disrupt the effective administration of this code under the Procedures.

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## Detrimental action

- 9.3 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 alleging a breach of this code.
- 9.4 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 the Procedures.
- 9.5 For the purposes of clauses 9.3 and 9.4, a 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.

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## Compliance with requirements under the Procedures

- 9.6 You must not engage in conduct that is calculated to impede or disrupt the consideration of a matter under the Procedures.
- 9.7 You must comply with a reasonable and lawful request made by a person exercising a function under the Procedures. A failure to make a written or oral submission invited under the Procedures will not constitute a breach of this clause.
- 9.8 You must comply with a practice ruling made by the Office under the Procedures.

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## Disclosure of information about the consideration of a matter under the Procedures

- 9.9 All allegations of breaches of this code must be dealt with under and in accordance with the Procedures.
- 9.10 You must not allege breaches of this code other than by way of a complaint made or initiated under the Procedures.
- 9.11 You must not make allegations about, or disclose information about, suspected breaches of this code at council, committee or other meetings, whether open to the public or not, or in any other forum, whether public or not.
- 9.12 You must not disclose information about a complaint you have made alleging a breach of this code or any other matter being considered under the Procedures except for the purposes of seeking legal advice, unless the disclosure is otherwise permitted under the Procedures.
- 9.13 Nothing under this Part prevents a person from making a public interest disclosure to an appropriate public authority or investigative authority under the *Public Interest Disclosures Act 1994*.

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## Complaints alleging a breach of this Part

- 9.14 Complaints alleging a breach of this Part by a councillor, the general manager or an administrator are to be managed by the Office. This clause does not prevent the Office from referring an alleged breach of this Part back to the council for consideration in accordance with the Procedures.
- 9.15 Complaints alleging a breach of this Part by other council officials are to be managed by the general manager in accordance with the Procedures.



**Schedule 1:**  
**Disclosures of Interest and Other**  
**Matters in Written Returns**  
**Submitted Under Clause 4.21**

# Part 1: Preliminary

## Definitions

1. For the purposes of the schedules to this code, the following definitions apply:

*address* means:

- a) in relation to a person other than a corporation, the last residential or business address of the person known to the councillor or designated person disclosing the address, or
- b) in relation to a corporation, the address of the registered office of the corporation in New South Wales or, if there is no such office, the address of the principal office of the corporation in the place where it is registered, or
- c) in relation to any real property, the street address of the property.

*de facto partner* has the same meaning as defined in section 21C of the *Interpretation Act 1987*.

*disposition of property* means a conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, including the following:

- a) the allotment of shares in a company
- b) the creation of a trust in respect of property
- c) the grant or creation of a lease, mortgage, charge, easement, licence, power, partnership or interest in respect of property
- d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of a debt, contract or chose in action, or of an interest in respect of property

- e) the exercise by a person of a general power of appointment over property in favour of another person
- f) a transaction entered into by a person who intends by the transaction to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of another person.

*gift* means a disposition of property made otherwise than by will (whether or not by instrument in writing) without consideration, or with inadequate consideration, in money or money's worth passing from the person to whom the disposition was made to the person who made the disposition, but does not include a financial or other contribution to travel.

*interest* means:

- a) in relation to property, an estate, interest, right or power, at law or in equity, in or over the property, or
- b) in relation to a corporation, a relevant interest (within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth) in securities issued or made available by the corporation.

*listed company* means a company that is listed within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth.

*occupation* includes trade, profession and vocation.

*professional or business association* means an incorporated or unincorporated body or organisation having as one of its objects or activities the promotion of the economic interests of its members in any occupation.

*property* includes money.

*return date* means:

- a) in the case of a return made under clause 4.21(a), the date on which a person became a councillor or designated person
- b) in the case of a return made under clause 4.21(b), 30 June of the year in which the return is made
- c) in the case of a return made under clause 4.21(c), the date on which the councillor or designated person became aware of the interest to be disclosed.

*relative* includes any of the following:

- a) a person's spouse or de facto partner
- b) a person's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
- c) a person's spouse's or de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
- d) the spouse or de facto partner of a person referred to in paragraphs (b) and (c).

*travel* includes accommodation incidental to a journey.

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## Matters relating to the interests that must be included in returns

2. *Interests etc. outside New South Wales:*  
A reference in this schedule or in schedule 2 to a disclosure concerning a corporation or other thing includes any reference to a disclosure concerning a corporation registered, or other thing arising or received, outside New South Wales.
3. *References to interests in real property:*  
A reference in this schedule or in schedule 2 to real property in which a councillor or designated person has an interest includes a reference to any real property situated in Australia in which the councillor or designated person has an interest.
4. *Gifts, loans etc. from related corporations:*  
For the purposes of this schedule and schedule 2, gifts or contributions to travel given, loans made, or goods or services supplied, to a councillor or designated person by two or more corporations that are related to each other for the purposes of section 50 of the *Corporations Act 2001* of the Commonwealth are all given, made or supplied by a single corporation.

# Part 2: Pecuniary interests to be disclosed in returns

## Real property

5. A person making a return under clause 4.21 of this code must disclose:
  - a) the street address of each parcel of real property in which they had an interest on the return date, and
  - b) the street address of each parcel of real property in which they had an interest in the period since 30 June of the previous financial year, and
  - c) the nature of the interest.
6. An interest in a parcel of real property need not be disclosed in a return if the person making the return had the interest only:
  - a) as executor of the will, or administrator of the estate, of a deceased person and not as a beneficiary under the will or intestacy, or
  - b) as a trustee, if the interest was acquired in the ordinary course of an occupation not related to their duties as the holder of a position required to make a return.
7. An interest in a parcel of real property need not be disclosed in a return if the person ceased to hold the interest prior to becoming a councillor or designated person.
8. For the purposes of clause 5 of this schedule, “interest” includes an option to purchase.

## Gifts

9. A person making a return under clause 4.21 of this code must disclose:
  - a) a description of each gift received in the period since 30 June of the previous financial year, and
  - b) the name and address of the donor of each of the gifts.
10. A gift need not be included in a return if:
  - a) it did not exceed \$500, unless it was among gifts totalling more than \$500 made by the same person during a period of 12 months or less, or
  - b) it was a political donation disclosed, or required to be disclosed, under Part 3 of the *Electoral Funding Act 2018*, or
  - c) the donor was a relative of the donee, or
  - d) subject to paragraph (a), it was received prior to the person becoming a councillor or designated person.
11. For the purposes of clause 10 of this schedule, the amount of a gift other than money is an amount equal to the value of the property given.

## Contributions to travel

12. A person making a return under clause 4.21 of this code must disclose:
  - a) the name and address of each person who made any financial or other contribution to the expenses of any travel undertaken by the person in the period since 30 June of the previous financial year, and

- b) the dates on which the travel was undertaken, and
  - c) the names of the states and territories, and of the overseas countries, in which the travel was undertaken.
13. A financial or other contribution to any travel need not be disclosed under this clause if it:
- a) was made from public funds (including a contribution arising from travel on free passes issued under an Act or from travel in government or council vehicles), or
  - b) was made by a relative of the traveller, or
  - c) was made in the ordinary course of an occupation of the traveller that is not related to their functions as the holder of a position requiring the making of a return, or
  - d) did not exceed \$250, unless it was among gifts totalling more than \$250 made by the same person during a 12-month period or less, or
  - e) was a political donation disclosed, or required to be disclosed, under Part 3 of the *Electoral Funding Act 2018*, or
  - f) was made by a political party of which the traveller was a member and the travel was undertaken for the purpose of political activity of the party in New South Wales, or to enable the traveller to represent the party within Australia, or
  - g) subject to paragraph (d) it was received prior to the person becoming a councillor or designated person.
14. For the purposes of clause 13 of this schedule, the amount of a contribution (other than a financial contribution) is an amount equal to the value of the contribution.

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## Interests and positions in corporations

15. A person making a return under clause 4.21 of this code must disclose:
- a) the name and address of each corporation in which they had an interest or held a position (whether remunerated or not) on the return date, and
  - b) the name and address of each corporation in which they had an interest or held a position in the period since 30 June of the previous financial year, and
  - c) the nature of the interest, or the position held, in each of the corporations, and
  - d) a description of the principal objects (if any) of each of the corporations, except in the case of a listed company.
16. An interest in, or a position held in, a corporation need not be disclosed if the corporation is:
- a) formed for the purpose of providing recreation or amusement, or for promoting commerce, industry, art, science, religion or charity, or for any other community purpose, and
  - b) required to apply its profits or other income in promoting its objects, and
  - c) prohibited from paying any dividend to its members.
17. An interest in a corporation need not be disclosed if the interest is a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company.
18. An interest or a position in a corporation need not be disclosed if the person ceased to hold the interest or position prior to becoming a councillor or designated person.



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## Interests as a property developer or a close associate of a property developer

19. A person making a return under clause 4.21 of this code must disclose whether they were a property developer, or a close associate of a corporation that, or an individual who, is a property developer, on the return date.
20. For the purposes of clause 19 of this schedule:

*close associate*, in relation to a corporation or an individual, has the same meaning as it has in section 53 of the *Electoral Funding Act 2018*.

*property developer* has the same meaning as it has in Division 7 of Part 3 of the *Electoral Funding Act 2018*.

---

## Positions in trade unions and professional or business associations

21. A person making a return under clause 4.21 of the code must disclose:
- a) the name of each trade union, and of each professional or business association, in which they held any position (whether remunerated or not) on the return date, and
  - b) the name of each trade union, and of each professional or business association, in which they have held any position (whether remunerated or not) in the period since 30 June of the previous financial year, and
  - c) a description of the position held in each of the unions and associations.

22. A position held in a trade union or a professional or business association need not be disclosed if the person ceased to hold the position prior to becoming a councillor or designated person.

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## Dispositions of real property

23. A person making a return under clause 4.21 of this code must disclose particulars of each disposition of real property by the person (including the street address of the affected property) in the period since 30 June of the previous financial year, under which they wholly or partly retained the use and benefit of the property or the right to re-acquire the property.
24. A person making a return under clause 4.21 of this code must disclose particulars of each disposition of real property to another person (including the street address of the affected property) in the period since 30 June of the previous financial year, that is made under arrangements with, but is not made by, the person making the return, being a disposition under which the person making the return obtained wholly or partly the use of the property.
25. A disposition of real property need not be disclosed if it was made prior to a person becoming a councillor or designated person.

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## Sources of income

26. A person making a return under clause 4.21 of this code must disclose:
- a) each source of income that the person reasonably expects to receive in the period commencing on the first day after the return date and ending on the following 30 June, and
  - b) each source of income received by the person in the period since 30 June of the previous financial year.
27. A reference in clause 26 of this schedule to each source of income received, or reasonably expected to be received, by a person is a reference to:
- a) in relation to income from an occupation of the person:
    - (i) a description of the occupation, and
    - (ii) if the person is employed or the holder of an office, the name and address of their employer, or a description of the office, and
    - (iii) if the person has entered into a partnership with other persons, the name (if any) under which the partnership is conducted, or
  - b) in relation to income from a trust, the name and address of the settlor and the trustee, or
  - c) in relation to any other income, a description sufficient to identify the person from whom, or the circumstances in which, the income was, or is reasonably expected to be, received.

28. The source of any income need not be disclosed by a person in a return if the amount of the income received, or reasonably expected to be received, by the person from that source did not exceed \$500, or is not reasonably expected to exceed \$500, as the case may be.
29. The source of any income received by the person that they ceased to receive prior to becoming a councillor or designated person need not be disclosed.
30. A fee paid to a councillor or to the mayor or deputy mayor under sections 248 or 249 of the LGA need not be disclosed.

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## Debts

31. A person making a return under clause 4.21 of this code must disclose the name and address of each person to whom the person was liable to pay any debt:
  - a) on the return date, and
  - b) at any time in the period since 30 June of the previous financial year.
32. A liability to pay a debt must be disclosed by a person in a return made under clause 4.21 whether or not the amount, or any part of the amount, to be paid was due and payable on the return date or at any time in the period since 30 June of the previous financial year, as the case may be.
33. A liability to pay a debt need not be disclosed by a person in a return if:
  - a) the amount to be paid did not exceed \$500 on the return date or in the period since 30 June of the previous financial year, as the case may be, unless:

- (i) the debt was one of two or more debts that the person was liable to pay to one person on the return date, or at any time in the period since 30 June of the previous financial year, as the case may be, and
- (ii) the amounts to be paid exceeded, in the aggregate, \$500, or
- b) the person was liable to pay the debt to a relative, or
- c) in the case of a debt arising from a loan of money the person was liable to pay the debt to an authorised deposit-taking institution or other person whose ordinary business includes the lending of money, and the loan was made in the ordinary course of business of the lender, or
- d) in the case of a debt arising from the supply of goods or services:
  - (i) the goods or services were supplied in the period of 12 months immediately preceding the return date, or were supplied in the period since 30 June of the previous financial year, as the case may be, or
  - (ii) the goods or services were supplied in the ordinary course of any occupation of the person that is not related to their duties as the holder of a position required to make a return, or
- e) subject to paragraph (a), the debt was discharged prior to the person becoming a councillor or designated person.

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## Discretionary disclosures

34. A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision of this Schedule.

# Schedule 2: Form of Written Return of Interests Submitted Under Clause 4.21

## ‘Disclosures by councillors and designated persons’ return

1. The pecuniary interests and other matters to be disclosed in this return are prescribed by Schedule 1 of the *Model Code of Conduct for Local Councils in NSW* (the Model Code of Conduct).
2. If this is the first return you have been required to lodge with the general manager after becoming a councillor or designated person, do not complete Parts C, D and I of the return. All other parts of the return should be completed with appropriate information based on your circumstances at the return date, that is, the date on which you became a councillor or designated person.
3. If you have previously lodged a return with the general manager and you are completing this return for the purposes of disclosing a new interest that was not disclosed in the last return you lodged with the general manager, you must complete all parts of the return with appropriate information for the period from 30 June of the previous financial year or the date on which you became a councillor or designated person, (whichever is the later date), to the return date which is the date you became aware of the new interest to be disclosed in your updated return.
4. If you have previously lodged a return with the general manager and are submitting a new return for the new financial year, you must complete all parts of the return with appropriate information for the 12-month period commencing on 30 June of the previous year to 30 June this year.
5. This form must be completed using block letters or typed.

6. If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.
7. If there are no pecuniary interests or other matters of the kind required to be disclosed under a heading in this form, the word “NIL” is to be placed in an appropriate space under that heading.

## Important information

This information is being collected for the purpose of complying with clause 4.21 of the Model Code of Conduct.

You must not lodge a return that you know or ought reasonably to know is false or misleading in a material particular (see clause 4.23 of the Model Code of Conduct). Complaints about breaches of these requirements are to be referred to the Office of Local Government and may result in disciplinary action by the council, the Chief Executive of the Office of Local Government or the NSW Civil and Administrative Tribunal.

The information collected on this form will be kept by the general manager in a register of returns. The general manager is required to table all returns at a council meeting.

Information contained in returns made and lodged under clause 4.21 is to be made publicly available in accordance with the requirements of the *Government Information (Public Access) Act 2009*, the *Government Information (Public Access) Regulation 2009* and any guidelines issued by the Information Commissioner.

You have an obligation to keep the information contained in this return up to date. If you become aware of a new interest that must be disclosed in this return, or an interest that you have previously failed to disclose, you must submit an updated return within three months of becoming aware of the previously undisclosed interest.

Disclosure of pecuniary interests and other matters by *[full name of councillor or designated person]*

as at *[return date]*

in respect of the period from *[date]* to *[date]*

*[councillor's or designated person's signature]*

*[date]*

### A. Real Property

Street address of each parcel of real property in which I had an interest at the return date/at any time since 30 June      Nature of interest

### B. Sources of income

1 Sources of income I reasonably expect to receive from an occupation in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from an occupation at any time since 30 June

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
---------------------------	--	--

2 Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from a trust since 30 June

Name and address of settlor	Name and address of trustee
-----------------------------	-----------------------------

3 Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June

Sources of other income I received at any time since 30 June

*[Include description sufficient to identify the person from whom, or the circumstances in which, that income was received]*

### C. Gifts

Description of each gift I received at any time since 30 June	Name and address of donor
---	---------------------------

**D. Contributions to travel**

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time since 30 June	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel was undertaken
---	--------------------------------------	---

**E. Interests and positions in corporations**

Name and address of each corporation in which I had an interest or held a position at the return date/at any time since 30 June	Nature of interest (if any)	Description of position (if any)	Description of principal objects (if any) of corporation (except in case of listed company)
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**F. Were you a property developer or a close associate of a property developer on the return date? (Y/N)**

**G. Positions in trade unions and professional or business associations**

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at the return date/at any time since 30 June	Description of position
---	-------------------------

**H. Debts**

Name and address of each person to whom I was liable to pay any debt at the return date/at any time since 30 June

**I. Dispositions of property**

1 Particulars of each disposition of real property by me (including the street address of the affected property) at any time since 30 June as a result of which I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time

2 Particulars of each disposition of property to a person by any other person under arrangements made by me (including the street address of the affected property), being dispositions made at any time since 30 June, as a result of which I obtained, either wholly or in part, the use and benefit of the property

**J. Discretionary disclosures**

**Schedule 3:**  
**Form of Special Disclosure of**  
**Pecuniary Interest Submitted**  
**Under Clause 4.37**



1. This form must be completed using block letters or typed.
2. If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.

---

## Important information

This information is being collected for the purpose of making a special disclosure of pecuniary interests under clause 4.36(c) of the *Model Code of Conduct for Local Councils in NSW* (the Model Code of Conduct).

The special disclosure must relate only to a pecuniary interest that a councillor has in the councillor's principal place of residence, or an interest another person (whose interests are relevant under clause 4.3 of the Model Code of Conduct) has in that person's principal place of residence.

Clause 4.3 of the Model Code of Conduct states that you will have a pecuniary interest in a matter because of the pecuniary interest of your spouse or your de facto partner or your relative or because your business partner or employer has a pecuniary interest. You will also have a pecuniary interest in a matter because

you, your nominee, your business partner or your employer is a member of a company or other body that has a pecuniary interest in the matter.

"Relative" is defined by clause 4.4 of the Model Code of Conduct as meaning your, your spouse's or your de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child and the spouse or de facto partner of any of those persons.

You must not make a special disclosure that you know or ought reasonably to know is false or misleading in a material particular. Complaints about breaches of these requirements are to be referred to the Office of Local Government and may result in disciplinary action by the Chief Executive of the Office of Local Government or the NSW Civil and Administrative Tribunal.

This form must be completed by you before the commencement of the council or council committee meeting at which the special disclosure is being made. The completed form must be tabled at the meeting. Everyone is entitled to inspect it. The special disclosure must be recorded in the minutes of the meeting.

**Special disclosure of pecuniary interests by** *[full name of councillor]*

in the matter of *[insert name of environmental planning instrument]*

which is to be considered at a meeting of the  
*[name of council or council committee (as the case requires)]*

to be held on the            day of            20     .

**Pecuniary interest**

**Address of the affected principal place of residence of the councillor or an associated person, company or body (the identified land)**

Relationship of identified land to councillor

*[Tick or cross one box.]*

- The councillor has an interest in the land (e.g. is the owner or has another interest arising out of a mortgage, lease, trust, option or contract, or otherwise).
- An associated person of the councillor has an interest in the land.
- An associated company or body of the councillor has an interest in the land.

**Matter giving rise to pecuniary interest<sup>1</sup>**

Nature of the land that is subject to a change in zone/planning control by the proposed LEP (the subject land)<sup>2</sup>

*[Tick or cross one box]*

- The identified land.
- Land that adjoins or is adjacent to or is in proximity to the identified land.

Current zone/planning control

*[Insert name of current planning instrument and identify relevant zone/planning control applying to the subject land]*

1 Clause 4.1 of the Model Code of Conduct provides that 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. A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter, or if the interest is of a kind specified in clause 4.6 of the Model Code of Conduct.

2 A pecuniary interest may arise by way of a change of permissible use of land adjoining, adjacent to or in proximity to land in which a councillor or a person, company or body referred to in clause 4.3 of the Model Code of Conduct has a proprietary interest.

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Proposed change of zone/planning control

*[Insert name of proposed LEP and identify proposed change of zone/planning control applying to the subject land]*

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Effect of proposed change of zone/planning control on councillor or associated person

*[Insert one of the following: "Appreciable financial gain" or "Appreciable financial loss"]*

---

*[If more than one pecuniary interest is to be declared, reprint the above box and fill in for each additional interest.]*

Councillor's signature

Date

[This form is to be retained by the council's general manager and included in full in the minutes of the meeting]



<b>Circular</b>	PS 20-002
<b>Issued</b>	5 May 2020
<b>Related</b>	Revokes PS 18-003 (February 2018), PS 19-005

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## Variations to development standards

This circular is to advise consent authorities of arrangements for when the Secretary's concurrence to vary development standards may be assumed (including when council or its Independent Hearing and Assessment Panel are to determine applications when development standards are varied) and clarify requirements around reporting and record keeping where that concurrence has been assumed.

---

### Overview of assumed concurrence

This circular replaces Planning Circular PS 18-003 and issues assumed concurrence, governance and reporting requirements for consent authorities. It also advises that council reports are to come through the Planning Portal, and of the repeal of SEPP 1.

All consent authorities may assume the Secretary's concurrence under:

- clause 4.6 of a local environmental plan that adopts the *Standard Instrument (Local Environmental Plans) Order 2006* or any other provision of an environmental planning instrument to the same effect, or
- *State Environmental Planning Policy No 1 – Development Standards* for land included in an old Interim Development Order (IDO) or Planning Scheme Ordinance (PSO).

However, the assumed concurrence is subject to conditions (see below).

The assumed concurrence notice takes effect immediately and applies to pending development applications.

Any existing variation agreed to by the Secretary of Planning, Industry and Environment to a previous notice will continue to have effect under the attached notice.

### Assumed concurrence conditions

#### Lot size standards for dwellings in rural areas

The Secretary's concurrence may not be assumed for a development standard relating to the minimum lot size required for erection of a dwelling on land in one of the following land use zones, if the lot is less than 90% of the required minimum lot size:

- Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone

RU4 Primary Production Small Lots, Zone RU6 Transition

- Zone R5 Large Lot Residential
- Zone E2 Environmental Conservation, Zone E3 Environmental Management, Zone E4 Environmental Living
- a land use zone that is equivalent to one of the above land use zones

This condition will only apply to local and regionally significant development.

### Numerical and non-numerical development standards

The Secretary's concurrence may not be assumed by a delegate of council if:

- the development contravenes a numerical standard by greater than 10%; or
- the variation is to a non-numerical standard.

This restriction does not apply to decisions made by independent hearing and assessment panels, formally known as local planning panels, who exercise consent authority functions on behalf of councils, but are not legally delegates of the council (see section 231).

The purpose of the restriction on assumed concurrence for variations of numerical and non-numerical standards applying to delegates is to ensure that variations of this nature are considered by the council or its independent hearing and assessment panel and that they are subject to greater public scrutiny than decisions made by council staff under delegation.

In all other circumstances, delegates of a consent authority may assume the Secretary's concurrence in accordance with the attached written notice.

## Independent hearing and assessment panels

From 1 March 2018, councils in Sydney and Wollongong were required to have independent hearing and assessment panels that will determine development applications on behalf of councils (see section 231).

The attached notice allows independent hearing and assessment panels to assume the Secretary's concurrence because they are exercising the council's functions as a consent authority.

Independent hearing and assessment panels established by councils before 1 March 2018 also make decisions on behalf of councils. The attached notice applies to existing panels in the same way as it applies to panels established after 1 March 2018.

## Regionally significant development

Sydney district and regional planning panels may also assume the Secretary's concurrence where development standards will be contravened.

The restriction on delegates determining applications involving numerical or non-numerical standards does not apply to all regionally significant development. This is because all regionally significant development is determined by a panel and is not delegated to council staff.

However, the restriction on assuming concurrence to vary lot size standards for dwellings in rural areas will continue to apply to regionally significant development. The Secretary's concurrence will need to be obtained for these proposals in the same way as it would for local development.

## State significant development and development where a Minister is the consent authority

Consent authorities for State significant development (SSD) may also assume the Secretary's concurrence where development standards will be contravened. This arrangement also applies to other development for which a Minister is the consent authority for the same reasons.

Any matters arising from contravening development standards will be dealt with in Departmental assessment reports.

The restriction on assuming concurrence to vary lot size standards for dwellings in rural areas will not apply to SSD or where a Minister is the consent authority for the same reasons.

## Notification of assumed concurrence

Under clause 64 of the *Environmental Planning and Assessment Regulation 2000*, consent authorities are notified that they may assume the Secretary's concurrence for exceptions to development standards for applications made under clause 4.6 of the SILEP (or any other provision of an environmental planning instrument to the same effect).

The notice takes effect on the day that it is published on the Department of Planning, Industry and Environment's website (i.e. the date of issue of this circular) and applies to pending development applications.

## Procedural and reporting requirements

In order to ensure transparency and integrity in the planning framework the below Departmental monitoring and reporting measures must be followed when development standards are being varied:

- Proposed variations to development standards cannot be considered without a written application objecting to the development standard and dealing with the matters required to be addressed by the relevant instrument.
- A publicly available online register of all variations to development standards approved by the consent authority or its delegates is to be established and maintained. This register must include the development application number and description, the property address, the standard to be varied and the extent of the variation.
- A report of all variations approved (including under delegation) must be submitted through the NSW Planning Portal at <https://www.planningportal.nsw.gov.au/reporting/online-submission-planning-data> within four weeks of the end of each quarter (i.e. March, June, September and December) in the form provided by the Department.
- A report of all variations approved under delegation from a council must be provided to a meeting of the council meeting at least once each quarter.

Councils are to ensure these procedures and reporting requirements are carried out on behalf of Independent Hearing and Assessment Panels and Sydney district or regional planning panels.

## Audit

The Department will continue to carry out random audits to ensure the monitoring and reporting measures are complied with. The Department and the NSW Independent Commission Against Corruption will continue to review and refine the audit strategy.

Should ongoing non-compliance be identified with one or more consent authorities, the Secretary will consider revoking the notice allowing concurrence to be assumed, either generally for a consent authority or for a specific type of development.

## Repeal of *State Environmental Planning Policy No 1 – Development Standards (SEPP 1)*

The repeal of SEPP 1 came into effect from 1 February 2020 as part of the SEPP Review Program to update and simplify the NSW Planning system.

SEPP 1 is repealed in circumstances where a standard instrument LEP applies in a local council

area. The amendments included the insertion of two clauses into the *SEPP (Concurrences and Consents) 2018*. Clause 6 provides for the continued operation of SEPP 1 where an Interim Development Order (IDO) or a Planning Scheme Ordinance (PSO) is in effect. Clause 7 is a savings provision which continues to apply SEPP 1 for applications that were made prior to the repeal but are yet to be determined.

## Further information

*A Guide on Varying Development Standards 2011* is available to assist applicants and councils on the procedures for managing SEPP 1 and clause 4.6 applications to vary standards.

Links to the Standard Instrument can be found on the NSW Legislation website at: [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)

For further information please contact the Department of Planning, Industry and Environment's information centre on 1300 305 695.

Department of Planning, Industry and Environment circulars are available at: [planning.nsw.gov.au/circulars](http://planning.nsw.gov.au/circulars)

## Authorised by:

**Marcus Ray**  
**Group Deputy Secretary,**  
**Planning and Assessment**  
**Department of Planning, Industry and Environment**

**Important note:** This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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## ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000

### Assumed concurrence notice

I, Carolyn McNally, Secretary of the Department of Planning and Environment, give the following notice to all consent authorities under clause 64 of the *Environmental Planning and Assessment Regulation 2000*.

#### Notice

All consent authorities may assume my concurrence, subject to the conditions set out in the table below, where it is required under:

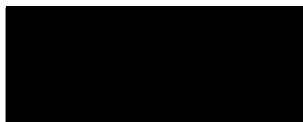
- clause 4.6 of a local environmental plan that adopts the *Standard Instrument (Local Environmental Plans) Order 2006* or any other provision of an environmental planning instrument to the same effect, or
- *State Environmental Planning Policy No 1 – Development Standards*.

No.	Conditions
1	<p>Concurrence may not be assumed for a development that contravenes a development standard relating to the minimum lot size required for the erection of a dwelling on land in one of the following land use zones, if the variation is greater than 10% of the required minimum lot size:</p> <ul style="list-style-type: none"><li>– Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition</li><li>– Zone R5 Large Lot Residential</li><li>– Zone E2 Environmental Conservation, Zone E3 Environmental Management, Zone E4 Environmental Living</li><li>– a land use zone that is equivalent to one of the above land use zones</li></ul> <p>This condition does not apply to State significant development or development for which a Minister is the consent authority</p>
2	<p>Concurrence may not be assumed for the following development, if the function of determining the development application is exercised by a delegate of the consent authority:</p> <ul style="list-style-type: none"><li>– development that contravenes a numerical development standard by more than 10%</li><li>– development that contravenes a non-numerical development standard</li></ul> <p><b>Note.</b> Local planning panels constituted under the <i>Environmental Planning and Assessment Act 1979</i> exercise consent authority functions on behalf a council and are not delegates of the council</p> <p>This condition does not apply to State significant development, regionally significant development or development for which a Minister is the consent authority</p>

This notice takes effect on the day that it is published on the Department of Planning's website and applies to development applications made (but not determined) before it takes effect.

The previous notice to assume my concurrence contained in planning system circular PS 17-006 *Variations to development standards*, issued 15 December 2017 is revoked by this notice. However, any variation to a previous notice continues to have effect as if it were a variation to this notice.

Dated: 21 February 2018



**Carolyn McNally**  
Secretary, Department of Planning and Environment





# CODE OF CONDUCT

SEPTEMBER 2020



[www.georgesriver.nsw.gov.au](http://www.georgesriver.nsw.gov.au)

## POLICY ADMINISTRATION

<b>Dates</b>	Policy approved 28/09/2020 (Version 4) This policy is effective upon its approval. Policy is due for review within 12 months of the ordinary election of Council.
<b>Approved by</b>	Council Meeting 28/09/2020 (Version 4) Council Resolution CCL060-20
<b>Exhibition Period</b>	N/A
<b>Policy Owner</b>	Manager Governance and Risk Management, Business and Corporate Services
<b>Related Documents</b>	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 Control Policy Statement of Business Ethics Customer Feedback and Complaints Management Policy Public Interest Disclosure Reporting Policy
<b>References &amp; Legislation</b>	<i>Local Government Act 1993</i> <i>Local Government (General) Regulation 2021</i>
<b>Document Identifier</b>	Policy #: Pol-022.04.3 Doc #: D17/114758
<b>Breaches of Policy</b>	Breaches of any policy will be dealt with and responded to in accordance with adopted codes and/or relevant legislation.
<b>Record Keeping</b>	All documents and information obtained in relation to the implementation of this policy will be kept in accordance with the <i>NSW State Records Act 1998</i> , Georges River Council's Corporate Records Policy and adopted internal procedures.

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# FOREWORD



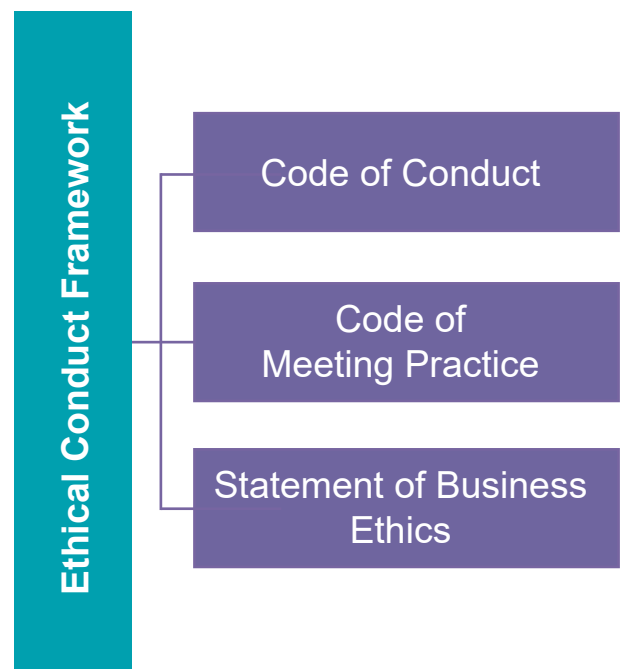
**GEORGES  
RIVER  
COUNCIL**

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.

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 an Ethical Conduct Framework which includes the Code of Conduct, the Code of Meeting Practice and Council's Statement of Business Ethics.

The Code of Conduct is the principal document which forms the foundation for a strong ethical culture at Council.

This Framework includes a suite of policies and procedures that Council has developed which provide further guidance in regards to ethical conduct. Failure to comply with these policies and procedures would therefore be a breach of the Code of Conduct.




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<sup>1</sup>Governance Lighthouse – Strategic Early Warning System, Audit Office of New South Wales



# 1. INTRODUCTION



This Code of Conduct incorporates the provisions of the Model Code of Conduct for Local Councils in NSW (“the Model Code of Conduct”) which is made under section 440 of the Local Government Act 1993 (“LGA”) and the Local Government (General) Regulation 2021 (“the Regulation”).

The Code of Conduct sets the minimum standards of conduct for council officials. It is prescribed by regulation to assist council officials to:

- understand and comply with 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 local government.

Section 440 of the LGA requires every council to adopt a code of conduct that incorporates the provisions of the Model Code of Conduct. A council’s adopted code of conduct may also include provisions that supplement the Model Code of Conduct and that extend its application to persons that are not “council officials” for the purposes of the Model Code of Conduct (eg volunteers, contractors and members of wholly advisory committees).

A council’s code of conduct has no effect to the extent that it is inconsistent with the Model Code of Conduct. However, a council’s adopted code of conduct may prescribe requirements that are more onerous than those prescribed in the Model Code of Conduct.

Councillors, administrators, members of staff of councils, delegates of councils, (including members of council committees that are delegates of a council) and any other person that Georges River Council’s adopted code of conduct applies to, must comply with the applicable provisions of our code of conduct. It is the personal responsibility of council officials to comply with the standards in the code and to regularly review their personal circumstances and conduct 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 LGA. The LGA 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 a council’s code of conduct may give rise to disciplinary action.

# 2. DEFINITIONS



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administrator	an administrator of a council appointed under the LGA other than an administrator appointed under section 66
committee	see the definition of “council committee”
complaint	a code of conduct complaint made for the purposes of clauses 4.1 and 4.2 of the Procedures.
council	includes county councils and joint organisations
council committee	a committee established by a council comprising of councillors, staff or other persons that the council has delegated functions to and the council’s audit, risk and improvement committee
council committee member	a person other than a councillor or member of staff of a council who is a member of a council committee other than a wholly advisory committee and a person other than a councillor who is a member of the council’s audit, risk and improvement committee
council official	includes councillors, members of staff of a council, contractors, administrators, community members of wholly advisory committees, members of the Audit Risk and Improvement Committee (ARIC), members of reference panels, council committee members, delegates of council and, for the purposes of clause 4.16, council advisers
councillor	any person elected or appointed to civic office, including the mayor and includes members and chairpersons of county councils and voting representatives of the boards of joint organisations and chairpersons of joint organisations
conduct	includes acts and omissions
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	a person referred to in clause 4.8
election campaign	includes council, state and federal election campaigns
environmental planning instrument	has the same meaning as it has in the <i>Environmental Planning and Assessment Act 1979</i>
LGA	Local Government Act 1993
local planning panel	a local planning panel constituted under the Environmental Planning and Assessment Act 1979
the office	Office of Local Government
personal information	information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion
the Procedures	the Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW prescribed under the Regulation
record	record means any document or other source of information compiled, recorded or stored in written form or on film or by electronic process, or in any other manner or by any other means
the Regulation	the Local Government (General) Regulation 2021
voting representative	a voting representative of the board of a joint organisation
wholly advisory committee	a council committee that the council has not delegated any functions to

# 3. GENERAL CONDUCT OBLIGATIONS



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## GENERAL CONDUCT

- 3.1 You must not conduct yourself in a manner that:
- is likely to bring the council or other council officials into disrepute
  - is contrary to statutory requirements or the council's administrative requirements or policies
  - is improper or unethical
  - is an abuse of power
  - causes, comprises or involves intimidation or verbal abuse
  - involves the misuse of your position to obtain a private benefit
  - constitutes harassment or bullying behaviour under this code, or is unlawfully discriminatory.
- 3.2 You must act lawfully and honestly, and exercise a reasonable degree of care and diligence in carrying out your functions under the LGA or any other Act. (section 439).

## FAIRNESS AND EQUITY

- 3.3 You must consider issues consistently, promptly and fairly. You must deal with matters in accordance with established procedures, in a non-discriminatory manner.
- 3.4 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.
- 3.5 An act or omission in good faith, whether or not it involves error, will not constitute a breach of clauses 3.3 or 3.4.

## HARASSMENT AND DISCRIMINATION

- 3.6 You must not harass or unlawfully discriminate against others, or support others who harass or unlawfully discriminate against others, on the grounds of age, disability, race (including colour, national or ethnic origin or immigrant status) sex, pregnancy, marital or relationship status, family responsibilities or breastfeeding, sexual orientation, gender identity or intersex status or political, religious or other affiliation.
- 3.7 For the purposes of this code, "harassment" is any form of behaviour towards a person that:
- is not wanted by the person
  - offends, humiliates or intimidates the person, and
  - creates a hostile environment.

## BULLYING

- 3.8 You must not engage in bullying behaviour towards others.
- 3.9 For the purposes of this code, "bullying behaviour" is any behaviour in which:
- a person or a group of people repeatedly behaves unreasonably towards another person or a group of persons; and
  - the behaviour creates a risk to health and safety.
- 3.10 Bullying behaviour may involve, but is not limited to, any of the following types of behaviour:
- aggressive, threatening or intimidating conduct
  - belittling or humiliating comments
  - spreading malicious rumours
  - teasing, practical jokes or 'initiation ceremonies'
  - exclusion from work-related events
  - unreasonable work expectations, including too much or too little work, or work below or beyond a worker's skill level
  - displaying offensive material
  - pressure to behave in an inappropriate manner.

- 3.11 Reasonable management action carried out in a reasonable manner does not constitute bullying behaviour for the purposes of this code. Examples of reasonable management action may include, but are not limited to:
- a) performance management processes
  - b) disciplinary action for misconduct
  - c) informing a worker about unsatisfactory work performance or inappropriate work behaviour
  - d) directing a worker to perform duties in keeping with their job
  - e) maintaining reasonable workplace goals and standards
  - f) legitimately exercising a regulatory function
  - g) legitimately implementing a council policy or administrative processes.

## WORK HEALTH AND SAFETY

- 3.12 All council officials, including councillors, owe statutory duties under the Work Health and Safety Act 2011 (WHS Act). You must comply with your duties under the WHS Act and your responsibilities under any policies or procedures adopted by the council to ensure workplace health and safety. Specifically, you must:
- a) take reasonable care for your own health and safety
  - b) take reasonable care that your acts or omissions do not adversely affect the health and safety of other persons
  - c) comply, so far as you are reasonably able, with any reasonable instruction that is given to ensure compliance with the WHS Act and any policies or procedures adopted by the council to ensure workplace health and safety
  - d) cooperate with any reasonable policy or procedure of the council relating to workplace health or safety that has been notified to council staff
  - e) report accidents, incidents, near misses, to the general manager or such other staff member nominated by the general manager, and take part in any incident investigations

- f) so far as is reasonably practicable, consult, co-operate and coordinate with all others who have a duty under the WHS Act in relation to the same matter.

## LAND USE PLANNING, DEVELOPMENT ASSESSMENT AND OTHER REGULATORY FUNCTIONS

- 3.13 You must ensure that land use planning, development assessment and other regulatory decisions are properly made, and that all parties are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the exercise of land use planning, development assessment and other regulatory functions.
- 3.14 In exercising land use planning, development assessment and other regulatory functions, you must ensure that no action, statement or communication between yourself and others conveys any suggestion of willingness to improperly provide concessions or preferential or unduly unfavourable treatment.
- 3.15 You must keep a written record of all meetings and other communications with applicants or objectors to planning applications. Councillors must disclose in writing any meetings and other communications with applicants or objectors to planning applications at a council or committee meeting where the planning application is under consideration.
- 3.16 For the purposes of clause 3.15, a "planning application" is:
- a) an application for development consent, or for the modifications of a development consent, or
  - b) an application for a complying development certificate, or an application for the modification of a complying development certificate, or
  - c) a formal request to initiate the making of an environmental planning instrument or development control plan in relation to development on a particular site.

## BINDING CAUCUS VOTES

- 3.17 You must not participate in binding caucus votes in relation to matters to be considered at a council or committee meeting.
- 3.18 For the purposes of clause 3.17, 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.
- 3.19 Clause 3.17 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.
- 3.20 Clause 3.17 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 or a representative of the council on an external body.
- 3.23 You must not engage in conduct that disrupts council or committee meetings or other proceedings of the council (such as, but not limited to, workshops and briefing sessions), or that would otherwise be inconsistent with the orderly conduct of meetings.
- 3.24 If you are a councillor, you must not engage in any acts of disorder or other conduct that is intended to prevent the proper or effective functioning of the council, or of a committee of the council. Without limiting this clause, you must not:
- leave a meeting of the council or a committee for the purposes of depriving the meeting of a quorum, or
  - submit a rescission motion with respect to a decision for the purposes of voting against it to prevent another councillor from submitting a rescission motion with respect to the same decision, or
  - deliberately seek to impede the consideration of business at a meeting.

## OBLIGATIONS IN RELATION TO MEETINGS

- 3.21 You must comply with rulings by the chair at council and committee meetings or other proceedings of the council unless a motion dissenting from the ruling is passed.
- 3.22 You must not engage in bullying behaviour (as defined under this Part) towards the chair, other council officials or any members of the public present during council or committee meetings or other proceedings of the council (such as, but not limited to, workshops and briefing sessions).
- 3.25 You must not engage or participate in any act that may constitute fraud and/or corrupt conduct.
- 3.26 You must immediately or as soon as practicable report any concerns you have about any act that you reasonably believe may constitute fraud and/or corrupt conduct to the General Manager, the Disclosures Coordinator or a Disclosures Officer or if the report is about the General Manager, to the Mayor. Further, you must not ignore or condone any act that you reasonably suspect to constitute fraud or corrupt conduct. Failure to report or disclose any potential fraud or corrupt conduct may result in disciplinary action against you.

## FRAUD AND CORRUPTION PREVENTION

- 3.27 For the purposes of this section corrupt conduct is defined in sections 8 & 9 of the Independent Commission Against Corruption Act 1988 (NSW) generally to mean the conduct of a person involving the dishonest or partial exercise of public official functions or a breach of public trust or the misuse of information or material that a person has acquired in the course of his or her official functions, in all cases involving either a criminal offence or a disciplinary offence or reasonable grounds for dismissing, dispensing with the services of or otherwise terminated the services of a public official.
- 3.28 Fraud is dishonest activity or a dishonest representation intended to result in financial or personal gain. Fraud includes, but is not limited to:
- i) theft of money or other property by employees or persons external to the Council, where deception is used; or
  - ii) deliberate falsification, concealment or improper destruction of documentation, or use of falsified documentation; or
  - iii) improper use of information or position for personal gain; or
  - iv) theft of Council property where deception is not used.



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# 4. PECUNIARY INTERESTS



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## WHAT IS A PECUNIARY INTEREST?

- 4.1 A pecuniary interest is an interest that you have in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to you or a person referred to in clause 4.3.
- 4.2 You will not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision you might make in relation to the matter, or if the interest is of a kind specified in clause 4.6.
- 4.3 For the purposes of this Part, you will have a pecuniary interest in a matter if the pecuniary interest is:
- a) your interest, or
  - b) the interest of your spouse or de facto partner, your relative, or your partner or employer, or
  - c) a company or other body of which you, or your nominee, partner or employer, is a shareholder or member.
- 4.4 For the purposes of clause 4.3:
- a) Your “relative” is any of the following:
    - i) your parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
    - ii) your spouse’s or de facto partner’s parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
    - iii) the spouse or de facto partner of a person referred to in paragraphs (i) and (ii).
  - b) “de facto partner” has the same meaning as defined in section 21C of the Interpretation Act 1987.
- 4.5 You will not have a pecuniary interest in relation to a person referred to in subclauses 4.3(b) or (c):
- a) if you are unaware of the relevant pecuniary interest of your spouse, de facto partner, relative, partner, employer or company or other body, or
  - b) just because the person is a member of, or is employed by, a council or a statutory body, or is employed by the Crown, or
  - c) just because the person is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.

## WHAT INTERESTS DO NOT HAVE TO BE DISCLOSED?

- 4.6 You do not have to disclose the following interests for the purposes of this Part:
- a) your interest as an elector
  - b) your interest as a ratepayer or person liable to pay a charge
  - c) an interest you have in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to the public generally, or to a section of the public that includes persons who are not subject to this code
  - d) an interest you have in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to your relative by the council in the same manner and subject to the same conditions as apply to persons who are not subject to this code
  - e) an interest you have as a member of a club or other organisation or association, unless the interest is as the holder of an office in the club or organisation (whether remunerated or not)
  - f) if you are a council committee member, an interest you have as a person chosen to represent the community, or as a member of a non-profit organisation or other community or special interest group, if you have been appointed to represent the organisation or group on the council committee

- g) an interest you have relating to a contract, proposed contract or other matter, if the interest arises only because of a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company
  - h) an interest you have arising from the proposed making by the council of an agreement between the council and a corporation, association or partnership, being a corporation, association or partnership that has more than 25 members, if the interest arises because your relative is a shareholder (but not a director) of the corporation, or is a member (but not a member of the committee) of the association, or is a partner of the partnership
  - i) an interest you have arising from the making by the council of a contract or agreement with your relative for, or in relation to, any of the following, but only if the proposed contract or agreement is similar in terms and conditions to such contracts and agreements as have been made, or as are proposed to be made, by the council in respect of similar matters with other residents of the area:
    - i) the performance by the council at the expense of your relative of any work or service in connection with roads or sanitation
    - ii) security for damage to footpaths or roads
    - iii) any other service to be rendered, or act to be done, by the council by or under any Act conferring functions on the council, or by or under any contract
  - j) an interest relating to the payment of fees to councillors (including the mayor and deputy mayor)
  - k) an interest relating to the payment of expenses and the provision of facilities to councillors (including the mayor and deputy mayor) in accordance with a policy under section 252 of the LGA
  - l) an interest relating to an election to the office of mayor arising from the fact that a fee for the following 12 months has been determined for the office of mayor
  - m) an interest of a person arising from the passing for payment of a regular account for the wages or salary of an employee who is a relative of the person
  - n) an interest arising from being covered by, or a proposal to be covered by, indemnity insurance as a councillor or a council committee member
  - o) an interest arising from the appointment of a councillor to a body as a representative or delegate of the council, whether or not a fee or other recompense is payable to the representative or delegate.
- 4.7 For the purposes of clause 4.6, “relative” has the same meaning as in clause 4.4, but includes your spouse or de facto partner.
- ## WHAT DISCLOSURES MUST BE MADE BY A DESIGNATED PERSON?
- 4.8 Designated persons include:
- a) the general manager
  - b) other senior staff of the council for the purposes of section 332 of the LGA
  - c) a person (other than a member of the senior staff of the council) who is a member of staff of the council or a delegate of the council and who holds a position identified by the council as the position of a designated person because it involves the exercise of functions (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the person’s duty as a member of staff or delegate and the person’s private interest

d) a person (other than a member of the senior staff of the council) who is a member of a committee of the council identified by the council as a committee whose members are designated persons because the functions of the committee involve the exercise of the council's functions (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the member's duty as a member of the committee and the member's private interest.

4.9 A designated person:

- a) must prepare and submit written returns of interests in accordance with clauses 4.21, and
- b) must disclose pecuniary interests in accordance with clause 4.10.

4.10 A designated person must disclose in writing to the general manager (or if the person is the general manager, to the council) the nature of any pecuniary interest the person has in any council matter with which the person is dealing as soon as practicable after becoming aware of the interest.

4.11 Clause 4.10 does not require a designated person who is a member of staff of the council to disclose a pecuniary interest if the interest relates only to the person's salary as a member of staff, or to their other conditions of employment.

4.12 The general manager must, on receiving a disclosure from a designated person, deal with the matter to which the disclosure relates or refer it to another person to deal with.

4.13 A disclosure by the general manager must, as soon as practicable after the disclosure is made, be laid on the table at a meeting of the council and the council must deal with the matter to which the disclosure relates or refer it to another person to deal with.

## WHAT DISCLOSURES MUST BE MADE BY COUNCIL STAFF OTHER THAN DESIGNATED PERSONS?

4.14 A member of staff of council, other than a designated person, must disclose in writing to their manager or the general manager the nature of any pecuniary interest they have in a matter they are dealing with as soon as practicable after becoming aware of the interest.

4.15 The staff member's manager or the general manager must, on receiving a disclosure under clause 4.14, deal with the matter to which the disclosure relates or refer it to another person to deal with.

## WHAT DISCLOSURES MUST BE MADE BY COUNCIL ADVISERS?

4.16 A person who, at the request or with the consent of the council or a council committee, gives advice on any matter at any meeting of the council or committee, must disclose the nature of any pecuniary interest the person has in the matter to the meeting at the time the advice is given. The person is not required to disclose the person's interest as an adviser.

4.17 A person does not breach clause 4.16 if the person did not know, and could not reasonably be expected to have known, that the matter under consideration at the meeting was a matter in which they had a pecuniary interest.

## WHAT DISCLOSURES MUST BE MADE BY A COUNCIL COMMITTEE MEMBER?

- 4.18 A council committee member must disclose pecuniary interests in accordance with clause 4.28 and comply with clause 4.29.
- 4.19 For the purposes of clause 4.18, a “council committee member” includes a member of staff of council who is a member of the committee.

## WHAT DISCLOSURES MUST BE MADE BY A COUNCILLOR?

- 4.20 A councillor:
- a) must prepare and submit written returns of interests in accordance with clause 4.21, and
  - b) must disclose pecuniary interests in accordance with clause 4.28 and comply with clause 4.29 where it is applicable.

## DISCLOSURE OF INTERESTS IN WRITTEN RETURNS

- 4.21 A councillor or designated person must make and lodge with the general manager a return in the form set out in schedule 2 to this code, disclosing the councillor’s or designated person’s interests as specified in schedule 1 to this code within 3 months after:
- a) becoming a councillor or designated person, and
  - b) 30 June of each year, and
  - c) the councillor or designated person becoming aware of an interest they are required to disclose under schedule 1 that has not been previously disclosed in a return lodged under paragraphs (a) or (b).

- 4.22 A person need not make and lodge a return under clause 4.21, paragraphs (a) and (b) if:
- a) they made and lodged a return under that clause in the preceding 3 months, or
  - b) they have ceased to be a councillor or designated person in the preceding 3 months.
- 4.23 A person must not make and lodge a return that the person knows or ought reasonably to know is false or misleading in a material particular.
- 4.24 The general manager must keep a register of returns required to be made and lodged with the general manager.
- 4.25 Returns required to be lodged with the general manager under clause 4.21(a) and (b) must be tabled at the first meeting of the council after the last day the return is required to be lodged.
- 4.26 Returns required to be lodged with the general manager under clause 4.21(c) must be tabled at the next council meeting after the return is lodged.
- 4.27 Information contained in returns made and lodged under clause 4.21 is to be made publicly available in accordance with the requirements of the Government Information (Public Access) Act 2009, the Government Information (Public Access) Regulation 2018 and any guidelines issued by the Information Commissioner.

## DISCLOSURE OF PECUNIARY INTERESTS AT MEETINGS

- 4.28 A councillor or a council committee member who has a pecuniary interest in any matter with which the council is concerned, and who is present at a meeting of the council or committee at which the matter is being considered, must disclose the nature of the interest to the meeting as soon as practicable.

- 4.29 The councillor or council committee member must not be present at, or in sight of, the meeting of the council or committee:
- a) at any time during which the matter is being considered or discussed by the council or committee, or
  - b) at any time during which the council or committee is voting on any question in relation to the matter.
- 4.30 A disclosure made at a meeting of a council or council committee must be recorded in the minutes of the meeting.
- 4.31 A general notice may be given to the general manager in writing by a councillor or a council committee member to the effect that the councillor or council committee member, or the councillor's or council committee member's spouse, de facto partner or relative, is:
- a) a member of, or in the employment of, a specified company or other body, or
  - b) a partner of, or in the employment of, a specified person.
- Such a notice is, unless and until the notice is withdrawn or until the end of the term of the council in which it is given (whichever is the sooner), sufficient disclosure of the councillor's or council committee member's interest in a matter relating to the specified company, body or person that may be the subject of consideration by the council or council committee after the date of the notice.
- 4.32 A councillor or a council committee member is not prevented from being present at and taking part in a meeting at which a matter is being considered, or from voting on the matter, merely because the councillor or council committee member has an interest in the matter of a kind referred to in clause 4.6.
- 4.33 A person does not breach clauses 4.28 or 4.29 if the person did not know, and could not reasonably be expected to have known, that the matter under consideration at the meeting was a matter in which they had a pecuniary interest.
- 4.34 Despite clause 4.29, a councillor who has a pecuniary interest in a matter may participate in a decision to delegate consideration of the matter in question to another body or person.
- 4.35 Clause 4.29 does not apply to a councillor who has a pecuniary interest in a matter that is being considered at a meeting 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 portion 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 portion of the council's area, and
  - b) the pecuniary interest arises only because of an interest of the councillor in the councillor's principal place of residence or an interest of another person (whose interests are relevant under clause 4.3) in that person's principal place of residence, and
  - c) the councillor made a special disclosure under clause 4.36 in relation to the interest before the commencement of the meeting.
- 4.36 A special disclosure of a pecuniary interest made for the purposes of clause 4.35(c) must:
- a) be in the form set out in schedule 3 of this code and contain the information required by that form, and
  - b) be laid on the table at a meeting of the council as soon as practicable after the disclosure is made, and the information contained in the special disclosure is to be recorded in the minutes of the meeting.

- 4.37 The Minister for Local Government may, conditionally or unconditionally, allow a councillor or a council committee member who has a pecuniary interest in a matter with which the council is concerned to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion:
- a) that the number of councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business, or
  - b) that it is in the interests of the electors for the area to do so.
- 4.38 A councillor or a council committee member with a pecuniary interest in a matter who is permitted to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter under clause 4.37, must still disclose the interest they have in the matter in accordance with clause 4.28.



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# 5. NON-PECUNIARY CONFLICTS OF INTEREST



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## WHAT IS A NON-PECUNIARY CONFLICT OF INTEREST?

- 5.1 Non-pecuniary interests are private or personal interests a council official has that do not amount to a pecuniary interest as defined in clause 4.1 of this code. These commonly arise out of family or personal relationships, or out of involvement in sporting, social, religious or other cultural groups and associations, and may include an interest of a financial nature.
- 5.2 A non-pecuniary conflict of interest exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your official functions in relation to a matter.
- 5.3 The personal or political views of a council official do not constitute a private interest for the purposes of clause 5.2.
- 5.4 Non-pecuniary conflicts of interest must be identified and appropriately managed to uphold community confidence in the probity of council decision-making. The onus is on you to identify any non-pecuniary conflict of interest you may have in matters that you deal with, to disclose the interest fully and in writing, and to take appropriate action to manage the conflict in accordance with this code.
- 5.5 When considering whether or not you have a non-pecuniary conflict of interest in a matter you are dealing with, it is always important to think about how others would view your situation.

## MANAGING NON-PECUNIARY CONFLICTS OF INTEREST

- 5.6 Where you have a non-pecuniary conflict of interest in a matter for the purposes of clause 5.2, you must disclose the relevant private interest you have in relation to the matter fully and in writing as soon as practicable after becoming aware of the non-pecuniary conflict of interest and on each occasion on which the non-pecuniary conflict of interest arises in relation to the matter. In the case of members of council staff other than the general manager, such a disclosure is to be made to the staff member's manager. In the case of the general manager, such a disclosure is to be made to the mayor.
- 5.7 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 on each occasion on which the non-pecuniary conflict of interest arises. This disclosure constitutes disclosure in writing for the purposes of clause 5.6.
- 5.8 How you manage a non-pecuniary conflict of interest will depend on whether or not it is significant.
- 5.9 As a general rule, a non-pecuniary conflict of interest will be significant where it does not involve a pecuniary interest for the purposes of clause 4.1, but it involves:
- a) a relationship between a council official and another person who is affected by a decision or a matter under consideration that is particularly close, such as a current or former spouse or de facto partner, a relative for the purposes of clause 4.4 or another person from the council official's extended family that the council official has a close personal relationship with, or another person living in the same household

- b) other relationships with persons who are affected by a decision or a matter under consideration 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 (such as a sporting body, club, religious, cultural or charitable organisation, corporation or association) that is affected by a decision or a matter under consideration that is particularly strong. The strength of a council official's affiliation with an organisation is to be determined by the extent to which they actively participate in the management, administration or other activities of the organisation.
  - d) membership, as the council's representative, of the board or management committee of an organisation that is affected by a decision or a matter under consideration, in circumstances where the interests of the council and the organisation are potentially in conflict in relation to the particular matter
  - e) a financial interest (other than an interest of a type referred to in clause 4.6) that is not a pecuniary interest for the purposes of clause 4.1
  - f) the conferral or loss of a personal benefit other than one conferred or lost as a member of the community or a broader class of people affected by a decision.
- 5.10 Significant non-pecuniary conflicts of interest must be managed in one of two ways:
- a) by not participating in consideration of, or decision making in relation to, the matter in which you have the significant non-pecuniary conflict of interest and the matter being allocated to another person for consideration or determination, or
  - b) if the significant non-pecuniary conflict of interest arises in relation to a matter under consideration at a council or committee meeting, by managing the conflict of interest as if you had a pecuniary interest in the matter by complying with clauses 4.28 and 4.29.
- 5.11 If you determine that you have a non-pecuniary conflict of interest in a matter that is not significant and does not require further action, when disclosing the interest you must also explain in writing why you consider that the non-pecuniary conflict of interest is not significant and does not require further action in the circumstances.
- 5.12 If you are a member of staff of council other than the general manager, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with and at the direction of your manager. In the case of the general manager, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with and at the direction of the mayor.
- 5.13 Despite clause 5.10(b), a councillor who has a significant non-pecuniary conflict of interest in a matter, may participate in a decision to delegate consideration of the matter in question to another body or person.
- 5.14 Council committee members are not required to declare and manage a non-pecuniary conflict of interest in accordance with the requirements of this Part where it arises from an interest they have as a person chosen to represent the community, or as a member of a non-profit organisation or other community or special interest group, if they have been appointed to represent the organisation or group on the council committee.

## POLITICAL DONATIONS

- 5.15 Councillors should be aware that matters before council or committee meetings involving their political donors may also give rise to a non-pecuniary conflict of interest.
- 5.16 Where you are a councillor and have received or knowingly benefitted from a reportable political donation:
- a) made by a major political donor in the previous four years, and
  - b) the major political donor has a matter before council,
- you must declare a non-pecuniary conflict of interest in the matter, disclose the nature of the interest, and manage the conflict of interest as if you had a pecuniary interest in the matter by complying with clauses 4.28 and 4.29. A disclosure made under this clause must be recorded in the minutes of the meeting.
- 5.17 For the purposes of this Part:
- a) a “reportable political donation” has the same meaning as it has in section 6 of the Electoral Funding Act 2018
  - b) “major political donor” has the same meaning as it has in the Electoral Funding Act 2018.
- 5.18 Councillors should note that political donations that are not a “reportable political donation”, 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 interest. Councillors should determine whether or not such conflicts are significant for the purposes of clause 5.9 and take the appropriate action to manage them.
- 5.19 Despite clause 5.16, a councillor who has received or knowingly benefitted from a reportable political donation of the kind referred to in that clause, may participate in a decision to delegate consideration of the matter in question to another body or person.

## LOSS OF QUORUM AS A RESULT OF COMPLIANCE WITH THIS PART

- 5.20 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 interest 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 portion 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 portion of the council’s area, and
  - b) the non-pecuniary conflict of interest arises only because of an interest that a person has in that person’s principal place of residence, and
  - c) the councillor discloses the interest they have in the matter that would otherwise have precluded their participation in consideration of the matter under this Part in accordance with clause 5.6.
- 5.21 The Minister for Local Government may, conditionally or unconditionally, allow a councillor or a council committee member who is precluded under this Part from participating in the consideration of a matter to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion:
- a) that the number of councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business, or
  - b) that it is in the interests of the electors for the area to do so.

5.22 Where the Minister exempts a councillor or committee member from complying with a requirement under this Part under clause 5.21, the councillor or committee member must still disclose any interests they have in the matter the exemption applies to, in accordance with clause 5.6.

## OTHER BUSINESS OR EMPLOYMENT

5.23 The general manager must not engage, for remuneration, in private employment, contract work or other business outside the service of the council without the approval of the council.

5.24 A member of staff must not engage, for remuneration, in private employment, contract work or other business outside the service of the council that relates to the business of the council or that might conflict with the staff member's council duties unless they have notified the general manager in writing of the employment, work or business and the general manager has given their written approval for the staff member to engage in the employment, work or business.

5.25 The general manager may at any time prohibit a member of staff from engaging, for remuneration, in private employment, contract work or other business outside the service of the council that relates to the business of the council, or that might conflict with the staff member's council duties.

5.26 A member of staff must not engage, for remuneration, in private employment, contract work or other business outside the service of the council if prohibited from doing so.

5.27 Members of staff must ensure that any outside employment, work or business they engage in will not:

a) conflict with their official duties

- b) involve using confidential information or council resources obtained through their work with the council including where private use is permitted
- c) require them to work while on council duty
- d) discredit or disadvantage the council
- e) pose, due to fatigue, a risk to their health or safety, or to the health and safety of their co-workers.

## PERSONAL DEALINGS WITH COUNCIL

5.28 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 development 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.

5.29 You must undertake any personal dealings you have with the council in a manner that is consistent with the way other members of the community deal with the council. You must also ensure that you disclose and appropriately manage any conflict of interest you may have in any matter in accordance with the requirements of this code.



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# 6. PERSONAL BENEFIT



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- 6.1 For the purposes of this Part, a gift or a benefit is something offered to or received by a council official or someone personally associated with them for their personal use and enjoyment.
- 6.2 A reference to a gift or benefit in this Part does not include:
- a) a political donation for the purposes of the Electoral Funding Act 2018
  - b) a gift provided to the council as part of a cultural exchange or sister-city relationship that is not converted for the personal use or enjoyment of any individual council official or someone personally associated with them
  - c) a benefit or facility provided by the council to an employee or councillor
  - d) attendance by a council official at a work-related event or function for the purposes of performing their official duties, or
  - e) free or subsidised meals, beverages or refreshments provided to council officials in conjunction with the performance of their official duties such as, but not limited to:
    - i) the discussion of official business
    - ii) work-related events such as council-sponsored or community events, training, education sessions or workshops
    - iii) conferences
    - iv) council functions or events
    - v) social functions organised by groups, such as council committees and community organisations.

## GIFTS AND BENEFITS

- 6.3 You must avoid situations that would give rise to the appearance that a person or body is attempting to secure favourable treatment from you or from the council, through the provision of gifts, benefits or hospitality of any kind to you or someone personally associated with you.

- 6.4 A gift or benefit is deemed to have been accepted by you for the purposes of this Part, where it is received by you or someone personally associated with you.

## HOW ARE OFFERS OF GIFTS AND BENEFITS TO BE DEALT WITH?

- 6.5 In line with Council's current stance of zero acceptance of gifts and benefits, 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 of any kind or value (with the exception of the circumstances outlined in section 6.2 above and section 6.7 below)
  - d) accept an offer of cash or a cash-like gift as defined by clause 6.10, regardless of the amount
  - e) participate in competitions for prizes where eligibility is based on the council being in or entering into a customer-supplier relationship with the competition organiser
  - f) personally benefit from reward points programs when purchasing on behalf of the council.
- 6.6 In any situation where a gift or benefit of any value is offered to a council official, an explanation shall be given, that whilst their offer is appreciated, council officials are not permitted to accept gifts or benefits.
- 6.7 The only circumstances, in which the acceptance by a council official of a gift or benefit of any value might be approved, 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. In these circumstances, following the acceptance the gift or benefit must be surrendered to the council.

- 6.8 Where you receive a gift or benefit in circumstances as outlined in clause 6.7, or refuse an offered gift or benefit of any value other than one referred to in clause 6.2, you must disclose this promptly in writing, on the appropriate declaration form to your manager, the General Manager or the Mayor (in the case of a Councillor). The General Manager will determine whether the gift can be donated to a charity or another means of appropriate disposal.
- 6.9 The recipient, manager, or General Manager must ensure that, at a minimum, the following details are recorded in the council's gift register:
- whether the gift was accepted or refused
  - the nature of the gift or benefit
  - the estimated monetary value of the gift or benefit
  - the name of the person who provided the gift or benefit, and
  - the date on which the gift or benefit was received
  - the manner of disposal of the gift or benefit.
- 6.10 proper exercise of their role as prescribed under the LGA.
- 6.12 You must not take advantage (or seek to take advantage) of your status or position with council, or of functions you perform for council, in order to obtain a private benefit for yourself or for any other person or body.

## 'CASH-LIKE GIFTS'

- 6.10 For the purposes of clause 6.5(d), "cash-like gifts" include but are not limited to, gift vouchers, credit cards, debit cards with credit on them, prepayments such as phone or internet credit, lottery tickets, memberships or entitlements to discounts that are not available to the general public or a broad class of persons.

## IMPROPER AND UNDUE INFLUENCE

- 6.11 You must not use your position to influence other council officials in the performance of their official functions 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





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# 7. RELATIONSHIPS BETWEEN COUNCIL OFFICIALS



## OBLIGATIONS OF COUNCILLORS AND ADMINISTRATORS

- 7.1 Each council is a body politic. The councillors or administrator/s are the governing body of the council. Under section 223 of the LGA, the role of the governing body of the council includes the development and endorsement of the strategic plans, programs, strategies and policies of the council, including those relating to workforce policy, and to keep the performance of the council under review.
- 7.2 Councillors or administrators must not:
- direct council staff other than by giving appropriate direction to the general manager by way of council or committee resolution, or by the mayor or administrator exercising their functions under section 226 of the LGA
  - 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 staff member or delegate
  - contact a member of the staff of the council on council-related business unless in accordance with the policy and procedures governing the interaction of councillors and council staff that have been authorised by the council and the general manager
  - contact or issue instructions to any of the council's contractors, including the council's legal advisers, unless by the mayor or administrator exercising their functions under section 226 of the LGA.
- 7.3 Despite clause 7.2, councillors may contact the council's external auditor or the chair of the council's audit risk and improvement committee to provide information reasonably necessary for the external auditor or the audit, risk and improvement committee to effectively perform their functions.

## OBLIGATIONS OF STAFF

- 7.4 Under section 335 of the LGA, the role of the general manager includes conducting the day-to-day management of the council in accordance with the strategic plans, programs, strategies and policies of the council, implementing without undue delay, lawful decisions of the council and ensuring that the mayor and other councillors are given timely information and advice and the administrative and professional support necessary to effectively discharge their official functions.
- 7.5 Members of staff of council must:
- give their attention to the business of the council while on duty
  - ensure that their work is carried out ethically, efficiently, economically and effectively
  - carry out reasonable and lawful directions given by any person having authority to give such directions
  - give effect to the lawful decisions, policies and procedures of the council, whether or not the staff member agrees with or approves of them
  - ensure that any participation in political activities outside the service of the council does not interfere with the performance of their official duties.

## INAPPROPRIATE INTERACTIONS

- 7.6 You must not engage in any of the following inappropriate interactions:
- councillors and administrators approaching staff and staff organisations to discuss individual or operational staff matters (other than matters relating to broader workforce policy), grievances, workplace investigations and disciplinary matters
  - council staff approaching councillors and administrators to discuss individual or operational staff matters (other than matters

- relating to broader workforce policy),  
grievances, workplace investigations and disciplinary matters
- c) subject to clause 8.6, council staff refusing to give information that is available to other councillors to a particular councillor
  - d) councillors and administrators who have lodged an application with the council, discussing the matter with council staff in staff-only areas of the council
  - e) councillors and administrators approaching members of local planning panels or discussing any application that is either before the panel or that will come before the panel at some future time, except during a panel meeting where the application forms part of the agenda and the councillor or administrator has a right to be heard by the panel at the meeting
  - f) councillors and administrators being overbearing or threatening to council staff
  - g) council staff being overbearing or threatening to councillors or administrators
  - h) councillors and administrators making personal attacks on council staff or engaging in conduct towards staff that would be contrary to the general conduct provisions in Part 3 of this code in public forums including social media
  - i) councillors and administrators directing or pressuring council staff in the performance of their work, or recommendations they should make
  - j) 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
  - k) council staff meeting with applicants or objectors alone AND outside office hours to discuss planning applications or proposals
  - l) councillors attending on-site inspection meetings with lawyers and/or consultants engaged by the council associated with

current or proposed legal proceedings unless permitted to do so by the council's general manager or, in the case of the mayor or administrator, unless they are exercising their functions under section 226 of the LGA.



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# 8. ACCESS TO INFORMATION AND COUNCIL RESOURCES



## **COUNCILLOR AND ADMINISTRATOR ACCESS TO INFORMATION**

- 8.1 The general manager is responsible for ensuring that councillors and administrators can access information necessary for the performance of their official functions. The general manager and public officer are also responsible for ensuring that members of the public can access publicly available council information under the Government Information (Public Access) Act 2009 (the GIPA Act).
- 8.2 The general manager must provide councillors and administrators with the information necessary to effectively discharge their official functions.
- 8.3 Members of staff of council must provide full and timely information to councillors and administrators sufficient to enable them to exercise their official functions and in accordance with council procedures.
- 8.4 Members of staff of council who provide any information to a particular councillor in the performance of their official functions must also make it available to any other councillor who requests it and in accordance with council procedures.
- 8.5 Councillors and administrators who have a private interest only in council information have the same rights of access as any member of the public.
- 8.6 Despite clause 8.4, councillors and administrators who are precluded from participating in the consideration of a matter under this code because they have a conflict of interest in the matter, are not entitled to request access to council information in relation to the matter unless the information is otherwise available to members of the public, or the council has determined to make the information available under the GIPA Act.

## **COUNCILLORS AND ADMINISTRATORS TO PROPERLY EXAMINE AND CONSIDER INFORMATION**

- 8.7 Councillors and administrators must ensure that they comply with their duty under section 439 of the LGA to act honestly and exercise a reasonable degree of care and diligence by properly examining and considering all the information provided to them relating to matters that they are required to make a decision on.

## **REFUSAL OF ACCESS TO INFORMATION**

- 8.8 Where the general manager or public officer determine to refuse access to information requested by a councillor or administrator, they must act reasonably. In reaching this decision they must take into account whether or not the information requested is necessary for the councillor or administrator to perform their official functions (see clause 8.2) and whether they have disclosed a conflict of interest in the matter the information relates to that would preclude their participation in consideration of the matter (see clause 8.6). The general manager or public officer must state the reasons for the decision if access is refused.

## USE OF CERTAIN COUNCIL INFORMATION

- 8.9 In regard to information obtained in your capacity as a council official, you must:
- subject to clause 8.14, only access council information needed for council business
  - not use that council information for private purposes
  - not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for yourself, or any other person or body, from any information to which you have access by virtue of your office or position with council
  - only release council information in accordance with established council policies and procedures and in compliance with relevant legislation.

## USE AND SECURITY OF CONFIDENTIAL INFORMATION

- 8.10 You must maintain the integrity and security of confidential information in your possession, or for which you are responsible.
- 8.11 In addition to your general obligations relating to the use of council information, you must:
- only access confidential information that you have been authorised to access and only do so for the purposes of exercising your official functions
  - protect confidential information
  - only release confidential information if you have authority to do so
  - only use confidential information for the purpose for which it is intended to be used
  - not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person
  - not use confidential information with the intention to cause harm or detriment to the council or any other person or body

- not disclose any confidential information discussed during a confidential session of a council or committee meeting or any other confidential forum (such as, but not limited to, workshops or briefing sessions).

## PERSONAL INFORMATION

- 8.12 When dealing with personal information you must comply with:
- the Privacy and Personal Information Protection Act 1998
  - the Health Records and Information Privacy Act 2002
  - the Information Protection Principles and Health Privacy Principles
  - the council's Privacy Management Plan
  - the Privacy Code of Practice for Local Government

## USE OF COUNCIL RESOURCES

- 8.13 You must use council resources ethically, effectively, efficiently and carefully in exercising your official functions, and must not use them for private purposes, except when supplied as part of a contract of employment (but not for private business purposes), unless this use is lawfully authorised and proper payment is made where appropriate.
- 8.14 Union delegates and consultative committee members may have reasonable access to council resources and information for the purposes of carrying out their industrial responsibilities, including but not limited to:
- the representation of members with respect to disciplinary matters
  - the representation of employees with respect to grievances and disputes
  - functions associated with the role of the local consultative committee.
- 8.15 You must be scrupulous in your use of council



property, including intellectual property, official services, facilities, technology and electronic devices and must not permit their misuse by any other person or body.

8.16 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.

8.17 You must not use council resources (including council staff), property or facilities for the purpose of assisting your election campaign or the election campaigns 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.

8.18 You must not use the council letterhead, council crests, council email or social media or other information that could give the appearance it is official council material:

- a) for the purpose of assisting your election campaign or the election campaign of others, or
- b) for other non-official purposes.

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

## INTERNET ACCESS AND USE OF SOCIAL MEDIA

8.20 You must not use council's computer resources or mobile or other devices to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature, or that could otherwise lead to criminal penalty or civil liability and/or damage the council's reputation.

8.21 You must not use social media to post or share comments, photos, videos, electronic recordings or other information that:

- a) divulges confidential council information;
- b) breaches the privacy of other council officials or those that deal with council;
- c) contains allegations of suspected breaches of this code or information about the consideration of a matter under the Procedures; or
- d) constitutes an offence under the Criminal Code Act 1995, being the use of a carriage service to menace, harass or cause offence.

8.22 For the purposes of this section (and as outlined in Council's Social Media and Communications Policy) social media is the term used for internet-based tools for sharing and discussing information among people. It refers to user-generated information, opinion and other content shared over open digital networks.

- a) Social media may include, but is not limited to, the following:
  - Council's intranet platform, including Yammer
  - Social networking sites and social networking platforms (for example Facebook, LinkedIn)
  - Video and photo sharing websites (for example Flickr, YouTube)
  - Blogs, whether corporate, personal, or hosted by media outlets
  - Micro-blogging (for example Twitter)
  - Wikis and online collaborations (for example Wikipedia)
  - Forums, discussion boards and groups
  - Instant messaging (including SMS)
- b) Social media also includes other emerging electronic/digital communication applications.
- c) It is important to remember that any website can become a "social media space" with the addition of functionality such as comments, likes, following, tagging and discussion areas.

## COUNCIL RECORD KEEPING

- 8.23 You must comply with the requirements of the State Records Act 1998 and the council's records management policy.
- 8.24 All information created, sent and received in your official capacity is a council record and must be managed in accordance with the requirements of the State Records Act 1998 and the council's approved records management policies and practices.
- 8.25 All information stored in either soft or hard copy on council supplied resources (including technology devices and email accounts) is deemed to be related to the business of the council and will be treated as council records, regardless of whether the original intention was to create the information for personal purposes. Personal email should not be used for official communication.
- 8.26 You must not destroy, alter, or dispose of council information or records, unless authorised to do so. If you need to alter or dispose of council information or records, you must do so in consultation with the council's records manager and comply with the requirements of the State Records Act 1998.
- 8.28 Councillors and administrators must not enter staff-only areas of council buildings without the approval of the general manager (or their delegate) or as provided for in the procedures governing the interaction of councillors and council staff.
- 8.29 Councillors and administrators must ensure that when they are within a staff only area they refrain from conduct that could be perceived to improperly influence council staff decisions.

## COUNCILLOR ACCESS TO COUNCIL BUILDINGS

- 8.27 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.



# 9. MAINTAINING THE INTEGRITY OF THIS CODE



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## COMPLAINTS MADE FOR AN IMPROPER PURPOSE

- 9.1 You must not make or threaten to make a complaint or cause a complaint to be made alleging a breach of this code for an improper purpose.
- 9.2 For the purposes of clause 9.1, 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 bully, 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 the Procedures
  - g) to take reprisal action against a person for making a complaint alleging a breach of this code
  - h) to take reprisal action against a person for exercising a function prescribed under the Procedures
  - i) to prevent or disrupt the effective administration of this code under the Procedures.

## DETRIMENTAL ACTION

- 9.3 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 alleging a breach of this code.
- 9.4 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 the Procedures.
- 9.5 For the purposes of clauses 9.3 and 9.4, a 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 THE PROCEDURES

- 9.6 You must not engage in conduct that is calculated to impede or disrupt the consideration of a matter under the Procedures.
- 9.7 You must comply with a reasonable and lawful request made by a person exercising a function under the Procedures. A failure to make a written or oral submission invited under the Procedures will not constitute a breach of this clause.
- 9.8 You must comply with a practice ruling made by the Office under the Procedures.

## **DISCLOSURE OF INFORMATION ABOUT THE CONSIDERATION OF A MATTER UNDER THE PROCEDURES**

- 9.9 All allegations of breaches of this code must be dealt with under and in accordance with the Procedures.
- 9.10 You must not allege breaches of this code other than by way of a complaint made or initiated under the Procedures.
- 9.11 You must not make allegations about, or disclose information about, suspected breaches of this code at council, committee or other meetings, whether open to the public or not, or in any other forum, whether public or not.
- 9.12 You must not disclose information about a complaint you have made alleging a breach of this code or any other matter being considered under the Procedures except for the purposes of seeking legal advice, unless the disclosure is otherwise permitted under the Procedures.
- 9.13 Nothing under this Part prevents a person from making a public interest disclosure to an appropriate public authority or investigative authority under the Public Interest Disclosures Act 1994.

## **COMPLAINTS ALLEGING A BREACH OF THIS PART**

- 9.14 Complaints alleging a breach of this Part by a councillor, the general manager or an administrator are to be managed by the Office. This clause does not prevent the Office from referring an alleged breach of this Part back to the council for consideration in accordance with the Procedures.
- 9.15 Complaints alleging a breach of this Part by other council officials are to be managed by the general manager in accordance with the Procedures.



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# **SCHEDULE 1: DISCLOSURES OF INTERESTS AND OTHER MATTERS IN WRITTEN RETURNS SUBMITTED UNDER CLAUSE 4.21**



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## PART 1: PRELIMINARY

### DEFINITIONS

1. For the purposes of the schedules to this code, the following definitions apply:

*address* means:

- a) in relation to a person other than a corporation, the last residential or business address of the person known to the councillor or designated person disclosing the address, or
- b) in relation to a corporation, the address of the registered office of the corporation in New South Wales or, if there is no such office, the address of the principal office of the corporation in the place where it is registered, or
- c) in relation to any real property, the street address of the property.

*de facto partner* has the same meaning as defined in section 21C of the Interpretation Act 1987.

*disposition of property* means a conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, including the following:

- a) the allotment of shares in a company
- b) the creation of a trust in respect of property
- c) the grant or creation of a lease, mortgage, charge, easement, licence, power, partnership or interest in respect of property
- d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of a debt, contract or chose in action, or of an interest in respect of property
- e) the exercise by a person of a general power of appointment over property in favour of another person

- f) a transaction entered into by a person who intends by the transaction to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of another person.

*gift* means a disposition of property made otherwise than by will (whether or not by instrument in writing) without consideration, or with inadequate consideration, in money or money's worth passing from the person to whom the disposition was made to the person who made the disposition, but does not include a financial or other contribution to travel.

*interest* means:

- a) in relation to property, an estate, interest, right or power, at law or in equity, in or over the property, or
- b) in relation to a corporation, a relevant interest (within the meaning of section 9 of the Corporations Act 2001 of the Commonwealth) in securities issued or made available by the corporation.

*listed company* means a company that is listed within the meaning of section 9 of the Corporations Act 2001 of the Commonwealth.

*occupation* includes trade, profession and vocation.

*professional or business association* means an incorporated or unincorporated body or organisation having as one of its objects or activities the promotion of the economic interests of its members in any occupation.

*property* includes money.

*return date* means:

- a) in the case of a return made under clause 4.21(a), the date on which a person became a councillor or designated person
- b) in the case of a return made under clause 4.21(b), 30 June of the year in which the return is made
- c) in the case of a return made under clause 4.21(c), the date on which the councillor or designated person became aware of the interest to be disclosed.

*relative* includes any of the following:

- a) a person's spouse or de facto partner
- b) a person's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
- c) a person's spouse's or de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
- d) the spouse or de facto partner of a person referred to in paragraphs (b) and (c).

*travel* includes accommodation incidental to a journey.

any real property situated in Australia in which the councillor or designated person has an interest.

4. Gifts, loans etc. from related corporations: For the purposes of this schedule and schedule 2, gifts or contributions to travel given, loans made, or goods or services supplied, to a councillor or designated person by two or more corporations that are related to each other for the purposes of section 50 of the Corporations Act 2001 of the Commonwealth are all given, made or supplied by a single corporation.

## **MATTERS RELATING TO THE INTERESTS THAT MUST BE INCLUDED IN RETURNS**

2. Interests etc. outside New South Wales: A reference in this schedule or in schedule 2 to a disclosure concerning a corporation or other thing includes any reference to a disclosure concerning a corporation registered, or other thing arising or received, outside New South Wales.
3. References to interests in real property: A reference in this schedule or in schedule 2 to real property in which a councillor or designated person has an interest includes a reference to

## PART 2: PECUNIARY INTERESTS TO BE DISCLOSED IN RETURNS

### REAL PROPERTY

5. A person making a return under clause 4.21 of this code must disclose:
  - a) the street address of each parcel of real property in which they had an interest on the return date, and
  - b) the street address of each parcel of real property in which they had an interest in the period since 30 June of the previous financial year, and
  - c) the nature of the interest.
6. An interest in a parcel of real property need not be disclosed in a return if the person making the return had the interest only:
  - a) as executor of the will, or administrator of the estate, of a deceased person and not as a beneficiary under the will or intestacy, or
  - b) as a trustee, if the interest was acquired in the ordinary course of an occupation not related to their duties as the holder of a position required to make a return.
7. An interest in a parcel of real property need not be disclosed in a return if the person ceased to hold the interest prior to becoming a councillor or designated person.
8. For the purposes of clause 5 of this schedule, "interest" includes an option to purchase.

### GIFTS

9. A person making a return under clause 4.21 of this code must disclose:
  - a) a description of each gift received in the period since 30 June of the previous financial year, and
  - b) the name and address of the donor of each of the gifts.

10. A gift need not be included in a return if:
  - a) it did not exceed \$500, unless it was among gifts totalling more than \$500 made by the same person during a period of 12 months or less, or
  - b) it was a political donation disclosed, or required to be disclosed, under Part 3 of the Electoral Funding Act 2018, or
  - c) the donor was a relative of the donee, or
  - d) subject to paragraph (a), it was received prior to the person becoming a councillor or designated person.
11. For the purposes of clause 10 of this schedule, the amount of a gift other than money is an amount equal to the value of the property given.

### CONTRIBUTIONS TO TRAVEL

12. A person making a return under clause 4.21 of this code must disclose:
  - a) the name and address of each person who made any financial or other contribution to the expenses of any travel undertaken by the person in the period since 30 June of the previous financial year, and
  - b) the dates on which the travel was undertaken, and
  - c) the names of the states and territories, and of the overseas countries, in which the travel was undertaken.
13. A financial or other contribution to any travel need not be disclosed under this clause if it:
  - a) was made from public funds (including a contribution arising from travel on free passes issued under an Act or from travel in government or council vehicles), or
  - b) was made by a relative of the traveller, or
  - c) was made in the ordinary course of an occupation of the traveller that is not related to their functions as the holder of a position requiring the making of a return, or

- d) did not exceed \$250, unless it was among gifts totalling more than \$250 made by the same person during a 12-month period or less, or
  - e) was a political donation disclosed, or required to be disclosed, under Part 3 of the Electoral Funding Act 2018, or
  - f) was made by a political party of which the traveller was a member and the travel was undertaken for the purpose of political activity of the party in New South Wales, or to enable the traveller to represent the party within Australia, or
  - g) subject to paragraph (d) it was received prior to the person becoming a councillor or designated person.
14. For the purposes of clause 13 of this schedule, the amount of a contribution (other than a financial contribution) is an amount equal to the value of the contribution.

## INTERESTS AND POSITIONS IN CORPORATIONS

15. A person making a return under clause 4.21 of this code must disclose:
- a) the name and address of each corporation in which they had an interest or held a position (whether remunerated or not) on the return date, and
  - b) the name and address of each corporation in which they had an interest or held a position in the period since 30 June of the previous financial year, and
  - c) the nature of the interest, or the position held, in each of the corporations, and
  - d) a description of the principal objects (if any) of each of the corporations, except in the case of a listed company.
16. An interest in, or a position held in, a corporation need not be disclosed if the corporation is:

- a) formed for the purpose of providing recreation or amusement, or for promoting commerce, industry, art, science, religion or charity, or for any other community purpose, and
  - b) required to apply its profits or other income in promoting its objects, and
  - c) prohibited from paying any dividend to its members.
17. An interest in a corporation need not be disclosed if the interest is a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company.
18. An interest or a position in a corporation need not be disclosed if the person ceased to hold the interest or position prior to becoming a councillor or designated person.

## INTERESTS AS A PROPERTY DEVELOPER OR A CLOSE ASSOCIATE OF A PROPERTY DEVELOPER

19. A person making a return under clause 4.21 of this code must disclose whether they were a property developer, or a close associate of a corporation that, or an individual who, is a property developer, on the return date.
20. For the purposes of clause 19 of this schedule:
- close associate, in relation to a corporation or an individual, has the same meaning as it has in section 53 of the Electoral Funding Act 2018.
- property developer has the same meaning as it has in Division 7 of Part 3 of the Electoral Funding Act 2018.

## POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS

21. A person making a return under clause 4.21 of the code must disclose:
- the name of each trade union, and of each professional or business association, in which they held any position (whether remunerated or not) on the return date, and
  - the name of each trade union, and of each professional or business association, in which they have held any position (whether remunerated or not) in the period since 30 June of the previous financial year, and
  - a description of the position held in each of the unions and associations.
22. A position held in a trade union or a professional or business association need not be disclosed if the person ceased to hold the position prior to becoming a councillor or designated person.

## DISPOSITIONS OF REAL PROPERTY

23. A person making a return under clause 4.21 of this code must disclose particulars of each disposition of real property by the person (including the street address of the affected property) in the period since 30 June of the previous financial year, under which they wholly or partly retained the use and benefit of the property or the right to re-acquire the property.
24. A person making a return under clause 4.21 of this code must disclose particulars of each disposition of real property to another person (including the street address of the affected property) in the period since 30 June of the previous financial year, that is made under arrangements with, but is not made by, the person making the return, being a disposition under which the person making the return obtained wholly or partly the use of the property.

25. A disposition of real property need not be disclosed if it was made prior to a person becoming a councillor or designated person.

## SOURCES OF INCOME

26. A person making a return under clause 4.21 of this code must disclose:
- each source of income that the person reasonably expects to receive in the period commencing on the first day after the return date and ending on the following 30 June, and
  - each source of income received by the person in the period since 30 June of the previous financial year.
27. A reference in clause 26 of this schedule to each source of income received, or reasonably expected to be received, by a person is a reference to:
- in relation to income from an occupation of the person:
    - a description of the occupation, and
    - if the person is employed or the holder of an office, the name and address of their employer, or a description of the office, and
    - if the person has entered into a partnership with other persons, the name (if any) under which the partnership is conducted, or
  - in relation to income from a trust, the name and address of the settlor and the trustee, or
  - in relation to any other income, a description sufficient to identify the person from whom, or the circumstances in which, the income was, or is reasonably expected to be, received.
28. The source of any income need not be disclosed by a person in a return if the amount of the income received, or reasonably expected to be received, by the person from that source did not exceed \$500, or is not reasonably expected to exceed \$500, as the case may be.

29. The source of any income received by the person that they ceased to receive prior to becoming a councillor or designated person need not be disclosed.
30. A fee paid to a councillor or to the mayor or deputy mayor under sections 248 or 249 of the LGA need not be disclosed.

## DEBTS

31. A person making a return under clause 4.21 of this code must disclose the name and address of each person to whom the person was liable to pay any debt:
- on the return date, and
  - at any time in the period since 30 June of the previous financial year.
32. A liability to pay a debt must be disclosed by a person in a return made under clause 4.21 whether or not the amount, or any part of the amount, to be paid was due and payable on the return date or at any time in the period since 30 June of the previous financial year, as the case may be.
33. A liability to pay a debt need not be disclosed by a person in a return if:
- the amount to be paid did not exceed \$500 on the return date or in the period since 30 June of the previous financial year, as the case may be, unless:
    - the debt was one of two or more debts that the person was liable to pay to one person on the return date, or at any time in the period since 30 June of the previous financial year, as the case may be, and
    - the amounts to be paid exceeded, in the aggregate, \$500, or
    - the person was liable to pay the debt to a relative, or
    - in the case of a debt arising from a loan of money the person was liable to pay the debt to an authorised deposit-taking institution or other person whose ordinary business includes the lending of money, and the loan was made in the ordinary course of business of the lender, or
  - in the case of a debt arising from the supply of goods or services:
    - the goods or services were supplied in the period of 12 months immediately preceding the return date, or were supplied in the period since 30 June of the previous financial year, as the case may be, or
    - the goods or services were supplied in the ordinary course of any occupation of the person that is not related to their duties as the holder of a position required to make a return, or
    - subject to paragraph (a), the debt was discharged prior to the person becoming a councillor or designated person.

## DISCRETIONARY DISCLOSURES

34. A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision of this Schedule.



**GEORGES  
RIVER  
COUNCIL**

# **SCHEDULE 2: FORM OF WRITTEN RETURN OF INTERESTS SUBMITTED UNDER CLAUSE 4.21**





## 'DISCLOSURES BY COUNCILLORS AND DESIGNATED PERSONS' RETURN

- a) The pecuniary interests and other matters to be disclosed in this return are prescribed by Schedule 1 of the Model Code of Conduct for Local Councils in NSW (the Model Code of Conduct).
- b) If this is the first return you have been required to lodge with the general manager after becoming a councillor or designated person, do not complete Parts C, D and I of the return. All other parts of the return should be completed with appropriate information based on your circumstances at the return date, that is, the date on which you became a councillor or designated person.
- c) If you have previously lodged a return with the general manager and you are completing this return for the purposes of disclosing a new interest that was not disclosed in the last return you lodged with the general manager, you must complete all parts of the return with appropriate information for the period from 30 June of the previous financial year or the date on which you became a councillor or designated person, (whichever is the later date), to the return date which is the date you became aware of the new interest to be disclosed in your updated return.
- d) If you have previously lodged a return with the general manager and are submitting a new return for the new financial year, you must complete all parts of the return with appropriate information for the 12-month period commencing on 30 June of the previous year to 30 June this year.
- e) This form must be completed using block letters or typed.
- f) If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.
- g) If there are no pecuniary interests or other matters of the kind required to be disclosed under a heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.

## IMPORTANT INFORMATION

This information is being collected for the purpose of complying with clause 4.21 of the Model Code of Conduct.

You must not lodge a return that you know or ought reasonably to know is false or misleading in a material particular (see clause 4.23 of the Model Code of Conduct). Complaints about breaches of these requirements are to be referred to the Office of Local Government and may result in disciplinary action by the council, the Chief Executive of the Office of Local Government or the NSW Civil and Administrative Tribunal.

The information collected on this form will be kept by the general manager in a register of returns. The general manager is required to table all returns at a council meeting.

Information contained in returns made and lodged under clause 4.21 is to be made publicly available in accordance with the requirements of the Government Information (Public Access) Act 2009, the Government Information (Public Access) Regulation 2018 and any guidelines issued by the Information Commissioner.

You have an obligation to keep the information contained in this return up to date. If you become aware of a new interest that must be disclosed in this return, or an interest that you have previously failed to disclose, you must submit an updated return within three months of becoming aware of the previously undisclosed interest.

**DISCLOSURE BY COUNCILLORS AND DESIGNATED PERSONS RETURN**

<b>OFFICE USE ONLY</b>
Date Received: _____
Received By: _____

- |   |  |
|---|--|
| <ol style="list-style-type: none"> <li>1) The pecuniary interests and other matters to be disclosed in this return are prescribed by Schedule 1 of the Model Code of Conduct for Local Councils in NSW (the Model Code of Conduct).</li> <li>2) If this is the first return you have been required to lodge with the general manager after becoming a councillor or designated person, do not complete Parts C, D and I of the return. All other parts of the return should be completed with appropriate information based on your circumstances at the return date, that is, the date on which you became a councillor or designated person.</li> <li>3) If you have previously lodged a return with the general manager and you are completing this return for the purposes of disclosing a new interest that was not disclosed in the last return you lodged with the general manager, you must complete all parts of the return with appropriate information for the period from 30 June of the previous financial year or the date on which you became a councillor or designated person, (whichever is the later date), to the return date which is the date you became aware of the new interest to be disclosed in your updated return.</li> </ol> | <ol style="list-style-type: none"> <li>4) If you have previously lodged a return with the general manager and are submitting a new return for the new financial year, you must complete all parts of the return with appropriate information for the 12-month period commencing on 30 June of the previous year to 30 June this year.</li> <li>5) This form must be completed using block letters or typed.</li> <li>6) If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.</li> <li>7) If there are no pecuniary interests or other matters of the kind required to be disclosed under a heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.</li> <li>8) "*" means delete whichever is inapplicable.</li> </ol> |
|---|--|

**IMPORTANT INFORMATION**

This information is being collected for the purpose of complying with clause 4.21 of the Model Code of Conduct. You must not lodge a return that you know or ought reasonably to know is false or misleading in a material particular (see clause 4.23 of the Model Code of Conduct). Complaints about breaches of these requirements are to be referred to the Office of Local Government and may result in disciplinary action by the council, the Chief Executive of the Office of Local Government or the NSW Civil and Administrative Tribunal.

The information collected on this form will be kept by the general manager in a register of returns. The general manager is required to table all returns at a council meeting.

Information contained in returns made and lodged under clause 4.21 is to be made publicly available in accordance with the requirements of the *Government Information (Public Access) Act 2009*, the *Government Information (Public Access) Regulation 2018* and any guidelines issued by the Information Commissioner.

You have an obligation to keep the information contained in this return up to date. If you become aware of a new interest that must be disclosed in this return, or an interest that you have previously failed to disclose, you must submit an updated return within three months of becoming aware of the previously undisclosed interest.

**DISCLOSURE OF PECUNIARY INTERESTS AND OTHER MATTERS**

by: ..... \*as at .....  
(return date)

\*in respect of the period from ..... to .....  
(return period) .....  
(councillor's or designated person's signature)

.....  
(date)

**A. REAL PROPERTY**

Street address of each parcel of real property in which I had an interest at the *return date / *at any time during the return period	Nature of Interest

## DISCLOSURE BY COUNCILLORS AND DESIGNATED PERSONS RETURN

### B. SOURCES OF INCOME

1. Sources of income I received from an occupation at any time during the return period:

Description of Occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)

2. Sources of income I received from a trust during the return period:

Name and address of settlor	Name and address of trustee

3. Sources of other income I received at any time during the return period:  
*(include description sufficient to identify the person from whom, or the circumstances in which, that income was received)*


### C. GIFTS

Description of each gift I received at any time during the return period	Name and address of donor

### D. CONTRIBUTIONS TO TRAVEL

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time during the return period	Dates on which travel was undertaken	Names of States, Territories of the Commonwealth and overseas countries in which travel was undertaken

**DISCLOSURE BY COUNCILLORS AND DESIGNATED PERSONS RETURN**

**E. INTERESTS AND POSITIONS IN CORPORATIONS**

Name and address of each corporation in which I had an interest or held a position *at the return date / *at any time during the return period	Nature of interest (if any)	Description of position (if any)	Description of principal objects of corporation (except in the case of a publicly listed company)

**F. WERE YOU A PROPERTY DEVELOPER OR A CLOSE ASSOCIATE OF A PROPERTY DEVELOPER ON THE RETURN DATE**

Yes  No

**G. POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS**

Name and address of each trade union and each professional or business association in which I had an interest or held any position *at the return date / *at any time during the return period.	Description of position

**H. DEBTS**

Name and address of each person to whom I was liable to pay any debt \*at the return date/\*at any time during the return period..

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**I. DISPOSITIONS OF PROPERTY**

- Particulars of each disposition of real property by me (including the street address of the affected property) at any time during the return period as a result of which I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time.
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- Particulars of each disposition of property to a person by any other person under arrangements made by me (including the street address of the affected property) being dispositions made at any time during the return period, as a result of which, I obtained, either wholly or in part, the use and benefit of the property.
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_



**SCHEDULE 3:  
FORM OF SPECIAL  
DISCLOSURE  
OF PECUNIARY  
INTEREST  
SUBMITTED UNDER  
CLAUSE 4.36**



**GEORGES  
RIVER  
COUNCIL**

- 1 This form must be completed using block letters or typed.
- 2 If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.

You must not make a special disclosure that you know or ought reasonably to know is false or misleading in a material particular. Complaints about breaches of these requirements are to be referred to the Office of Local Government and may result in disciplinary action by the Chief Executive of the Office of Local Government or the NSW Civil and Administrative Tribunal.

## IMPORTANT INFORMATION

This information is being collected for the purpose of making a special disclosure of pecuniary interests under clause 4.35(c) of the Code of Conduct.

The special disclosure must relate only to a pecuniary interest that a councillor has in the councillor's principal place of residence, or an interest another person (whose interests are relevant under clause 4.3 of the Code of Conduct has in that person's principal place of residence.

Clause 4.3 of the Code of Conduct states that you will have a pecuniary interest in a matter because of the pecuniary interest of your spouse or your de facto partner or your relative or because your business partner or employer has a pecuniary interest. You will also have a pecuniary interest in a matter because you, your nominee, your business partner or your employer is a member of a company or other body that has a pecuniary interest in the matter.

"Relative" is defined by clause 4.4 of the Code of Conduct as meaning your, your spouse's or your de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child and the spouse or de facto partner of any of those persons.

This form must be completed by you before the commencement of the council or council committee meeting at which the special disclosure is being made. The completed form must be tabled at the meeting. Everyone is entitled to inspect it. The special disclosure must be recorded in the minutes of the meeting.

**SCHEDULE 3: FORM OF SPECIAL DISCLOSURE OF PECUNIARY INTEREST SUBMITTED UNDER CLAUSE 4.36 OF GEORGES RIVER COUNCIL'S CODE OF CONDUCT**

Special disclosure of pecuniary interests by \_\_\_\_\_  
[full name of councillor]

in the matter of \_\_\_\_\_  
[insert name of environmental planning instrument]

which is to be considered at a meeting of the \_\_\_\_\_  
[name of council or council committee (as the case requires)]

Date: \_\_\_\_\_

Pecuniary interest	
Address of the affected principal place of residence of the councillor or an associated person, company or body (the identified land)	
Relationship of identified land to the councillor [Tick or cross one box.]	<input type="checkbox"/> The councillor has an interest in the land (e.g. is the owner or has another interest arising out of a mortgage, lease, trust, option or contract, or otherwise). <input type="checkbox"/> An associated person of the councillor has an interest in the land. <input type="checkbox"/> An associated company or body of the councillor has an interest in the land.
Matter giving rise to pecuniary interest <sup>1</sup>	
Nature of the land that is subject to a change in zone/ planning control by the proposed LEP (the subject land) <sup>2</sup> [Tick or cross one box]	<input type="checkbox"/> The identified land. <input type="checkbox"/> Land that adjoins or is adjacent to or is in proximity to the identified land.
Current zone/planning control [Insert name of current planning instrument and identify relevant zone/planning control applying to the subject land]	





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<sup>1</sup> Clause 4.1 of the Model Code of Conduct provides that 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. A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter, or if the interest is of a kind specified in clause 4.6 of the Model Code of Conduct.

<sup>2</sup> A pecuniary interest may arise by way of a change of permissible use of land adjoining, adjacent to or in proximity to land in which a councillor or a person, company or body referred to in clause 4.3 of the Model Code of Conduct has a proprietary interest.

<p>Proposed change of zone/planning control  <i>[Insert name of proposed LEP and identify proposed change of zone/ planning control applying to the subject land]</i></p>	
<p>Effect of proposed change of zone/ planning control on councillor or associated person  <i>[Insert one of the following: "Appreciable financial gain" or "Appreciable financial loss"]</i></p>	

[If more than one pecuniary interest is to be declared, reprint the above box and fill in for each additional interest.]

Councillor's signature: \_\_\_\_\_

Date: \_\_\_\_\_

NOTE: This form is to be retained by Council's General Manager and included in full in the minutes of the meeting.

# VERSION CONTROL AND CHANGE HISTORY



**GEORGES  
RIVER  
COUNCIL**

Version	Amendment Details	Policy Owner	Period Active
1.0	Code of Conduct (Council Resolution CCL169-17)	Manager Governance and Risk Management	7/8/2017 – 6/9/2017
2.0	Minor amendments to s5.1, 5.2 and 6.2 to reflect the Model Code, as suggested by OLG (Approved by General Manager)	Manager Governance and Risk Management	7/9/2017 – 27/5/19
3.0	Adoption of new Code of Conduct following prescription of Model Code of Conduct for Local Councils NSW. (Council Resolution CCL026-19)	Manager Governance and Risk Management	27/5/19
3.1	Numbering corrected at Schedule 3 to reference numbering at clauses 4.35(c) and 4.36. Error amended 21/11/19.	Manager Governance and Risk Management	27/5/19 – 28/09/20
4.0	Revised Code of Conduct incorporating revisions contained in the Model Code of Conduct for Local Councils in NSW which were published by the NSW Government on 7 August 2020. (Council Resolution CCL060-20)	Manager Governance and Risk Management	28/09/20 - 18/02/21
4.1	New Corporate Style Guide formatting applied to 4.0 version of the Code of Conduct on 18/02/21.	Manager Governance and Risk Management	18/02/21 - 22/04/21
4.2	Correction of duplication of Clause 9.12 and omission of Clause 9.11 due to formatting applied on 18/02/21 to bring into line with Council Resolution CCL060-20.	Manager Governance and Risk Management	22/04/21 – 1/09/2021
4.3	Editorial amendment made to the title of the <i>Local Government (General) Regulation 2021</i> referenced in the policy which commenced on 1 September 2021. The title of the <i>Government Information (Public Access) Regulation 2018</i> has also been updated.	Manager Governance and Risk Management	1/09/21 - ongoing



# **CODE OF CONDUCT**

## **SEPTEMBER 2020**

[www.georgesriver.nsw.gov.au](http://www.georgesriver.nsw.gov.au)

# MODEL CODE OF MEETING PRACTICE

for Local Councils  
in NSW

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2021



## **MODEL CODE OF MEETING PRACTICE FOR LOCAL COUNCILS IN NSW**

2021

### **ACCESS TO SERVICES**

The Office of Local Government is located at:

Street Address: Levels 1 & 2, 5 O'Keefe Avenue, NOWRA NSW 2541

Postal Address: Locked Bag 3015, Nowra, NSW 2541

Phone: 02 4428 4100

Fax: 02 4428 4199

TTY: 02 4428 4209

Email: [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au)

Website: [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au)

### **OFFICE HOURS**

Monday to Friday

9.00am to 5.00pm

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# 1 Introduction



This Model Code of Meeting Practice for Local Councils in NSW (the Model Meeting Code) is prescribed under section 360 of the *Local Government Act 1993* (the Act) and the *Local Government (General) Regulation 2021* (the Regulation).

The Model Meeting Code applies to all meetings of councils and committees of councils of which all the members are councillors (committees of council). Council committees whose members include persons other than councillors may adopt their own rules for meetings unless the council determines otherwise.

Councils must adopt a code of meeting practice that incorporates the mandatory provisions of the Model Meeting Code.

A council's adopted code of meeting practice may also incorporate the non-mandatory provisions of the Model Meeting Code and other supplementary provisions. However, a code of meeting practice adopted by a council must not contain provisions that are inconsistent with the mandatory provisions of this Model Meeting Code.

The provisions of the Model Meeting Code that are not mandatory are indicated in **red font**.

A council and a committee of the council of which all the members are councillors must conduct its meetings in accordance with the code of meeting practice adopted by the council.

The Model Meeting Code also applies to meetings of the boards of joint organisations and county councils. The provisions that are specific to meetings of boards of joint organisations are indicated in **blue font**.

In adopting the Model Meeting Code, joint organisations should adapt it to substitute the terms "board" for "council", "chairperson" for "mayor", "voting representative" for "councillor" and "executive officer" for "general manager".

In adopting the Model Meeting Code, county councils should adapt it to substitute the term "chairperson" for "mayor" and "member" for "councillor".

## 2 Meeting Principles

## 2.1 Council and committee meetings should be:

<b>Transparent:</b>	Decisions are made in a way that is open and accountable.
<b>Informed:</b>	Decisions are made based on relevant, quality information.
<b>Inclusive:</b>	Decisions respect the diverse needs and interests of the local community.
<b>Principled:</b>	Decisions are informed by the principles prescribed under Chapter 3 of the Act.
<b>Trusted:</b>	The community has confidence that councillors and staff act ethically and make decisions in the interests of the whole community.
<b>Respectful:</b>	Councillors, staff and meeting attendees treat each other with respect.
<b>Effective:</b>	Meetings are well organised, effectively run and skilfully chaired.
<b>Orderly:</b>	Councillors, staff and meeting attendees behave in a way that contributes to the orderly conduct of the meeting.

## 3 Before the Meeting

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## Timing of ordinary council meetings

- 3.1 Ordinary meetings of the council will be held on the following occasions: **[council to specify the frequency, time, date and place of its ordinary meetings]**.
- 3.2 The council shall, by resolution, set the frequency, time, date and place of its ordinary meetings.

**Note: Councils must use either clause 3.1 or 3.2.**

**Note: Under section 365 of the Act, councils are required to meet at least ten (10) times each year, each time in a different month unless the Minister for Local Government has approved a reduction in the number of times that a council is required to meet each year under section 365A.**

**Note: Under section 396 of the Act, county councils are required to meet at least four (4) times each year.**

**Note: Under section 400T of the Act, boards of joint organisations are required to meet at least four (4) times each year, each in a different quarter of the year.**

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## Extraordinary meetings

- 3.3 If the mayor receives a request in writing, signed by at least two (2) councillors, the mayor must call an extraordinary meeting of the council to be held as soon as practicable, but in any event, no more than fourteen (14) days after receipt of the request. The mayor can be one of the two councillors requesting the meeting.

**Note: Clause 3.3 reflects section 366 of the Act.**

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## Notice to the public of council meetings

- 3.4 The council must give notice to the public of the time, date and place of each of its meetings, including extraordinary meetings and of each meeting of committees of the council.

**Note: Clause 3.4 reflects section 9(1) of the Act.**

- 3.5 For the purposes of clause 3.4, notice of a meeting of the council and of a committee of council is to be published before the meeting takes place. The notice must be published on the council's website, and in such other manner that the council is satisfied is likely to bring notice of the meeting to the attention of as many people as possible.
- 3.6 For the purposes of clause 3.4, notice of more than one (1) meeting may be given in the same notice.

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## Notice to councillors of ordinary council meetings

- 3.7 The general manager must send to each councillor, at least three (3) days before each meeting of the council, a notice specifying the time, date and place at which the meeting is to be held, and the business proposed to be considered at the meeting.

**Note: Clause 3.7 reflects section 367(1) of the Act.**

- 3.8 The notice and the agenda for, and the business papers relating to, the meeting may be given to councillors in electronic form, but only if all councillors have facilities to access the notice, agenda and business papers in that form.

**Note: Clause 3.8 reflects section 367(3) of the Act.**

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## Notice to councillors of extraordinary meetings

3.9 Notice of less than three (3) days may be given to councillors of an extraordinary meeting of the council in cases of emergency.

**Note: Clause 3.9 reflects section 367(2) of the Act.**

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## Giving notice of business to be considered at council meetings

3.10 A councillor may give notice of any business they wish to be considered by the council at its next ordinary meeting by way of a notice of motion. To be included on the agenda of the meeting, the notice of motion must be in writing and must be submitted **[council to specify notice period required]** business days before the meeting is to be held.

3.11 A councillor may, in writing to the general manager, request the withdrawal of a notice of motion submitted by them prior to its inclusion in the agenda and business paper for the meeting at which it is to be considered.

3.12 If the general manager considers that a notice of motion submitted by a councillor for consideration at an ordinary meeting of the council has legal, strategic, financial or policy implications which should be taken into consideration by the meeting, the general manager may prepare a report in relation to the notice of motion for inclusion with the business papers for the meeting at which the notice of motion is to be considered by the council.

3.13 A notice of motion for the expenditure of funds on works and/or services other than those already provided for in the council's current adopted operational plan must identify the source of funding for the expenditure that is the subject of the notice of motion. If the notice of motion does not identify a funding source, the general manager must either:

- (a) prepare a report on the availability of funds for implementing the motion if adopted for inclusion in the business papers for the meeting at which the notice of motion is to be considered by the council, or
  - (b) by written notice sent to all councillors with the business papers for the meeting for which the notice of motion has been submitted, defer consideration of the matter by the council to such a date specified in the notice, pending the preparation of such a report.
- 

## Questions with notice

3.14 A councillor may, by way of a notice submitted under clause 3.10, ask a question for response by the general manager about the performance or operations of the council.

3.15 A councillor is not permitted to ask a question with notice under clause 3.14 that comprises a complaint against the general manager or a member of staff of the council, or a question that implies wrongdoing by the general manager or a member of staff of the council.

3.16 The general manager or their nominee may respond to a question with notice submitted under clause 3.14 by way of a report included in the business papers for the relevant meeting of the council or orally at the meeting.

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## Agenda and business papers for ordinary meetings

- 3.17 The general manager must cause the agenda for a meeting of the council or a committee of the council to be prepared as soon as practicable before the meeting.
- 3.18 The general manager must ensure that the agenda for an ordinary meeting of the council states:
- (a) all matters to be dealt with arising out of the proceedings of previous meetings of the council, and
  - (b) if the mayor is the chairperson – any matter or topic that the chairperson proposes, at the time when the agenda is prepared, to put to the meeting, and
  - (c) all matters, including matters that are the subject of staff reports and reports of committees, to be considered at the meeting, and
  - (d) any business of which due notice has been given under clause 3.10.
- 3.19 Nothing in clause 3.18 limits the powers of the mayor to put a mayoral minute to a meeting under clause 9.6.
- 3.20 The general manager must not include in the agenda for a meeting of the council any business of which due notice has been given if, in the opinion of the general manager, the business is, or the implementation of the business would be, unlawful. The general manager must report, without giving details of the item of business, any such exclusion to the next meeting of the council.
- 3.21 Where the agenda includes the receipt of information or discussion of other matters that, in the opinion of the general manager, is likely to take place when

the meeting is closed to the public, the general manager must ensure that the agenda of the meeting:

- (a) identifies the relevant item of business and indicates that it is of such a nature (without disclosing details of the information to be considered when the meeting is closed to the public), and
- (b) states the grounds under section 10A(2) of the Act relevant to the item of business.

**Note: Clause 3.21 reflects section 9(2A) (a) of the Act.**

- 3.22 The general manager must ensure that the details of any item of business which, in the opinion of the general manager, is likely to be considered when the meeting is closed to the public, are included in a business paper provided to councillors for the meeting concerned. Such details must not be included in the business papers made available to the public and must not be disclosed by a councillor or by any other person to another person who is not authorised to have that information.

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## Statement of ethical obligations

- 3.23 Business papers for all ordinary and extraordinary meetings of the council and committees of the council must contain a statement reminding councillors of their oath or affirmation of office made under section 233A of the Act and their obligations under the council's code of conduct to disclose and appropriately manage conflicts of interest.

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## Availability of the agenda and business papers to the public

3.24 Copies of the agenda and the associated business papers, such as correspondence and reports for meetings of the council and committees of council, are to be published on the council's website, and must be made available to the public for inspection, or for taking away by any person free of charge at the offices of the council, at the relevant meeting and at such other venues determined by the council.

**Note: Clause 3.24 reflects section 9(2) and (4) of the Act.**

3.25 Clause 3.24 does not apply to the business papers for items of business that the general manager has identified under clause 3.21 as being likely to be considered when the meeting is closed to the public.

**Note: Clause 3.25 reflects section 9(2A) (b) of the Act.**

3.26 For the purposes of clause 3.24, copies of agendas and business papers must be published on the council's website and made available to the public at a time that is as close as possible to the time they are available to councillors.

**Note: Clause 3.26 reflects section 9(3) of the Act.**

3.27 A copy of an agenda, or of an associated business paper made available under clause 3.24, may in addition be given or made available in electronic form.

**Note: Clause 3.27 reflects section 9(5) of the Act.**

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## Agenda and business papers for extraordinary meetings

3.28 The general manager must ensure that the agenda for an extraordinary meeting of the council deals only with the matters stated in the notice of the meeting.

3.29 Despite clause 3.28, business may be considered at an extraordinary meeting of the council, even though due notice of the business has not been given, if:

(a) a motion is passed to have the business considered at the meeting, and

(b) the business to be considered is ruled by the chairperson to be of great urgency on the grounds that it requires a decision by the council before the next scheduled ordinary meeting of the council.

3.30 A motion moved under clause 3.29(a) can be moved without notice but only after the business notified in the agenda for the extraordinary meeting has been dealt with.

3.31 Despite clauses 10.20-10.30, only the mover of a motion moved under clause 3.29(a) can speak to the motion before it is put.

3.32 A motion of dissent cannot be moved against a ruling of the chairperson under clause 3.29(b) on whether a matter is of great urgency.



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## Pre-meeting briefing sessions

- 3.33 Prior to each ordinary meeting of the council, the general manager may arrange a pre-meeting briefing session to brief councillors on business to be considered at the meeting. Pre-meeting briefing sessions may also be held for extraordinary meetings of the council and meetings of committees of the council.
- 3.34 Pre-meeting briefing sessions are to be held in the absence of the public.
- 3.35 Pre-meeting briefing sessions may be held by audio-visual link.
- 3.36 The general manager or a member of staff nominated by the general manager is to preside at pre-meeting briefing sessions.
- 3.37 Councillors must not use pre-meeting briefing sessions to debate or make preliminary decisions on items of business they are being briefed on, and any debate and decision-making must be left to the formal council or committee meeting at which the item of business is to be considered.
- 3.38 Councillors (including the mayor) must declare and manage any conflicts of interest they may have in relation to any item of business that is the subject of a briefing at a pre-meeting briefing session, in the same way that they are required to do so at a council or committee meeting. The council is to maintain a written record of all conflict of interest declarations made at pre-meeting briefing sessions and how the conflict of interest was managed by the councillor who made the declaration.

## 4 Public Forums

- 4.1 The council may hold a public forum prior to each ordinary meeting of the council for the purpose of hearing oral submissions from members of the public on items of business to be considered at the meeting. Public forums may also be held prior to extraordinary council meetings and meetings of committees of the council.
- 4.2 Public forums may be held by audio-visual link.
- 4.3 Public forums are to be chaired by the mayor or their nominee.
- 4.4 To speak at a public forum, a person must first make an application to the council in the approved form. Applications to speak at the public forum must be received by **[date and time to be specified by the council]** before the date on which the public forum is to be held, and must identify the item of business on the agenda of the council meeting the person wishes to speak on, and whether they wish to speak 'for' or 'against' the item.
- 4.5 A person may apply to speak on no more than **[number to be specified by the council]** items of business on the agenda of the council meeting.
- 4.6 Legal representatives acting on behalf of others are not to be permitted to speak at a public forum unless they identify their status as a legal representative when applying to speak at the public forum.
- 4.7 The general manager or their delegate may refuse an application to speak at a public forum. The general manager or their delegate must give reasons in writing for a decision to refuse an application.
- 4.8 No more than **[number to be specified by the council]** speakers are to be permitted to speak 'for' or 'against' each item of business on the agenda for the council meeting.
- 4.9 If more than the permitted number of speakers apply to speak 'for' or 'against' any item of business, the general manager or their delegate may request the speakers to nominate from among themselves the persons who are to address the council on the item of business. If the speakers are not able to agree on whom to nominate to address the council, the general manager or their delegate is to determine who will address the council at the public forum.
- 4.10 If more than the permitted number of speakers apply to speak 'for' or 'against' any item of business, the general manager or their delegate may, in consultation with the mayor or the mayor's nominated chairperson, increase the number of speakers permitted to speak on an item of business, where they are satisfied that it is necessary to do so to allow the council to hear a fuller range of views on the relevant item of business.
- 4.11 Approved speakers at the public forum are to register with the council any written, visual or audio material to be presented in support of their address to the council at the public forum, and to identify any equipment needs no more than **[number to be specified by the council]** days before the public forum. The general manager or their delegate may refuse to allow such material to be presented.
- 4.12 The general manager or their delegate is to determine the order of speakers at the public forum.
- 4.13 Each speaker will be allowed **[number to be specified by the council]** minutes to address the council. This time is to be strictly enforced by the chairperson.

- 4.14 Speakers at public forums must not digress from the item on the agenda of the council meeting they have applied to address the council on. If a speaker digresses to irrelevant matters, the chairperson is to direct the speaker not to do so. If a speaker fails to observe a direction from the chairperson, the speaker will not be further heard.
- 4.15 A councillor (including the chairperson) may, through the chairperson, ask questions of a speaker following their address at a public forum. Questions put to a speaker must be direct, succinct and without argument.
- 4.16 Speakers are under no obligation to answer a question put under clause 4.15. Answers by the speaker, to each question are to be limited to **[number to be specified by the council]** minutes.
- 4.17 Speakers at public forums cannot ask questions of the council, councillors, or council staff.
- 4.18 The general manager or their nominee may, with the concurrence of the chairperson, address the council for up to **[number to be specified by the council]** minutes in response to an address to the council at a public forum after the address and any subsequent questions and answers have been finalised.
- 4.19 Where an address made at a public forum raises matters that require further consideration by council staff, the general manager may recommend that the council defer consideration of the matter pending the preparation of a further report on the matters.
- 4.20 When addressing the council, speakers at public forums must comply with this code and all other relevant council codes, policies, and procedures. Speakers must refrain from engaging in disorderly conduct, publicly alleging breaches of the council's code of conduct or making other potentially defamatory statements.
- 4.21 If the chairperson considers that a speaker at a public forum has engaged in conduct of the type referred to in clause 4.20, the chairperson may request the person to refrain from the inappropriate behaviour and to withdraw and unreservedly apologise for any inappropriate comments. Where the speaker fails to comply with the chairperson's request, the chairperson may immediately require the person to stop speaking.
- 4.22 Clause 4.21 does not limit the ability of the chairperson to deal with disorderly conduct by speakers at public forums in accordance with the provisions of Part 15 of this code.
- 4.23 Where a speaker engages in conduct of the type referred to in clause 4.20, the general manager or their delegate may refuse further applications from that person to speak at public forums for such a period as the general manager or their delegate considers appropriate.
- 4.24 Councillors (including the mayor) must declare and manage any conflicts of interest they may have in relation to any item of business that is the subject of an address at a public forum, in the same way that they are required to do so at a council or committee meeting. The council is to maintain a written record of all conflict of interest declarations made at public forums and how the conflict of interest was managed by the councillor who made the declaration.
- Note: Public forums should not be held as part of a council or committee meeting. Council or committee meetings should be reserved for decision-making by the council or committee of council. Where a public forum is held as part of a council or committee meeting, it must be conducted in accordance with the other requirements of this code relating to the conduct of council and committee meetings.**



# 5 Coming Together



## Attendance by councillors at meetings

- 5.1 All councillors must make reasonable efforts to attend meetings of the council and of committees of the council of which they are members.

**Note: A councillor may not attend a meeting as a councillor (other than the first meeting of the council after the councillor is elected or a meeting at which the councillor takes an oath or makes an affirmation of office) until they have taken an oath or made an affirmation of office in the form prescribed under section 233A of the Act.**

- 5.2 A councillor cannot participate in a meeting of the council or of a committee of the council unless personally present at the meeting, unless permitted to attend the meeting by audio-visual link under this code.
- 5.3 The board of the joint organisation may, if it thinks fit, transact any of its business at a meeting at which representatives (or some representatives) participate by telephone or other electronic means, but only if any representative who speaks on a matter before the meeting can be heard by the other representatives. For the purposes of a meeting held in accordance with this clause, the chairperson and each other voting representative on the board have the same voting rights as they have at an ordinary meeting of the board.

**Note: Clause 5.3 reflects section 397G of the Regulation. Joint organisations may adopt clause 5.3 and omit clause 5.2. Councils must not adopt clause 5.3.**

- 5.4 Where a councillor is unable to attend one or more ordinary meetings of the council, the councillor should request that the council grant them a leave of absence from those meetings. This clause does not prevent a councillor from making

an apology if they are unable to attend a meeting. However, the acceptance of such an apology does not constitute the granting of a leave of absence for the purposes of this code and the Act.

- 5.5 A councillor's request for leave of absence from council meetings should, if practicable, identify (by date) the meetings from which the councillor intends to be absent and the grounds upon which the leave of absence is being sought.
- 5.6 The council must act reasonably when considering whether to grant a councillor's request for a leave of absence.
- 5.7 A councillor's civic office will become vacant if the councillor is absent from three (3) consecutive ordinary meetings of the council without prior leave of the council, or leave granted by the council at any of the meetings concerned, unless the holder is absent because they have been suspended from office under the Act, or because the council has been suspended under the Act, or as a consequence of a compliance order under section 438HA.

**Note: Clause 5.7 reflects section 234(1)(d) of the Act.**

- 5.8 A councillor who intends to attend a meeting of the council despite having been granted a leave of absence should, if practicable, give the general manager at least two (2) days' notice of their intention to attend.

## The quorum for a meeting

- 5.9 The quorum for a meeting of the council is a majority of the councillors of the council who hold office at that time and are not suspended from office.

**Note: Clause 5.9 reflects section 368(1) of the Act.**

5.10 Clause 5.9 does not apply if the quorum is required to be determined in accordance with directions of the Minister in a performance improvement order issued in respect of the council.

**Note: Clause 5.10 reflects section 368(2) of the Act.**

5.11 A meeting of the council must be adjourned if a quorum is not present:

- (a) at the commencement of the meeting where the number of apologies received for the meeting indicates that there will not be a quorum for the meeting, or
- (b) within half an hour after the time designated for the holding of the meeting, or
- (c) at any time during the meeting.

5.12 In either case, the meeting must be adjourned to a time, date, and place fixed:

- (a) by the chairperson, or
- (b) in the chairperson's absence, by the majority of the councillors present, or
- (c) failing that, by the general manager.

5.13 The general manager must record in the council's minutes the circumstances relating to the absence of a quorum (including the reasons for the absence of a quorum) at or arising during a meeting of the council, together with the names of the councillors present.

5.14 Where, prior to the commencement of a meeting, it becomes apparent that a quorum may not be present at the meeting, or that the health, safety or welfare of councillors, council staff and members of the public may be put at risk by attending the meeting because of a natural disaster or a public health emergency, the mayor may, in consultation with the general manager and, as far as is practicable, with each

councillor, cancel the meeting. Where a meeting is cancelled, notice of the cancellation must be published on the council's website and in such other manner that the council is satisfied is likely to bring notice of the cancellation to the attention of as many people as possible.

5.15 Where a meeting is cancelled under clause 5.14, the business to be considered at the meeting may instead be considered, where practicable, at the next ordinary meeting of the council or at an extraordinary meeting called under clause 3.3.

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## Meetings held by audio-visual link

5.16 A meeting of the council or a committee of the council may be held by audio-visual link where the mayor determines that the meeting should be held by audio-visual link because of a natural disaster or a public health emergency. The mayor may only make a determination under this clause where they are satisfied that attendance at the meeting may put the health and safety of councillors and staff at risk. The mayor must make a determination under this clause in consultation with the general manager and, as far as is practicable, with each councillor.

5.17 Where the mayor determines under clause 5.16 that a meeting is to be held by audio-visual link, the general manager must:

- (a) give written notice to all councillors that the meeting is to be held by audio-visual link, and
- (b) take all reasonable steps to ensure that all councillors can participate in the meeting by audio-visual link, and



- (c) cause a notice to be published on the council's website and in such other manner the general manager is satisfied will bring it to the attention of as many people as possible, advising that the meeting is to be held by audio-visual link and providing information about where members of the public may view the meeting.
- 5.18 This code applies to a meeting held by audio-visual link under clause 5.16 in the same way it would if the meeting was held in person.
- Note: Where a council holds a meeting by audio-visual link under clause 5.16, it is still required under section 10 of the Act to provide a physical venue for members of the public to attend in person and observe the meeting.**
- 
- ## Attendance by councillors at meetings by audio-visual link
- 5.19 Councillors may attend and participate in meetings of the council and committees of the council by audio-visual link with the approval of the council or the relevant committee.
- 5.20 A request by a councillor for approval to attend a meeting by audio-visual link must be made in writing to the general manager prior to the meeting in question and must provide reasons why the councillor will be prevented from attending the meeting in person.
- 5.21 Councillors may request approval to attend more than one meeting by audio-visual link. Where a councillor requests approval to attend more than one meeting by audio-visual link, the request must specify the meetings the request relates to in addition to the information required under clause 5.20.
- 5.22 The council must comply with the Health Privacy Principles prescribed under the *Health Records and Information Privacy Act 2002* when collecting, holding, using and disclosing health information in connection with a request by a councillor to attend a meeting by audio-visual link.
- 5.23 A councillor who has requested approval to attend a meeting of the council or a committee of the council by audio-visual link may participate in the meeting by audio-visual link until the council or committee determines whether to approve their request and is to be taken as present at the meeting. The councillor may participate in a decision in relation to their request to attend the meeting by audio-visual link.
- 5.24 A decision whether to approve a request by a councillor to attend a meeting of the council or a committee of the council by audio-visual link must be made by a resolution of the council or the committee concerned. The resolution must state:
- the meetings the resolution applies to, and
  - the reason why the councillor is being permitted to attend the meetings by audio-visual link where it is on grounds other than illness, disability, or caring responsibilities.
- 5.25 If the council or committee refuses a councillor's request to attend a meeting by audio-visual link, their link to the meeting is to be terminated.
- 5.26 A decision whether to approve a councillor's request to attend a meeting by audio-visual link is at the council's or the relevant committee's discretion. The council and committees of the council must act reasonably when considering requests by councillors to attend meetings by audio-visual link. However, the council and committees of the council are under no obligation to approve a councillor's request to attend a meeting by audio-

visual link where the technical capacity does not exist to allow the councillor to attend the meeting by these means.

- 5.27 The council and committees of the council may refuse a councillor's request to attend a meeting by audio-visual link where the council or committee is satisfied that the councillor has failed to appropriately declare and manage conflicts of interest, observe confidentiality, or to comply with this code on one or more previous occasions they have attended a meeting of the council or a committee of the council by audio-visual link.
- 5.28 This code applies to a councillor attending a meeting by audio-visual link in the same way it would if the councillor was attending the meeting in person. Where a councillor is permitted to attend a meeting by audio-visual link under this code, they are to be taken as attending the meeting in person for the purposes of the code and will have the same voting rights as if they were attending the meeting in person.
- 5.29 A councillor must give their full attention to the business and proceedings of the meeting when attending a meeting by audio-visual link. The councillor's camera must be on at all times during the meeting except as may be otherwise provided for under this code.
- 5.30 A councillor must be appropriately dressed when attending a meeting by audio-visual link and must ensure that no items are within sight of the meeting that are inconsistent with the maintenance of order at the meeting or that are likely to bring the council or the committee into disrepute.

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## Entitlement of the public to attend council meetings

- 5.31 Everyone is entitled to attend a meeting of the council and committees of the council. The council must ensure that all meetings of the council and committees of the council are open to the public.

**Note: Clause 5.31 reflects section 10(1) of the Act.**

- 5.32 Clause 5.31 does not apply to parts of meetings that have been closed to the public under section 10A of the Act.
- 5.33 A person (whether a councillor or another person) is not entitled to be present at a meeting of the council or a committee of the council if expelled from the meeting:
- (a) by a resolution of the meeting, or
  - (b) by the person presiding at the meeting if the council has, by resolution, authorised the person presiding to exercise the power of expulsion.

**Note: Clause 5.33 reflects section 10(2) of the Act.**

**Note: If adopted, clauses 15.14 and 15.15 confer a standing authorisation on all chairpersons of meetings of the council and committees of the council to expel persons from meetings. If adopted, clause 15.14 authorises chairpersons to expel any person, including a councillor, from a council or committee meeting. Alternatively, if adopted, clause 15.15 authorises chairpersons to expel persons other than councillors from a council or committee meeting.**

## Webcasting of meetings

- 5.34 Each meeting of the council or a committee of the council is to be recorded by means of an audio or audio-visual device.
- 5.35 At the start of each meeting of the council or a committee of the council, the chairperson must inform the persons attending the meeting that:
- (a) the meeting is being recorded and made publicly available on the council's website, and
  - (b) persons attending the meeting should refrain from making any defamatory statements.
- 5.36 The recording of a meeting is to be made publicly available on the council's website:
- (a) at the same time as the meeting is taking place, or
  - (b) as soon as practicable after the meeting.
- 5.37 The recording of a meeting is to be made publicly available on the council's website for at least 12 months after the meeting.
- 5.38 Clauses 5.36 and 5.37 do not apply to any part of a meeting that has been closed to the public in accordance with section 10A of the Act.
- Note: Clauses 5.34 – 5.38 reflect section 236 of the Regulation.**
- 5.39 Recordings of meetings may be disposed of in accordance with the *State Records Act 1998*.

**Note: Joint organisations are not required to webcast meetings but may choose to do so by adopting clauses 5.34–5.39. Joint organisations that choose not to webcast meetings may omit clauses 5.34–5.39.**

## Attendance of the general manager and other staff at meetings

- 5.40 The general manager is entitled to attend, but not to vote at, a meeting of the council or a meeting of a committee of the council of which all of the members are councillors.

**Note: Clause 5.40 reflects section 376(1) of the Act.**

- 5.41 The general manager is entitled to attend a meeting of any other committee of the council and may, if a member of the committee, exercise a vote.

**Note: Clause 5.41 reflects section 376(2) of the Act.**

- 5.42 The general manager may be excluded from a meeting of the council or a committee while the council or committee deals with a matter relating to the standard of performance of the general manager or the terms of employment of the general manager.

**Note: Clause 5.42 reflects section 376(3) of the Act.**

- 5.43 The attendance of other council staff at a meeting, (other than as members of the public) shall be with the approval of the general manager.

- 5.44 The general manager and other council staff may attend meetings of the council and committees of the council by audio-visual link. Attendance by council staff at meetings by audio-visual link (other than as members of the public) shall be with the approval of the general manager.

## 6 The Chairperson

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## The chairperson at meetings

- 6.1 The mayor, or at the request of or in the absence of the mayor, the deputy mayor (if any) presides at meetings of the council.

**Note: Clause 6.1 reflects section 369(1) of the Act.**

- 6.2 If the mayor and the deputy mayor (if any) are absent, a councillor elected to chair the meeting by the councillors present presides at a meeting of the council.

**Note: Clause 6.2 reflects section 369(2) of the Act.**

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## Election of the chairperson in the absence of the mayor and deputy mayor

- 6.3 If no chairperson is present at a meeting of the council at the time designated for the holding of the meeting, the first business of the meeting must be the election of a chairperson to preside at the meeting.
- 6.4 The election of a chairperson must be conducted:
- (a) by the general manager or, in their absence, an employee of the council designated by the general manager to conduct the election, or
  - (b) by the person who called the meeting or a person acting on their behalf if neither the general manager nor a designated employee is present at the meeting, or if there is no general manager or designated employee.

- 6.5 If, at an election of a chairperson, two (2) or more candidates receive the same number of votes and no other candidate receives a greater number of votes, the chairperson is to be the candidate whose name is chosen by lot.
- 6.6 For the purposes of clause 6.5, the person conducting the election must:
- (a) arrange for the names of the candidates who have equal numbers of votes to be written on similar slips, and
  - (b) then fold the slips so as to prevent the names from being seen, mix the slips and draw one of the slips at random.
- 6.7 The candidate whose name is on the drawn slip is the candidate who is to be the chairperson.
- 6.8 Any election conducted under clause 6.3, and the outcome of the vote, are to be recorded in the minutes of the meeting.

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## Chairperson to have precedence

- 6.9 When the chairperson rises or speaks during a meeting of the council:
- (a) any councillor then speaking or seeking to speak must cease speaking and, if standing, immediately resume their seat, and
  - (b) every councillor present must be silent to enable the chairperson to be heard without interruption.

## 7 Modes of Address

- 7.1 If the chairperson is the mayor, they are to be addressed as 'Mr Mayor' or 'Madam Mayor'.
- 7.2 Where the chairperson is not the mayor, they are to be addressed as either 'Mr Chairperson' or 'Madam Chairperson'.
- 7.3 A councillor is to be addressed as 'Councillor [surname]'.
- 7.4 A council officer is to be addressed by their official designation or as Mr/Ms [surname].

# 8 Order of Business for Ordinary Council Meetings



8.1 At a meeting of the council, the general order of business is as fixed by resolution of the council.

8.2 The general order of business for an ordinary meeting of the council shall be:  
**[councils may adapt the following order of business to meet their needs]**

01 Opening meeting

02 Acknowledgement of country

03 Apologies and applications for a leave of absence or attendance by audio-visual link by councillors

04 Confirmation of minutes

05 Disclosures of interests

06 Mayoral minute(s)

07 Reports of committees

08 Reports to council

09 Notices of motions/Questions with notice

10 Confidential matters

11 Conclusion of the meeting

**Note: Councils must use either clause 8.1 or 8.2.**

8.3 The order of business as fixed under [8.1/8.2] **[delete whichever is not applicable]** may be altered for a particular meeting of the council if a motion to that effect is passed at that meeting. Such a motion can be moved without notice.

**Note: If adopted, Part 13 allows council to deal with items of business by exception.**

8.4 Despite clauses 10.20-10.30, only the mover of a motion referred to in clause 8.3 may speak to the motion before it is put.

# 9 Consideration of Business at Council Meetings



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## Business that can be dealt with at a council meeting

- 9.1 The council must not consider business at a meeting of the council:
- (a) unless a councillor has given notice of the business, as required by clause 3.10, and
  - (b) unless notice of the business has been sent to the councillors in accordance with clause 3.7 in the case of an ordinary meeting or clause 3.9 in the case of an extraordinary meeting called in an emergency.
- 9.2 Clause 9.1 does not apply to the consideration of business at a meeting, if the business:
- (a) is already before, or directly relates to, a matter that is already before the council, or
  - (b) is the election of a chairperson to preside at the meeting, or
  - (c) subject to clause 9.9, is a matter or topic put to the meeting by way of a mayoral minute, or
  - (d) is a motion for the adoption of recommendations of a committee, including, but not limited to, a committee of the council.
- 9.3 Despite clause 9.1, business may be considered at a meeting of the council even though due notice of the business has not been given to the councillors if:
- (a) a motion is passed to have the business considered at the meeting, and
  - (b) the business to be considered is ruled by the chairperson to be of great urgency on the grounds that

it requires a decision by the council before the next scheduled ordinary meeting of the council.

- 9.4 A motion moved under clause 9.3(a) can be moved without notice. Despite clauses 10.20–10.30, only the mover of a motion referred to in clause 9.3(a) can speak to the motion before it is put.
- 9.5 A motion of dissent cannot be moved against a ruling by the chairperson under clause 9.3(b).

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## Mayoral minutes

- 9.6 Subject to clause 9.9, if the mayor is the chairperson at a meeting of the council, the mayor may, by minute signed by the mayor, put to the meeting without notice any matter or topic that is within the jurisdiction of the council, or of which the council has official knowledge.
- 9.7 A mayoral minute, when put to a meeting, takes precedence over all business on the council's agenda for the meeting. The chairperson (but only if the chairperson is the mayor) may move the adoption of a mayoral minute without the motion being seconded.
- 9.8 A recommendation made in a mayoral minute put by the mayor is, so far as it is adopted by the council, a resolution of the council.
- 9.9 A mayoral minute must not be used to put without notice matters that are routine and not urgent or matters for which proper notice should be given because of their complexity. For the purpose of this clause, a matter will be urgent where it requires a decision by the council before the next scheduled ordinary meeting of the council.

9.10 Where a mayoral minute makes a recommendation which, if adopted, would require the expenditure of funds on works and/or services other than those already provided for in the council's current adopted operational plan, it must identify the source of funding for the expenditure that is the subject of the recommendation. If the mayoral minute does not identify a funding source, the council must defer consideration of the matter, pending a report from the general manager on the availability of funds for implementing the recommendation if adopted.

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## Staff reports

9.11 A recommendation made in a staff report is, so far as it is adopted by the council, a resolution of the council.

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## Reports of committees of council

9.12 The recommendations of a committee of the council are, so far as they are adopted by the council, resolutions of the council.

9.13 If in a report of a committee of the council distinct recommendations are made, the council may make separate decisions on each recommendation.

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## Questions

9.14 A question must not be asked at a meeting of the council unless it concerns a matter on the agenda of the meeting or notice has been given of the question in accordance with clauses 3.10 and 3.14.

9.15 A councillor may, through the chairperson, put a question to another councillor about a matter on the agenda.

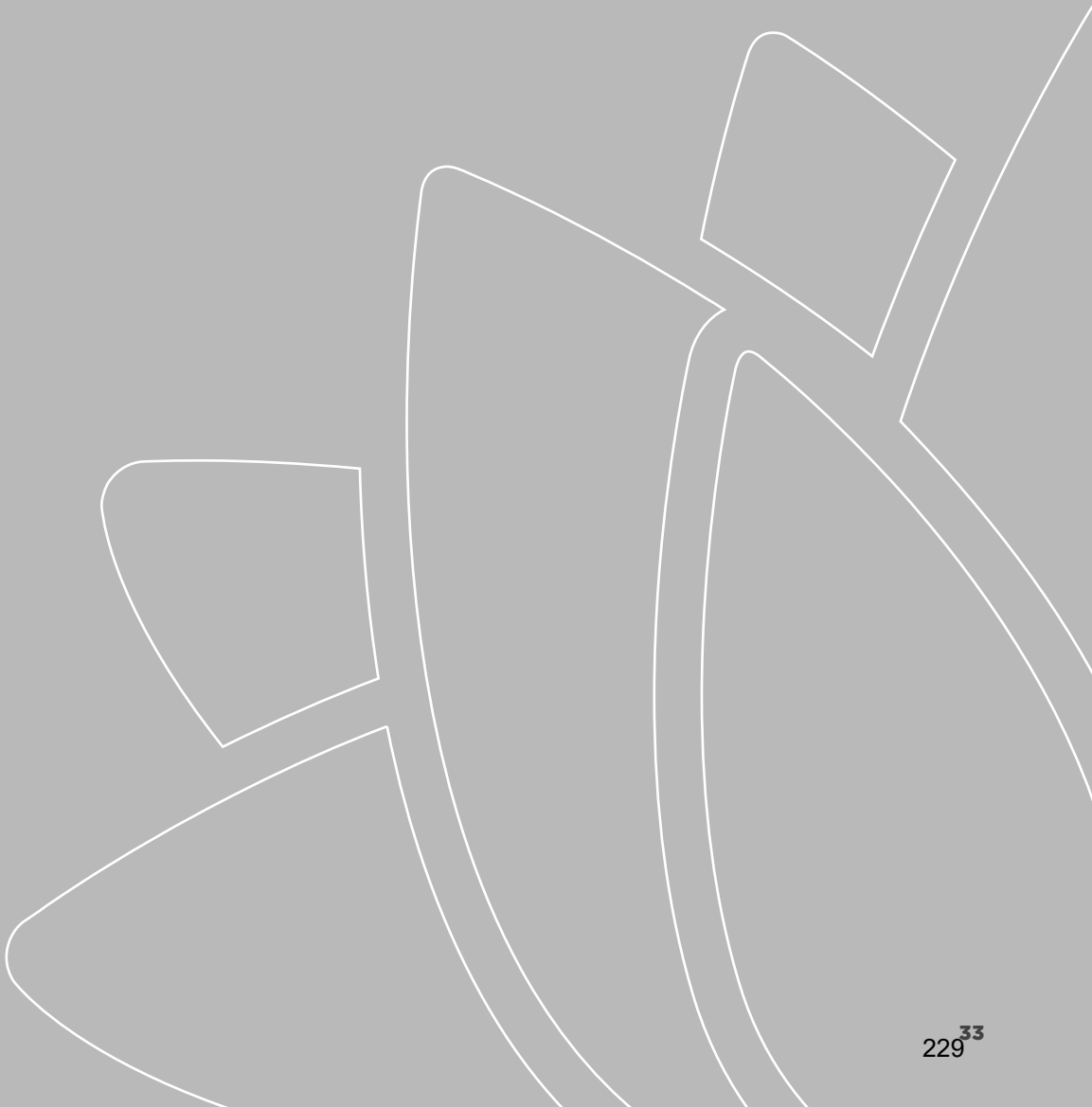
9.16 A councillor may, through the general manager, put a question to a council employee about a matter on the agenda. Council employees are only obliged to

answer a question put to them through the general manager at the direction of the general manager.

9.17 A councillor or council employee to whom a question is put is entitled to be given reasonable notice of the question and, in particular, sufficient notice to enable reference to be made to other persons or to information. Where a councillor or council employee to whom a question is put is unable to respond to the question at the meeting at which it is put, they may take it on notice and report the response to the next meeting of the council.

9.18 Councillors must put questions directly, succinctly, respectfully and without argument.

9.19 The chairperson must not permit discussion on any reply to, or refusal to reply to, a question put to a councillor or council employee.



# 10 Rules of Debate



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## Motions to be seconded

10.1 Unless otherwise specified in this code, a motion or an amendment cannot be debated unless or until it has been seconded.

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## Notices of motion

10.2 A councillor who has submitted a notice of motion under clause 3.10 is to move the motion the subject of the notice of motion at the meeting at which it is to be considered.

10.3 If a councillor who has submitted a notice of motion under clause 3.10 wishes to withdraw it after the agenda and business paper for the meeting at which it is to be considered have been sent to councillors, the councillor may request the withdrawal of the motion when it is before the council.

10.4 In the absence of a councillor who has placed a notice of motion on the agenda for a meeting of the council:

- (a) any other councillor may, with the leave of the chairperson, move the motion at the meeting, or
- (b) the chairperson may defer consideration of the motion until the next meeting of the council.

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## Chairperson's duties with respect to motions

10.5 It is the duty of the chairperson at a meeting of the council to receive and put to the meeting any lawful motion that is brought before the meeting.

10.6 The chairperson must rule out of order any motion or amendment to a motion that is unlawful or the implementation of which would be unlawful.

10.7 Before ruling out of order a motion or an amendment to a motion under clause 10.6, the chairperson is to give the mover an opportunity to clarify or amend the motion or amendment.

10.8 Any motion, amendment, or other matter that the chairperson has ruled out of order is taken to have been lost.

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## Motions requiring the expenditure of funds

10.9 A motion or an amendment to a motion which if passed would require the expenditure of funds on works and/or services other than those already provided for in the council's current adopted operational plan must identify the source of funding for the expenditure that is the subject of the motion. If the motion does not identify a funding source, the council must defer consideration of the matter, pending a report from the general manager on the availability of funds for implementing the motion if adopted.

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## Amendments to motions

10.10 An amendment to a motion must be moved and seconded before it can be debated.

10.11 An amendment to a motion must relate to the matter being dealt with in the original motion before the council and must not be a direct negative of the original motion. An amendment to a motion which does not relate to the matter being dealt with in the original motion, or which is a direct negative of the original motion, must be ruled out of order by the chairperson.

10.12 The mover of an amendment is to be given the opportunity to explain any uncertainties in the proposed amendment before a seconder is called for.

- 10.13 If an amendment has been lost, a further amendment can be moved to the motion to which the lost amendment was moved, and so on, but no more than one (1) motion and one (1) proposed amendment can be before council at any one time.
- 10.14 While an amendment is being considered, debate must only occur in relation to the amendment and not the original motion. Debate on the original motion is to be suspended while the amendment to the original motion is being debated.
- 10.15 If the amendment is carried, it becomes the motion and is to be debated. If the amendment is lost, debate is to resume on the original motion.
- 10.16 An amendment may become the motion without debate or a vote where it is accepted by the councillor who moved the original motion.

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## Foreshadowed motions

- 10.17 A councillor may propose a foreshadowed motion in relation to the matter the subject of the original motion before the council, without a seconder during debate on the original motion. The foreshadowed motion is only to be considered if the original motion is lost or withdrawn and the foreshadowed motion is then moved and seconded. If the original motion is carried, the foreshadowed motion lapses.
- 10.18 Where an amendment has been moved and seconded, a councillor may, without a seconder, foreshadow a further amendment that they propose to move after the first amendment has been dealt with. There is no limit to the number of foreshadowed amendments that may be put before the council at any time. However, no discussion can take place on foreshadowed amendments until the previous amendment has been dealt with and the foreshadowed amendment has been moved and seconded.

- 10.19 Foreshadowed motions and foreshadowed amendments are to be considered in the order in which they are proposed. However, foreshadowed motions cannot be considered until all foreshadowed amendments have been dealt with.

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## Limitations on the number and duration of speeches

- 10.20 A councillor who, during a debate at a meeting of the council, moves an original motion, has the right to speak on each amendment to the motion and a right of general reply to all observations that are made during the debate in relation to the motion, and any amendment to it at the conclusion of the debate before the motion (whether amended or not) is finally put.
- 10.21 A councillor, other than the mover of an original motion, has the right to speak once on the motion and once on each amendment to it.
- 10.22 A councillor must not, without the consent of the council, speak more than once on a motion or an amendment, or for longer than five (5) minutes at any one time.
- 10.23 Despite clause 10.22, the chairperson may permit a councillor who claims to have been misrepresented or misunderstood to speak more than once on a motion or an amendment, and for longer than five (5) minutes on that motion or amendment to enable the councillor to make a statement limited to explaining the misrepresentation or misunderstanding.
- 10.24 Despite clause 10.22, the council may resolve to shorten the duration of speeches to expedite the consideration of business at a meeting.



10.25 Despite clauses 10.20 and 10.21, a councillor may move that a motion or an amendment be now put:

(a) if the mover of the motion or amendment has spoken in favour of it and no councillor expresses an intention to speak against it, or

(b) if at least two (2) councillors have spoken in favour of the motion or amendment and at least two (2) councillors have spoken against it.

10.26 The chairperson must immediately put to the vote, without debate, a motion moved under clause 10.25. A seconder is not required for such a motion.

10.27 If a motion that the original motion or an amendment be now put is passed, the chairperson must, without further debate, put the original motion or amendment to the vote immediately after the mover of the original motion has exercised their right of reply under clause 10.20.

10.28 If a motion that the original motion or an amendment be now put is lost, the chairperson must allow the debate on the original motion or the amendment to be resumed.

10.29 All councillors must be heard without interruption and all other councillors must, unless otherwise permitted under this code, remain silent while another councillor is speaking.

10.30 Once the debate on a matter has concluded and a matter has been dealt with, the chairperson must not allow further debate on the matter.

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## Participation by non-voting representatives in joint organisation board meetings

10.31 Non-voting representatives of joint organisation boards may speak on but must not move, second or vote on any motion or an amendment to a motion.

**Note: Under section 400T(1)(c) of the Act, non-voting representatives of joint organisation boards may attend but are not entitled to vote at a meeting of the board.**

**Note: Joint organisations must adopt clause 10.31. Councils must not adopt clause 10.31.**

# 11 Voting



## Voting entitlements of councillors

11.1 Each councillor is entitled to one (1) vote.

**Note: Clause 11.1 reflects section 370(1) of the Act.**

**Note: Under section 400T(1) of the Act, voting representatives of joint organisation boards are entitled to one (1) vote each at meetings of the board.**

11.2 The person presiding at a meeting of the council has, in the event of an equality of votes, a second or casting vote.

**Note: Clause 11.2 reflects section 370(2) of the Act.**

11.3 Where the chairperson declines to exercise, or fails to exercise, their second or casting vote, in the event of an equality of votes, the motion being voted upon is lost.

11.4 A motion at a meeting of the board of a joint organisation is taken to be lost in the event of an equality of votes.

**Note: Clause 11.4 reflects section 397E of the Regulation. Joint organisations must adopt clause 11.4 and omit clauses 11.2 and 11.3. Councils must not adopt clause 11.4.**

**Note: Under section 400U(4) of the Act, joint organisations may specify more stringent voting requirements for decisions by the board such as a 75% majority or consensus decision making. Where a joint organisation's charter specifies more stringent voting requirements, clause 11.4 must be adapted to reflect those requirements.**

## Voting at council meetings

11.5 A councillor who is present at a meeting of the council but who fails to vote on a motion put to the meeting is taken to have voted against the motion

11.6 If a councillor who has voted against a motion put at a council meeting so requests, the general manager must ensure that the councillor's dissenting vote is recorded in the council's minutes.

11.7 The decision of the chairperson as to the result of a vote is final unless the decision is immediately challenged and not fewer than two (2) councillors rise and call for a division.

11.8 When a division on a motion is called, the chairperson must ensure that the division takes place immediately. The general manager must ensure that the names of those who vote for the motion and those who vote against it are recorded in the council's minutes for the meeting.

11.9 When a division on a motion is called, any councillor who fails to vote will be recorded as having voted against the motion in accordance with clause 11.5 of this code.

11.10 Voting at a meeting, including voting in an election at a meeting, is to be by open means (such as on the voices, by show of hands or by a visible electronic voting system). However, the council may resolve that the voting in any election by councillors for mayor or deputy mayor is to be by secret ballot.

11.11 All voting at council meetings, (including meetings that are closed to the public), must be recorded in the minutes of meetings with the names of councillors who voted for and against each motion or amendment, (including the use of the casting vote), being recorded.

**Note: If clause 11.11 is adopted, clauses 11.6 – 11.9 and clause 11.13 may be omitted.**

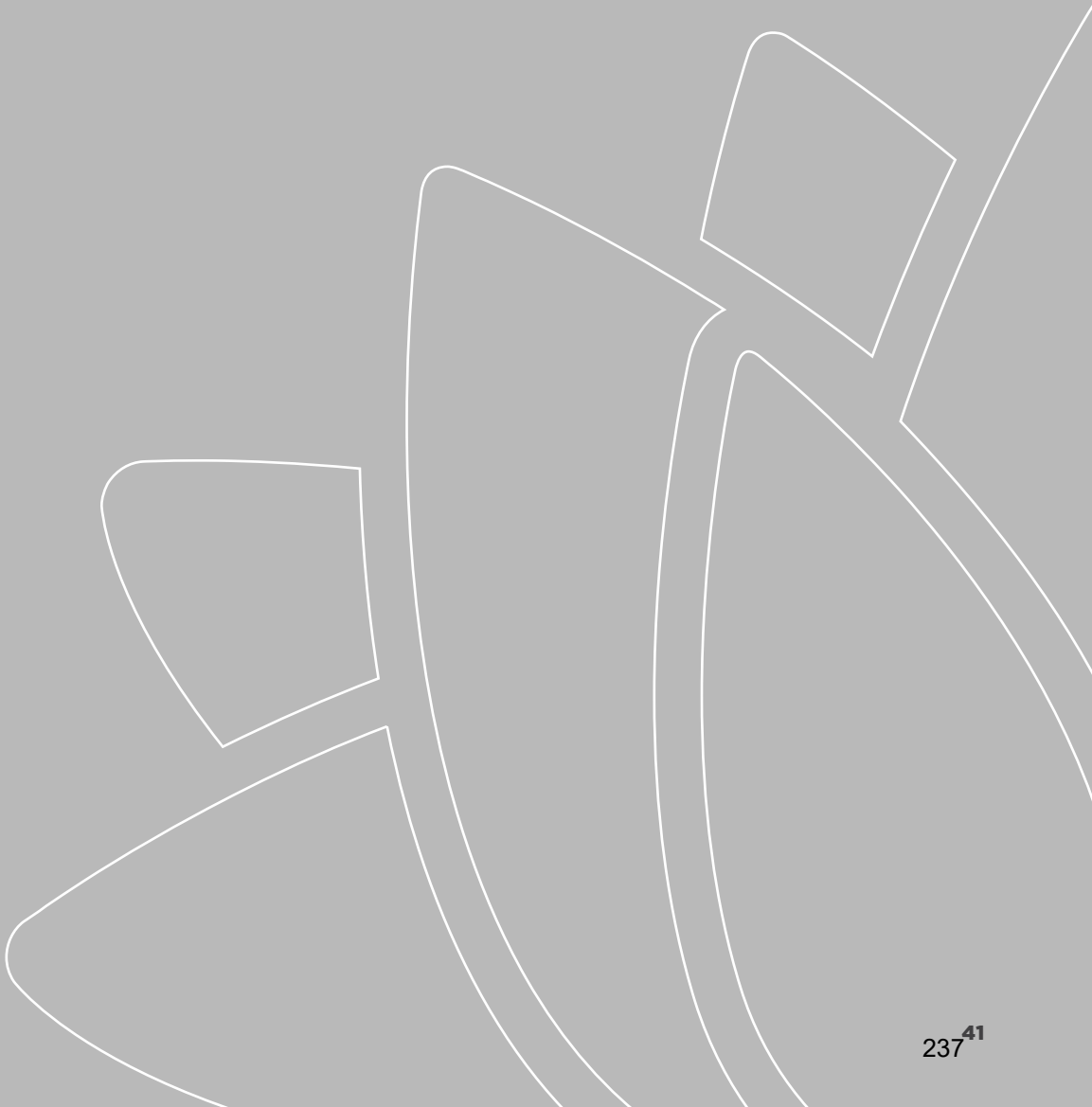
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## Voting on planning decisions

- 11.12 The general manager must keep a register containing, for each planning decision made at a meeting of the council or a council committee (including, but not limited to a committee of the council), the names of the councillors who supported the decision and the names of any councillors who opposed (or are taken to have opposed) the decision.
- 11.13 For the purpose of maintaining the register, a division is taken to have been called whenever a motion for a planning decision is put at a meeting of the council or a council committee.
- 11.14 Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document.
- 11.15 Clauses 11.12-11.14 apply also to meetings that are closed to the public.

**Note: Clauses 11.12-11.15 reflect section 375A of the Act.**

**Note: The requirements of clause 11.12 may be satisfied by maintaining a register of the minutes of each planning decision.**



## 12 Committee of the Whole

- 12.1 The council may resolve itself into a committee to consider any matter before the council.

**Note: Clause 12.1 reflects section 373 of the Act.**

- 12.2 All the provisions of this code relating to meetings of the council, so far as they are applicable, extend to and govern the proceedings of the council when in committee of the whole, except the provisions limiting the number and duration of speeches.

**Note: Clauses 10.20-10.30 limit the number and duration of speeches.**

- 12.3 The general manager or, in the absence of the general manager, an employee of the council designated by the general manager, is responsible for reporting to the council the proceedings of the committee of the whole. It is not necessary to report the proceedings in full, but any recommendations of the committee must be reported.
- 12.4 The council must ensure that a report of the proceedings (including any recommendations of the committee) is recorded in the council's minutes. However, the council is not taken to have adopted the report until a motion for adoption has been made and passed.

# 13 Dealing with Items by Exception



- 13.1 The council or a committee of council may, at any time, resolve to adopt multiple items of business on the agenda together by way of a single resolution.
- 13.2 Before the council or committee resolves to adopt multiple items of business on the agenda together under clause 13.1, the chairperson must list the items of business to be adopted and ask councillors to identify any individual items of business listed by the chairperson that they intend to vote against the recommendation made in the business paper or that they wish to speak on.
- 13.3 The council or committee must not resolve to adopt any item of business under clause 13.1 that a councillor has identified as being one they intend to vote against the recommendation made in the business paper or to speak on.
- 13.4 Where the consideration of multiple items of business together under clause 13.1 involves a variation to the order of business for the meeting, the council or committee must resolve to alter the order of business in accordance with clause 8.3.
- 13.5 A motion to adopt multiple items of business together under clause 13.1 must identify each of the items of business to be adopted and state that they are to be adopted as recommended in the business paper.
- 13.6 Items of business adopted under clause 13.1 are to be taken to have been adopted unanimously.
- 13.7 Councillors must ensure that they declare and manage any conflicts of interest they may have in relation to items of business considered together under clause 13.1 in accordance with the requirements of the council's code of conduct.

# 14 Closure of Council Meetings to the Public



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## Grounds on which meetings can be closed to the public

- 14.1 The council or a committee of the council may close to the public so much of its meeting as comprises the discussion or the receipt of any of the following types of matters:
- (a) personnel matters concerning particular individuals (other than councillors),
  - (b) the personal hardship of any resident or ratepayer,
  - (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business,
  - (d) commercial information of a confidential nature that would, if disclosed:
    - (i) prejudice the commercial position of the person who supplied it, or
    - (ii) confer a commercial advantage on a competitor of the council, or
    - (iii) reveal a trade secret,
  - (e) information that would, if disclosed, prejudice the maintenance of law,
  - (f) matters affecting the security of the council, councillors, council staff or council property,
  - (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,

- (h) information concerning the nature and location of a place or an item of Aboriginal significance on community land,
- (i) alleged contraventions of the council's code of conduct.

**Note: Clause 14.1 reflects section 10A(1) and (2) of the Act.**

- 14.2 The council or a committee of the council may also close to the public so much of its meeting as comprises a motion to close another part of the meeting to the public.

**Note: Clause 14.2 reflects section 10A(3) of the Act.**

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## Matters to be considered when closing meetings to the public

- 14.3 A meeting is not to remain closed during the discussion of anything referred to in clause 14.1:
- (a) except for so much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security, and
  - (b) if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret – unless the council or committee concerned is satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the public interest.

**Note: Clause 14.3 reflects section 10B(1) of the Act.**

14.4 A meeting is not to be closed during the receipt and consideration of information or advice referred to in clause 14.1(g) unless the advice concerns legal matters that:

- (a) are substantial issues relating to a matter in which the council or committee is involved, and
- (b) are clearly identified in the advice, and
- (c) are fully discussed in that advice.

**Note: Clause 14.4 reflects section 10B(2) of the Act.**

14.5 If a meeting is closed during the discussion of a motion to close another part of the meeting to the public (as referred to in clause 14.2), the consideration of the motion must not include any consideration of the matter or information to be discussed in that other part of the meeting other than consideration of whether the matter concerned is a matter referred to in clause 14.1.

**Note: Clause 14.5 reflects section 10B(3) of the Act.**

14.6 For the purpose of determining whether the discussion of a matter in an open meeting would be contrary to the public interest, it is irrelevant that:

- (a) a person may misinterpret or misunderstand the discussion, or
- (b) the discussion of the matter may:
  - (i) cause embarrassment to the council or committee concerned, or to councillors or to employees of the council, or
  - (ii) cause a loss of confidence in the council or committee.

**Note: Clause 14.6 reflects section 10B(4) of the Act.**

14.7 In deciding whether part of a meeting is to be closed to the public, the council or committee concerned must consider any relevant guidelines issued by the Departmental Chief Executive of the Office of Local Government.

**Note: Clause 14.7 reflects section 10B(5) of the Act.**

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## Notice of likelihood of closure not required in urgent cases

14.8 Part of a meeting of the council, or of a committee of the council, may be closed to the public while the council or committee considers a matter that has not been identified in the agenda for the meeting under clause 3.21 as a matter that is likely to be considered when the meeting is closed, but only if:

- (a) it becomes apparent during the discussion of a particular matter that the matter is a matter referred to in clause 14.1, and
- (b) the council or committee, after considering any representations made under clause 14.9, resolves that further discussion of the matter:
  - (i) should not be deferred (because of the urgency of the matter), and
  - (ii) should take place in a part of the meeting that is closed to the public.

**Note: Clause 14.8 reflects section 10C of the Act.**

## Representations by members of the public

14.9 The council, or a committee of the council, may allow members of the public to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.

**Note: Clause 14.9 reflects section 10A(4) of the Act.**

- 14.10 A representation under clause 14.9 is to be made after the motion to close the part of the meeting is moved and seconded.
- 14.11 Where the matter has been identified in the agenda of the meeting under clause 3.21 as a matter that is likely to be considered when the meeting is closed to the public, in order to make representations under clause 14.9, members of the public must first make an application to the council in the approved form. Applications must be received by **[date and time to be specified by the council]** before the meeting at which the matter is to be considered.
- 14.12 The general manager (or their delegate) may refuse an application made under clause 14.11. The general manager or their delegate must give reasons in writing for a decision to refuse an application.
- 14.13 No more than **[number to be specified by the council]** speakers are to be permitted to make representations under clause 14.9.
- 14.14 If more than the permitted number of speakers apply to make representations under clause 14.9, the general manager or their delegate may request the speakers to nominate from among themselves the

persons who are to make representations to the council. If the speakers are not able to agree on whom to nominate to make representations under clause 14.9, the general manager or their delegate is to determine who will make representations to the council.

- 14.15 The general manager (or their delegate) is to determine the order of speakers.
- 14.16 Where the council or a committee of the council proposes to close a meeting or part of a meeting to the public in circumstances where the matter has not been identified in the agenda for the meeting under clause 3.21 as a matter that is likely to be considered when the meeting is closed to the public, the chairperson is to invite representations from the public under clause 14.9 after the motion to close the part of the meeting is moved and seconded. The chairperson is to permit no more than **[number to be specified by the council]** speakers to make representations in such order as determined by the chairperson.
- 14.17 Each speaker will be allowed **[number to be specified by the council]** minutes to make representations, and this time limit is to be strictly enforced by the chairperson. Speakers must confine their representations to whether the meeting should be closed to the public. If a speaker digresses to irrelevant matters, the chairperson is to direct the speaker not to do so. If a speaker fails to observe a direction from the chairperson, the speaker will not be further heard.

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## Expulsion of non-councillors from meetings closed to the public

- 14.18 If a meeting or part of a meeting of the council or a committee of the council is closed to the public in accordance with section 10A of the Act and this code, any person who is not a councillor and who fails to leave the meeting when requested, may be expelled from the meeting as provided by section 10(2)(a) or (b) of the Act.
- 14.19 If any such person, after being notified of a resolution or direction expelling them from the meeting, fails to leave the place where the meeting is being held, a police officer, or any person authorised for the purpose by the council or person presiding, may, by using only such force as is necessary, remove the first-mentioned person from that place and, if necessary restrain that person from re-entering that place for the remainder of the meeting.

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## Obligations of councillors attending meetings by audio-visual link

- 14.20 Councillors attending a meeting by audio-visual link must ensure that no other person is within sight or hearing of the meeting at any time that the meeting is closed to the public under section 10A of the Act.

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## Information to be disclosed in resolutions closing meetings to the public

- 14.21 The grounds on which part of a meeting is closed must be stated in the decision to close that part of the meeting and must be recorded in the minutes of the meeting. The grounds must specify the following:
- (a) the relevant provision of section 10A(2) of the Act,
  - (b) the matter that is to be discussed during the closed part of the meeting,
  - (c) the reasons why the part of the meeting is being closed, including (if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret) an explanation of the way in which discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

**Note: Clause 14.21 reflects section 10D of the Act.**

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## Resolutions passed at closed meetings to be made public

- 14.22 If the council passes a resolution during a meeting, or a part of a meeting, that is closed to the public, the chairperson must make the resolution public as soon as practicable after the meeting, or the relevant part of the meeting, has ended, and the resolution must be recorded in the publicly available minutes of the meeting.
- 14.23 Resolutions passed during a meeting, or a part of a meeting, that is closed to the public must be made public by the chairperson under clause 14.22 during a part of the meeting that is webcast.
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## 15 Keeping Order at Meetings



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## Points of order

- 15.1 A councillor may draw the attention of the chairperson to an alleged breach of this code by raising a point of order. A point of order does not require a seconder.
- 15.2 A point of order cannot be made with respect to adherence to the principles contained in clause 2.1.
- 15.3 A point of order must be taken immediately it is raised. The chairperson must suspend the business before the meeting and permit the councillor raising the point of order to state the provision of this code they believe has been breached. The chairperson must then rule on the point of order – either by upholding it or by overruling it.

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## Questions of order

- 15.4 The chairperson, without the intervention of any other councillor, may call any councillor to order whenever, in the opinion of the chairperson, it is necessary to do so.
- 15.5 A councillor who claims that another councillor has committed an act of disorder, or is out of order, may call the attention of the chairperson to the matter.
- 15.6 The chairperson must rule on a question of order immediately after it is raised but, before doing so, may invite the opinion of the council.
- 15.7 The chairperson's ruling must be obeyed unless a motion dissenting from the ruling is passed.

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## Motions of dissent

- 15.8 A councillor can, without notice, move to dissent from a ruling of the chairperson on a point of order or a question of order. If that happens, the chairperson must suspend the business before the meeting until a decision is made on the motion of dissent.
- 15.9 If a motion of dissent is passed, the chairperson must proceed with the suspended business as though the ruling dissented from had not been given. If, as a result of the ruling, any motion or business has been rejected as out of order, the chairperson must restore the motion or business to the agenda and proceed with it in due course.
- 15.10 Despite any other provision of this code, only the mover of a motion of dissent and the chairperson can speak to the motion before it is put. The mover of the motion does not have a right of general reply.

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## Acts of disorder

- 15.11 A councillor commits an act of disorder if the councillor, at a meeting of the council or a committee of the council:
- (a) contravenes the Act, the Regulation or this code, or
  - (b) assaults or threatens to assault another councillor or person present at the meeting, or
  - (c) moves or attempts to move a motion or an amendment that has an unlawful purpose or that deals with a matter that is outside the jurisdiction of the council or the committee, or addresses or attempts to address the council or the committee on such a motion, amendment or matter, or

- (d) insults, makes unfavourable personal remarks about, or imputes improper motives to any other council official, or alleges a breach of the council's code of conduct, or
- (e) says or does anything that is inconsistent with maintaining order at the meeting or is likely to bring the council or the committee into disrepute.

**Note: Clause 15.11 reflects section 182 of the Regulation.**

- 15.12 The chairperson may require a councillor:
- (a) to apologise without reservation for an act of disorder referred to in clauses 15.11(a), (b), or (e), or
  - (b) to withdraw a motion or an amendment referred to in clause 15.11(c) and, where appropriate, to apologise without reservation, or
  - (c) to retract and apologise without reservation for any statement that constitutes an act of disorder referred to in clauses 15.11(d) and (e).

**Note: Clause 15.12 reflects section 233 of the Regulation.**

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## How disorder at a meeting may be dealt with

- 15.13 If disorder occurs at a meeting of the council, the chairperson may adjourn the meeting for a period of not more than fifteen (15) minutes and leave the chair. The council, on reassembling, must, on a question put from the chairperson, decide without debate whether the business is to be proceeded with or not. This clause applies to disorder arising from the conduct of members of the public as well as disorder arising from the conduct of councillors.

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## Expulsion from meetings

- 15.14 All chairpersons of meetings of the council and committees of the council are authorised under this code to expel any person, including any councillor, from a council or committee meeting, for the purposes of section 10(2)(b) of the Act.

- 15.15 All chairpersons of meetings of the council and committees of the council are authorised under this code to expel any person other than a councillor, from a council or committee meeting, for the purposes of section 10(2)(b) of the Act. Councillors may only be expelled by resolution of the council or the committee of the council.

**Note: Councils may use either clause 15.14 or clause 15.15.**

- 15.16 Clause [15.14/15.15] **[delete whichever is not applicable]**, does not limit the ability of the council or a committee of the council to resolve to expel a person, including a councillor, from a council or committee meeting, under section 10(2)(a) of the Act.

- 15.17 A councillor may, as provided by section 10(2)(a) or (b) of the Act, be expelled from a meeting of the council for having failed to comply with a requirement under clause 15.12. The expulsion of a councillor from the meeting for that reason does not prevent any other action from being taken against the councillor for the act of disorder concerned.

**Note: Clause 15.17 reflects section 233(2) of the Regulation.**

- 15.18 A member of the public may, as provided by section 10(2)(a) or (b) of the Act, be expelled from a meeting of the council for engaging in or having engaged in disorderly conduct at the meeting.

- 15.19 Where a councillor or a member of the public is expelled from a meeting, the expulsion and the name of the person expelled, if known, are to be recorded in the minutes of the meeting.
- 15.20 If a councillor or a member of the public fails to leave the place where a meeting of the council is being held immediately after they have been expelled, a police officer, or any person authorised for the purpose by the council or person presiding, may, by using only such force as is necessary, remove the councillor or member of the public from that place and, if necessary, restrain the councillor or member of the public from re-entering that place for the remainder of the meeting.

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## How disorder by councillors attending meetings by audio-visual link may be dealt with

- 15.21 Where a councillor is attending a meeting by audio-visual link, the chairperson or a person authorised by the chairperson may mute the councillor's audio link to the meeting for the purposes of enforcing compliance with this code.
- 15.22 If a councillor attending a meeting by audio-visual link is expelled from a meeting for an act of disorder, the chairperson of the meeting or a person authorised by the chairperson, may terminate the councillor's audio-visual link to the meeting.

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## Use of mobile phones and the unauthorised recording of meetings

- 15.23 Councillors, council staff and members of the public must ensure that mobile phones are turned to silent during meetings of the council and committees of the council.
- 15.24 A person must not live stream or use an audio recorder, video camera, mobile phone or any other device to make a recording of the proceedings of a meeting of the council or a committee of the council without the prior authorisation of the council or the committee.
- 15.25 Without limiting clause 15.18, a contravention of clause 15.24 or an attempt to contravene that clause, constitutes disorderly conduct for the purposes of clause 15.18. Any person who contravenes or attempts to contravene clause 15.24, may be expelled from the meeting as provided for under section 10(2) of the Act.
- 15.26 If any such person, after being notified of a resolution or direction expelling them from the meeting, fails to leave the place where the meeting is being held, a police officer, or any person authorised for the purpose by the council or person presiding, may, by using only such force as is necessary, remove the first-mentioned person from that place and, if necessary, restrain that person from re-entering that place for the remainder of the meeting.

# 16 Conflicts of Interest



- 16.1 All councillors and, where applicable, all other persons, must declare and manage any conflicts of interest they may have in matters being considered at meetings of the council and committees of the council in accordance with the council's code of conduct. All declarations of conflicts of interest and how the conflict of interest was managed by the person who made the declaration must be recorded in the minutes of the meeting at which the declaration was made.
- 16.2 Councillors attending a meeting by audio-visual link must declare and manage any conflicts of interest they may have in matters being considered at the meeting in accordance with the council's code of conduct. Where a councillor has declared a pecuniary or significant non-pecuniary conflict of interest in a matter being discussed at the meeting, the councillor's audio-visual link to the meeting must be suspended or terminated and the councillor must not be in sight or hearing of the meeting at any time during which the matter is being considered or discussed by the council or committee, or at any time during which the council or committee is voting on the matter.

# 17 Decisions of the Council

## Council decisions

17.1 A decision supported by a majority of the votes at a meeting of the council at which a quorum is present is a decision of the council.

**Note: Clause 17.1 reflects section 371 of the Act in the case of councils and section 400T(8) in the case of joint organisations.**

**Note: Under section 400U(4) of the Act, joint organisations may specify more stringent voting requirements for decisions by the board such as a 75% majority or consensus decision making. Where a joint organisation's charter specifies more stringent voting requirements, clause 17.1 must be adapted to reflect those requirements.**

17.2 Decisions made by the council must be accurately recorded in the minutes of the meeting at which the decision is made.

## Rescinding or altering council decisions

17.3 A resolution passed by the council may not be altered or rescinded except by a motion to that effect of which notice has been given under clause 3.10.

**Note: Clause 17.3 reflects section 372(1) of the Act.**

17.4 If a notice of motion to rescind a resolution is given at the meeting at which the resolution is carried, the resolution must not be carried into effect until the motion of rescission has been dealt with.

**Note: Clause 17.4 reflects section 372(2) of the Act.**

17.5 If a motion has been lost, a motion having the same effect must not be considered unless notice of it has been duly given in accordance with clause 3.10.

**Note: Clause 17.5 reflects section 372(3) of the Act.**

17.6 A notice of motion to alter or rescind a resolution, and a notice of motion which has the same effect as a motion which has been lost, must be signed by three (3) councillors if less than three (3) months has elapsed since the resolution was passed, or the motion was lost.

**Note: Clause 17.6 reflects section 372(4) of the Act.**

17.7 If a motion to alter or rescind a resolution has been lost, or if a motion which has the same effect as a previously lost motion is lost, no similar motion may be brought forward within three (3) months of the meeting at which it was lost. This clause may not be evaded by substituting a motion differently worded, but in principle the same.

**Note: Clause 17.7 reflects section 372(5) of the Act.**

17.8 The provisions of clauses 17.5–17.7 concerning lost motions do not apply to motions of adjournment.

**Note: Clause 17.8 reflects section 372(7) of the Act.**

17.9 A notice of motion submitted in accordance with clause 17.6 may only be withdrawn under clause 3.11 with the consent of all signatories to the notice of motion.

17.10 A notice of motion to alter or rescind a resolution relating to a development application must be submitted to the general manager no later than **[council to specify the period of time]** after the meeting at which the resolution was adopted.

17.11 A motion to alter or rescind a resolution of the council may be moved on the report of a committee of the council and any such report must be recorded in the minutes of the meeting of the council.

**Note: Clause 17.11 reflects section 372(6) of the Act.**

17.12 Subject to clause 17.7, in cases of urgency, a motion to alter or rescind a resolution of the council may be moved at the same meeting at which the resolution was adopted, where:

- (a) a notice of motion signed by three councillors is submitted to the chairperson, and
- (b) a motion to have the motion considered at the meeting is passed, and
- (c) the chairperson rules the business that is the subject of the motion is of great urgency on the grounds that it requires a decision by the council before the next scheduled ordinary meeting of the council.

17.13 A motion moved under clause 17.12(b) can be moved without notice. Despite clauses 10.20–10.30, only the mover of a motion referred to in clause 17.12(b) can speak to the motion before it is put.

17.14 A motion of dissent cannot be moved against a ruling by the chairperson under clause 17.12(c).

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## Recommitting resolutions to correct an error

17.15 Despite the provisions of this Part, a councillor may, with the leave of the chairperson, move to recommit a resolution adopted at the same meeting:

- (a) to correct any error, ambiguity or imprecision in the council’s resolution, or
- (b) to confirm the voting on the resolution.

17.16 In seeking the leave of the chairperson to move to recommit a resolution for the purposes of clause 17.15(a), the councillor is to propose alternative wording for the resolution.

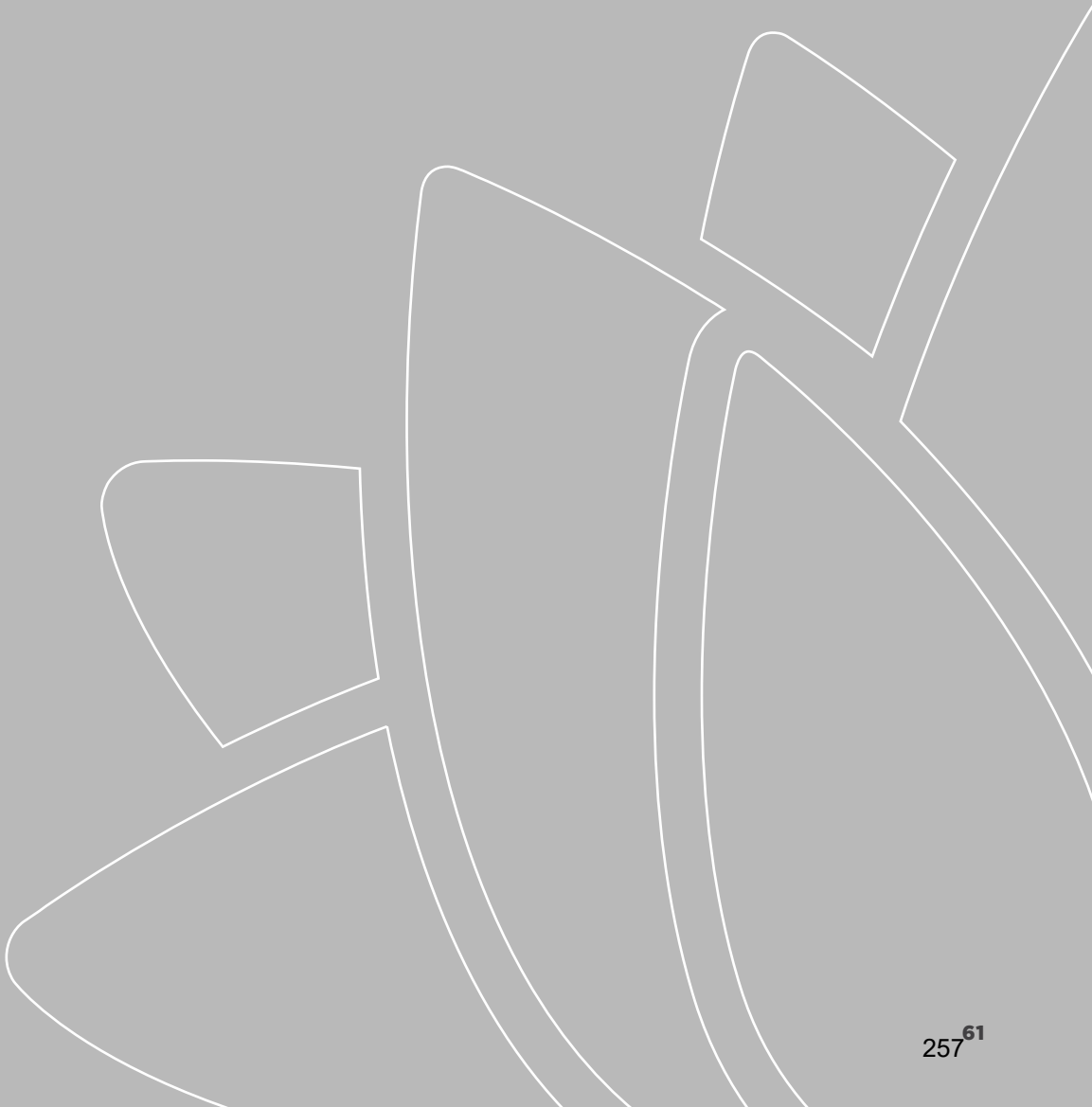
17.17 The chairperson must not grant leave to recommit a resolution for the purposes of clause 17.15(a), unless they are satisfied that the proposed alternative wording of the resolution would not alter the substance of the resolution previously adopted at the meeting.

17.18 A motion moved under clause 17.15 can be moved without notice. Despite clauses 10.20–10.30, only the mover of a motion referred to in clause 17.15 can speak to the motion before it is put.

17.19 A motion of dissent cannot be moved against a ruling by the chairperson under clause 17.15.

17.20 A motion moved under clause 17.15 with the leave of the chairperson cannot be voted on unless or until it has been seconded.





# 18 Time Limits on Council Meetings



- 18.1 Meetings of the council and committees of the council are to conclude no later than **[council to specify the time]**.
- 18.2 If the business of the meeting is unfinished at **[council to specify the time]**, the council or the committee may, by resolution, extend the time of the meeting.
- 18.3 If the business of the meeting is unfinished at **[council to specify the time]**, and the council does not resolve to extend the meeting, the chairperson must either:
- (a) defer consideration of the remaining items of business on the agenda to the next ordinary meeting of the council, or
  - (b) adjourn the meeting to a time, date and place fixed by the chairperson.
- 18.4 Clause 18.3 does not limit the ability of the council or a committee of the council to resolve to adjourn a meeting at any time. The resolution adjourning the meeting must fix the time, date and place that the meeting is to be adjourned to.
- 18.5 Where a meeting is adjourned under clause 18.3 or 18.4, the general manager must:
- (a) individually notify each councillor of the time, date and place at which the meeting will reconvene, and
  - (b) publish the time, date and place at which the meeting will reconvene on the council's website and in such other manner that the general manager is satisfied is likely to bring notice of the time, date and place of the reconvened meeting to the attention of as many people as possible.

# 19 After the Meeting

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## Minutes of meetings

- 19.1 The council is to keep full and accurate minutes of the proceedings of meetings of the council.
- Note: Clause 19.1 reflects section 375(1) of the Act.**
- 19.2 At a minimum, the general manager must ensure that the following matters are recorded in the council's minutes:
- (a) the names of councillors attending a council meeting and whether they attended the meeting in person or by audio-visual link,
  - (b) details of each motion moved at a council meeting and of any amendments moved to it,
  - (c) the names of the mover and seconder of the motion or amendment,
  - (d) whether the motion or amendment was passed or lost, and
  - (e) such other matters specifically required under this code.
- 19.3 The minutes of a council meeting must be confirmed at a subsequent meeting of the council.
- Note: Clause 19.3 reflects section 375(2) of the Act.**
- 19.4 Any debate on the confirmation of the minutes is to be confined to whether the minutes are a full and accurate record of the meeting they relate to.
- 19.5 When the minutes have been confirmed, they are to be signed by the person presiding at the subsequent meeting.
- Note: Clause 19.5 reflects section 375(2) of the Act.**
- 19.6 The confirmed minutes of a meeting may be amended to correct typographical or administrative errors after they have been

confirmed. Any amendment made under this clause must not alter the substance of any decision made at the meeting.

- 19.7 The confirmed minutes of a council meeting must be published on the council's website. This clause does not prevent the council from also publishing unconfirmed minutes of its meetings on its website prior to their confirmation.

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## Access to correspondence and reports laid on the table at, or submitted to, a meeting

- 19.8 The council and committees of the council must, during or at the close of a meeting, or during the business day following the meeting, give reasonable access to any person to inspect correspondence and reports laid on the table at, or submitted to, the meeting.

**Note: Clause 19.8 reflects section 11(1) of the Act.**

- 19.9 Clause 19.8 does not apply if the correspondence or reports relate to a matter that was received or discussed or laid on the table at, or submitted to, the meeting when the meeting was closed to the public.

**Note: Clause 19.9 reflects section 11(2) of the Act.**

- 19.10 Clause 19.8 does not apply if the council or the committee resolves at the meeting, when open to the public, that the correspondence or reports are to be treated as confidential because they relate to a matter specified in section 10A(2) of the Act.

**Note: Clause 19.10 reflects section 11(3) of the Act.**

- 19.11 Correspondence or reports to which clauses 19.9 and 19.10 apply are to be marked with the relevant provision of section 10A(2) of the Act that applies to the correspondence or report.

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## Implementation of decisions of the council

- 19.12 The general manager is to implement, without undue delay, lawful decisions of the council.

**Note: Clause 19.12 reflects section 335(b) of the Act.**



## 20 Council Committees



## Application of this Part

20.1 This Part only applies to committees of the council whose members are all councillors.

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## Council committees whose members are all councillors

20.2 The council may, by resolution, establish such committees as it considers necessary.

20.3 A committee of the council is to consist of the mayor and such other councillors as are elected by the councillors or appointed by the council.

20.4 The quorum for a meeting of a committee of the council is to be:

- (a) such number of members as the council decides, or
- (b) if the council has not decided a number - a majority of the members of the committee.

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## Functions of committees

20.5 The council must specify the functions of each of its committees when the committee is established but may from time to time amend those functions.

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## Notice of committee meetings

20.6 The general manager must send to each councillor, regardless of whether they are a committee member, at least three (3) days before each meeting of the committee, a notice specifying:

- (a) the time, date and place of the meeting, and
- (b) the business proposed to be considered at the meeting.

20.7 Notice of less than three (3) days may be given of a committee meeting called in an emergency.

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## Attendance at committee meetings

20.8 A committee member (other than the mayor) ceases to be a member of a committee if the committee member:

- (a) has been absent from three (3) consecutive meetings of the committee without having given reasons acceptable to the committee for the member's absences, or
- (b) has been absent from at least half of the meetings of the committee held during the immediately preceding year without having given to the committee acceptable reasons for the member's absences.

20.9 Clause 20.8 does not apply if all of the members of the council are members of the committee.

---

## Non-members entitled to attend committee meetings

20.10 A councillor who is not a member of a committee of the council is entitled to attend, and to speak at a meeting of the committee. However, the councillor is not entitled:

- (a) to give notice of business for inclusion in the agenda for the meeting, or
- (b) to move or second a motion at the meeting, or
- (c) to vote at the meeting.

---

## Chairperson and deputy chairperson of council committees

- 20.11 The chairperson of each committee of the council must be:
- (a) the mayor, or
  - (b) if the mayor does not wish to be the chairperson of a committee, a member of the committee elected by the council, or
  - (c) if the council does not elect such a member, a member of the committee elected by the committee.
- 20.12 The council may elect a member of a committee of the council as deputy chairperson of the committee. If the council does not elect a deputy chairperson of such a committee, the committee may elect a deputy chairperson.
- 20.13 If neither the chairperson nor the deputy chairperson of a committee of the council is able or willing to preside at a meeting of the committee, the committee must elect a member of the committee to be acting chairperson of the committee.
- 20.14 The chairperson is to preside at a meeting of a committee of the council. If the chairperson is unable or unwilling to preside, the deputy chairperson (if any) is to preside at the meeting, but if neither the chairperson nor the deputy chairperson is able or willing to preside, the acting chairperson is to preside at the meeting.

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## Procedure in committee meetings

- 20.15 Subject to any specific requirements of this code, each committee of the council may regulate its own procedure. The provisions of this code are to be taken to apply to all committees of the council unless the council or the committee determines otherwise in accordance with this clause.
- 20.16 Whenever the voting on a motion put to a meeting of the committee is equal, the chairperson of the committee is to have a casting vote as well as an original vote unless the council or the committee determines otherwise in accordance with clause 20.15.
- 20.17 A motion at a committee of a joint organisation is taken to be lost in the event of an equality of votes.
- Note: Clause 20.17 reflects section 397E of the Regulation. Joint organisations must adopt clause 20.17 and omit clause 20.16. Councils must not adopt clause 20.17.**
- 20.18 Voting at a council committee meeting is to be by open means (such as on the voices, by show of hands or by a visible electronic voting system).

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## Closure of committee meetings to the public

- 20.19 The provisions of the Act and Part 14 of this code apply to the closure of meetings of committees of the council to the public in the same way they apply to the closure of meetings of the council to the public.
- 20.20 If a committee of the council passes a resolution, or makes a recommendation, during a meeting, or a part of a meeting that is closed to the public, the chairperson must make the resolution or recommendation public as soon as practicable after the meeting or part of the meeting has ended, and report the resolution or recommendation to the next meeting of the council. The resolution or recommendation must also be recorded in the publicly available minutes of the meeting.
- 20.21 Resolutions passed during a meeting, or a part of a meeting that is closed to the public must be made public by the chairperson under clause 20.20 during a part of the meeting that is webcast.

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## Disorder in committee meetings

- 20.22 The provisions of the Act and this code relating to the maintenance of order in council meetings apply to meetings of committees of the council in the same way as they apply to meetings of the council.

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## Minutes of council committee meetings

- 20.23 Each committee of the council is to keep full and accurate minutes of the proceedings of its meetings. At a minimum, a committee must ensure that the following matters are recorded in the committee's minutes:
- (a) the names of councillors attending a meeting and whether they attended the meeting in person or by audio-visual link,
  - (b) details of each motion moved at a meeting and of any amendments moved to it,
  - (c) the names of the mover and seconder of the motion or amendment,
  - (d) whether the motion or amendment was passed or lost, and
  - (e) such other matters specifically required under this code.
- 20.24 All voting at meetings of committees of the council (including meetings that are closed to the public), must be recorded in the minutes of meetings with the names of councillors who voted for and against each motion or amendment, (including the use of the casting vote), being recorded.
- 20.25 The minutes of meetings of each committee of the council must be confirmed at a subsequent meeting of the committee.
- 20.26 Any debate on the confirmation of the minutes is to be confined to whether the minutes are a full and accurate record of the meeting they relate to.
- 20.27 When the minutes have been confirmed, they are to be signed by the person presiding at that subsequent meeting.

20.28 The confirmed minutes of a meeting may be amended to correct typographical or administrative errors after they have been confirmed. Any amendment made under this clause must not alter the substance of any decision made at the meeting.

20.29 The confirmed minutes of a meeting of a committee of the council must be published on the council's website. This clause does not prevent the council from also publishing unconfirmed minutes of meetings of committees of the council on its website prior to their confirmation.



## 21 Irregularities

- 21.1 Proceedings at a meeting of a council or a council committee are not invalidated because of:
- (a) a vacancy in a civic office, or
  - (b) a failure to give notice of the meeting to any councillor or committee member, or
  - (c) any defect in the election or appointment of a councillor or committee member, or
  - (d) a failure of a councillor or a committee member to declare a conflict of interest, or to refrain from the consideration or discussion of, or vote on, the relevant matter, at a council or committee meeting in accordance with the council's code of conduct, or
  - (e) a failure to comply with this code.

**Note: Clause 21.1 reflects section 374 of the Act.**

## 22 Definitions

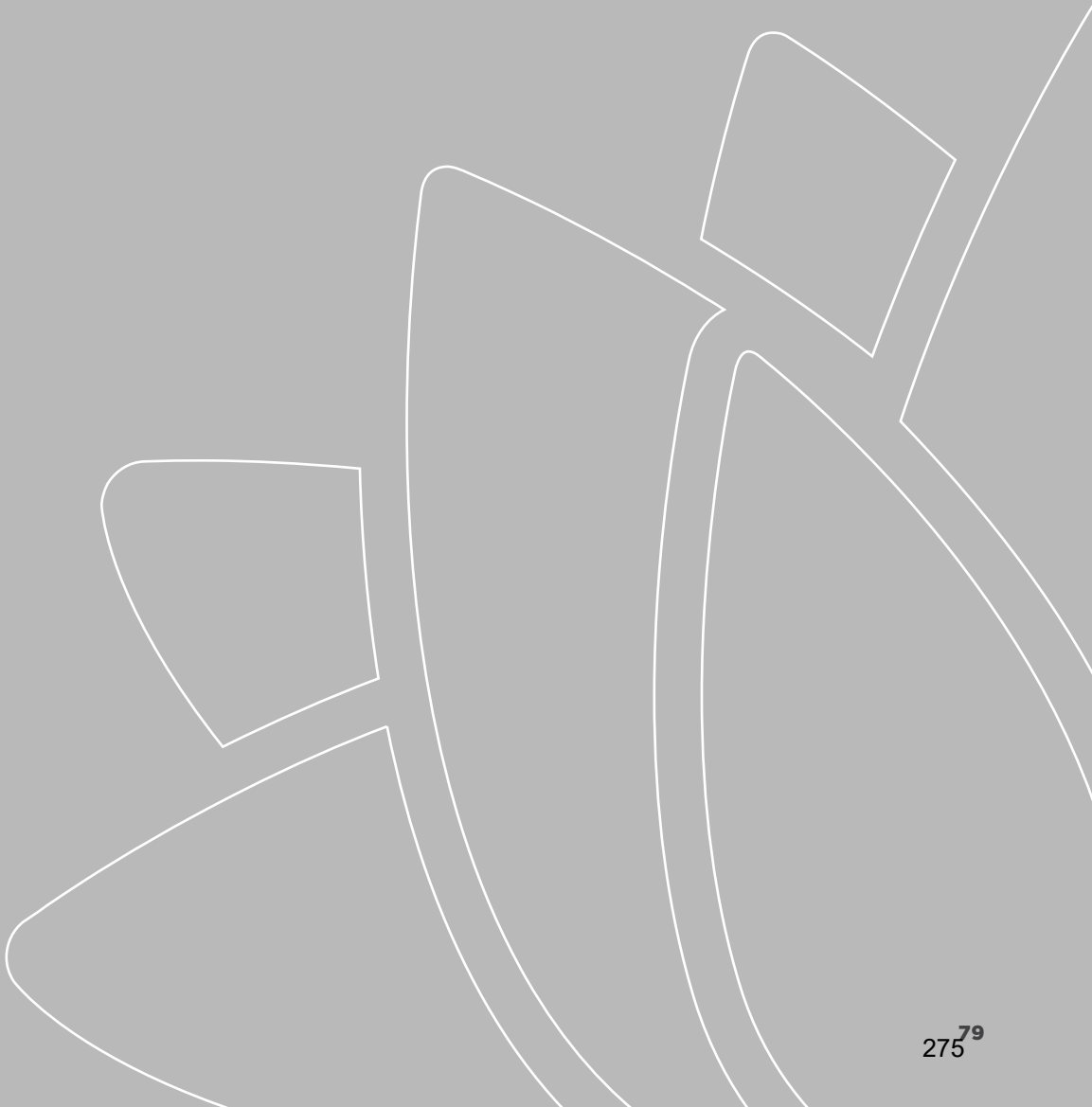


<b>the Act</b>	means the <i>Local Government Act 1993</i>
<b>act of disorder</b>	means an act of disorder as defined in clause 15.11 of this code
<b>amendment</b>	in relation to an original motion, means a motion moving an amendment to that motion
<b>audio recorder</b>	any device capable of recording speech
<b>audio-visual link</b>	means a facility that enables audio and visual communication between persons at different places
<b>business day</b>	means any day except Saturday or Sunday or any other day the whole or part of which is observed as a public holiday throughout New South Wales
<b>chairperson</b>	in relation to a meeting of the council - means the person presiding at the meeting as provided by section 369 of the Act and clauses 6.1 and 6.2 of this code, and  in relation to a meeting of a committee - means the person presiding at the meeting as provided by clause 20.11 of this code
<b>this code</b>	means the council's adopted code of meeting practice
<b>committee of the council</b>	means a committee established by the council in accordance with clause 20.2 of this code (being a committee consisting only of councillors) or the council when it has resolved itself into committee of the whole under clause 12.1
<b>council official</b>	has the same meaning it has in the <i>Model Code of Conduct for Local Councils in NSW</i>
<b>day</b>	means calendar day
<b>division</b>	means a request by two councillors under clause 11.7 of this code requiring the recording of the names of the councillors who voted both for and against a motion
<b>foreshadowed amendment</b>	means a proposed amendment foreshadowed by a councillor under clause 10.18 of this code during debate on the first amendment
<b>foreshadowed motion</b>	means a motion foreshadowed by a councillor under clause 10.17 of this code during debate on an original motion
<b>open voting</b>	means voting on the voices or by a show of hands or by a visible electronic voting system or similar means
<b>planning decision</b>	means a decision made in the exercise of a function of a council under the <i>Environmental Planning and Assessment Act 1979</i> including any decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but not including the making of an order under Division 9.3 of Part 9 of that Act

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<b>performance improvement order</b>	means an order issued under section 438A of the Act
<b>quorum</b>	means the minimum number of councillors or committee members necessary to conduct a meeting
<b>the Regulation</b>	means the <i>Local Government (General) Regulation 2021</i>
<b>webcast</b>	a video or audio broadcast of a meeting transmitted across the internet either concurrently with the meeting or at a later time
<b>year</b>	means the period beginning 1 July and ending the following 30 June

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## Planning agreements

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Practice note – February 2021



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## Preface

### Planning agreements

A planning agreement is a voluntary agreement or other arrangement between a planning authority and a developer, who has:

- sought a change to an environmental planning instrument; or
- made or proposes to make a development application or application for a complying development certificate,

under which the developer is required to:

- dedicate land free of cost;
- pay a monetary contribution;
- provide any other material benefit; or
- provide any combination of the above,

to be used for or applied towards a public purpose.

This practice note provides guidance on matters relating to planning agreements, often referred to as voluntary planning agreements or VPAs. It sets out the statutory framework for planning agreements and other matters such as the fundamental principles governing their use.

### Legislative and regulatory framework

Part 7 Division 7.1 Subdivision 2 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) provides the legislative framework for planning agreements.

Part 4 Division 1A of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) has further requirements relating to the form and subject matter of planning agreements, making, amending and revocation of planning agreements, giving public notice and other procedural arrangements relating to planning agreements.

### About this practice note

This practice note is made for the purposes of clause 25B of the EP&A Regulation to assist parties in the preparation of planning agreements.

Planning authorities are not required to apply this practice note, when finalising proposed planning agreements which have been publicly notified pursuant to section 7.5 (1) of the EP&A Act, but not finalised before the issue of this practice note. However, planning authorities may choose to consider parts of the practice note when finalising these planning agreements.

This practice note replaces the previous 'Practice Note – Planning Agreements' issued by the Director General of the then Department of Infrastructure, Planning, and Natural Resources in July 2005.

### How to use this practice note

The practice note is structured as follows:

**Part 1** provides the rationale for planning agreements.

**Part 2** identifies and provides fundamental principles and policy considerations.



**Part 3** sets out strategic considerations for when and how planning agreements can be used.

**Part 4** provides guidance on the procedures and decision-making for application, negotiation and administration of planning agreements.

**Part 5** provides examples of the use of planning agreements.

## Affordable Housing Contributions

*State Environmental Planning Policy No. 70 - Affordable Housing (Revised Schemes)* (SEPP 70) is the enabling mechanism for securing affordable housing contributions through imposing a condition of consent. To secure contributions through this pathway, councils must establish an affordable housing contribution scheme and arrange for the relevant local environmental plan to be amended to authorise the imposition of the condition. *Environmental Planning Assessment (Planning Agreements) Direction 2019* sets out the matters to be considered by council if negotiating a planning agreement which provides for affordable housing.

## Mining Projects

This practice note does not apply to planning agreements for mining projects. However, councils can refer to Parts 1, 4 and 5, for appropriate guidance on use, process and governance of those planning agreements.

## Terminology

The following terminology is used to convey key concepts in relation to planning agreements:

- **development application** has the same meaning as in the EP&A Act
- **development consent** has the same meaning as in the EP&A Act
- **development contribution** means a contribution made by a developer under a planning agreement, being a monetary contribution, the dedication of land free of cost or the provision of a material public benefit, to be used for or applied towards a public purpose
- **planning authority** has the same meaning as in Division 7.1 of Part 7 of the EP&A Act
- **planning obligation** means an obligation imposed by a planning agreement on a developer requiring the developer to make a development contribution
- **planning proposal** has the same meaning as in the EP&A Act
- **public benefit** is the benefit enjoyed by the public as a consequence of a development contribution
- **public facilities** means public infrastructure, amenities and services

## Updates to this practice note

This practice note will be periodically updated. More detailed information or guidance on specific matters in this practice note may also be the subject of future separate practice notes.

## Transitional arrangements

This practice note does not apply to a new or amended planning agreement if it:

- has been substantially negotiated when this practice note is published, and
- public notice of the agreement or amendment is given before 1 July 2021.

## Part 1 Introduction

### 1.1 Purpose of planning agreements

Planning agreements are used widely in the planning system as a tool for delivering innovative or complex infrastructure and public benefit outcomes in connection with planning proposals and development applications.

They provide a way for planning authorities and developers to negotiate flexible outcomes in respect of development contributions and enable the NSW planning system to deliver sustainable development while achieving key economic, social and environmental objectives.

Planning agreements enable the provision of development contributions for a variety of public purposes, some of which extend beyond the scope of section 7.11 and 7.12 (local infrastructure contributions), of the EP&A Act. For example, these additional purposes could include the recurrent funding of public facilities provided by councils, the capital and recurrent funding of transport, the protection and enhancement of the natural environment, and the monitoring of the planning impacts of development.

Planning agreements are negotiated between planning authorities and developers in the context of applications for changes to environmental planning instruments (planning proposals) or for consent to carry out development (development applications).

### 1.2 Rationale for planning agreements

Since the commencement of the *Environmental Planning and Assessment Amendment (Development Contributions) Act 2005*, the use of planning agreements has steadily grown across NSW. There is a range of reasons why the use of planning agreements has become widespread.

- Planning agreements provide a flexible means of achieving tailored development outcomes and focused public benefits, including agreement by communities to the redistribution of the costs and benefits of development.
- Planning agreements can provide enhanced and more flexible infrastructure funding opportunities and better planning implementation.
- Planning agreements allow for the flexible delivery of infrastructure for a development proposal which may have good planning merit but be out of sequence with broader strategic planning processes.

Planning agreements provide a flexible framework under which the planning authorities can share responsibility for the provision of infrastructure in new release areas or in major urban renewal projects. They permit tailored governance arrangements and the provision of infrastructure in an efficient, co-operative and coordinated way.

## Part 2 Principles and policy for planning agreements

### 2.1 Fundamental principles

Planning agreements must be governed by a set of policy principles that ensure transparency, fairness and flexibility of planning decisions. A planning agreement cannot and should not purport to fetter any authority's exercise of statutory functions, in particular the function of a relevant planning proposal authority in relation to a planning proposal, a local plan-making authority in relation to the local environmental plan that gives effect to a planning proposal or the consent authority for a development application.

A planning agreement related to a development application is one of several matters for consideration identified by the EP&A Act when a consent authority is determining a development application. Public benefits offered by developers do not make unacceptable development acceptable.

Planning authorities and developers that are parties to planning agreements should adhere to the following fundamental principles.

- Planning authorities should always consider a development proposal on its merits, not on the basis of a planning agreement.
- Planning agreements must be underpinned by proper strategic land use and infrastructure planning carried out on a regular basis and must address expected growth and the associated infrastructure demand.
- Strategic planning should ensure that development is supported by the infrastructure needed to meet the needs of the growing population.
- A consent authority cannot refuse to grant development consent on the grounds that a planning agreement has not been entered into in relation to the proposed development or that the developer has not offered to enter into such an agreement.
- Planning agreements should not be used as a means of general revenue raising or to overcome revenue shortfalls.
- Planning agreements must not include public benefits wholly unrelated to the particular development.
- Value capture should not be the primary purpose of a planning agreement.

### 2.2 Public interest and probity considerations

It is critical to consider whether a planning agreement is in the public interest. Generally speaking, the public interest is directed towards ensuring planning controls are imposed fairly for the benefit of the community. In some cases, the public interest may be directed towards the need to mitigate adverse impacts of development on the public domain or towards providing a benefit to the wider community.

Planning agreements are matters of public interest and this is a relevant consideration in negotiating outcomes. The negotiation of planning agreements involves the use of discretion on both sides, allowing planning authorities and developers to consider different values and varying concepts of the public and private interests.

The ability for a planning agreement to wholly or partly exclude the application of other infrastructure contributions gives a planning authority scope to prioritise the items of infrastructure

that is most needed under an agreement. This means that the financial, social and environmental costs and benefits of development can be redistributed through a planning agreement.

However, there is no guarantee that these costs and benefits will be equitably distributed within the community and what may be a specific benefit to one group in the community may be a loss to another group or the remainder of the community. As such, best practice principles, policies and procedures should be implemented as safeguards to protect the public interest and the integrity of the planning process. These are discussed in *Section 2.6 Policies and procedures for planning agreements*.

If probity and public interest are not considered, planning agreements may produce undesirable outcomes, including where:

- A planning authority seeks inappropriate benefits through a planning agreement because of opportunism or to overcome revenue-raising or spending limitations that exist elsewhere.
- A planning authority has not undertaken appropriate infrastructure planning as part of strategic land use planning, resulting in growth being poorly aligned with infrastructure planning and funding, infrastructure demand and costs relating to infrastructure operation.
- There is insufficient analysis of the likely planning impacts of a proposed development because a planning authority is determined to enter into, or to give effect, to a planning agreement.
- A planning authority allows the interests of individuals or small groups to demand benefits, which otherwise outweigh the public interest.
- A planning authority takes advantage of an imbalance of bargaining power between the planning authority and developer, for example by improperly relying on its statutory position in order to extract unreasonable public benefits under a planning agreement.
- A planning authority's ability to make independent decisions is compromised, or its decisions appear to be fettered by a planning agreement.

The potential for misuse also exists where a planning authority, acting as consent authority or in another regulatory capacity for development, is both party to a planning agreement and a development joint venture partner under the agreement, for example as a landowner. Special safeguards, such as the use of an independent third party in the development assessment process, would be appropriate in such circumstances.

## **Considerations for public participation**

Public participation in the planning agreement process is important to ensure the community has an opportunity to provide input in decisions being made relating to public benefit and development. Planning agreements redistribute the costs and benefits of a development, and it is

critical the public can comment on whether they think the balance between development and public benefit is achieved successfully. Public participation processes are discussed in *Section 4.5 Public participation and notification*.

## **2.3 Value capture**

The term value capture is widely used and covers several different practices. This practice note does not attempt to define or discuss them all. In general, the use of planning agreements for the primary purpose of value capture is not supported as it leads to the perception that planning decisions can be bought and sold and that planning authorities may leverage their bargaining position based on their statutory powers.

Planning agreements should not be used explicitly for value capture in connection with the making of

planning decisions. For example, they should not be used to capture land value uplift resulting from rezoning or variations to planning controls. Such agreements often express value capture as a monetary contribution per square metre of increased floor area or as a percentage of the increased value of the land. Usually the planning agreement would only commence operation as a result of the rezoning proposal or increased development potential being applied.

## 2.4 Relationship with development applications and planning proposals

### Development applications

When determining a development application, the consent authority is required by the EP&A Act to take into consideration any relevant planning agreement or draft agreement that the developer has offered to enter into. The consent authority is also required to take into consideration any public submissions made in respect of the development application, which may include submissions relating to a planning agreement.

### Planning proposals

The EP&A Act requires a planning proposal authority to state the objectives and outcomes of a planning proposal, and to describe and justify the process by which they will be achieved. The role of a planning agreement in facilitating these objectives or outcomes should be clearly set out in the planning proposal documentation.

### Nexus

Development contributions provided for in a planning agreement are not required to bear the same nexus with development as required for section 7.11 local contributions. However, planning agreements should provide for public benefits that are not wholly unrelated to development.

### Varying development standards

Benefits provided under a planning agreement must not be exchanged for a variation from a development standard under any circumstances. Variations to development standards under Clause 4.6 of the Standard Instrument LEP must be justified on planning grounds, and the benefit under the agreement should contribute to achieving the planning objective of the development standard.

### Conditions of development consent

Planning authorities and developers must make a judgement in each case about whether negotiation of a planning agreement is beneficial and otherwise appropriate. However, planning agreements should not be used to require compliance with or restate obligations imposed by conditions of development consent.

## 2.5 Acceptability test

Planning agreements should be assessed against the acceptability test below which is a generally applicable test for determining the acceptability of a planning agreement.

The acceptability test requires that planning agreements:

- Are directed towards legitimate planning purposes, which can be identified in the statutory planning controls and other adopted planning strategies and policies applying to development.
- Provide for the delivery of infrastructure or public benefits not wholly unrelated to the development.

- Produce outcomes that meet the general values and expectations of the public and protect the overall public interest.
- Provide for a reasonable means of achieving the desired outcomes and securing the benefits.
- Protect the community against adverse planning decisions.

## 2.6 Policies and procedures for planning agreements

Councils are strongly encouraged to publish policies and procedures concerning their use of planning agreements. Best practice principles, policies and procedures should be implemented as safeguards to protect the public interest and the integrity of the planning process.

These safeguards are to protect against the misuse of planning discretions and processes, which may seriously undermine good planning outcomes and public confidence in the planning system. They should ensure that planning decisions are made openly, honestly and freely in any given case and fairly and consistently across the board.

Policies applying to the use of planning agreements should:

- Provide a generally applicable test for determining the acceptability of a planning agreement (see *Section 2.5 Acceptability Test*).
- Contain specific measures to protect the public interest and prevent misuse of planning agreements.
- Have published and accessible rules and procedures.
- Provide for effective formalised public participation.
- Extend fairness to all parties affected by a planning agreement.
- Guarantee regulatory independence of the planning authority.

Policies and procedures prepared by planning authorities should incorporate the contents of this practice note and the following considerations:

- How the use of planning agreements aligns with any relevant district and regional strategic plans and policies.
- How the use of planning agreements fits within the context of the planning authority's broader organisational strategic planning and land use planning policies, goals, and strategies.
- The circumstances in which the planning authority would consider entering into a planning agreement.
- The land use planning and development objectives that are sought to be promoted or addressed by the use of planning agreements.
- The role served by planning agreements in the development contributions and infrastructure funding systems of the planning authority.
- The types of development to which planning agreements will ordinarily apply, and how their use may be differentiated between different types of development.
- Whether any thresholds apply to the use of planning agreements in relation to particular types of development or in particular circumstances.
- The matters ordinarily covered by a planning agreement.
- The form of development contributions ordinarily sought under a planning agreement.
- The kinds of public benefits sought.
- The method for determining the value of public benefits.
- When, how and where public benefits will be provided.

- The procedures for negotiating and entering into planning agreements.
- The planning authority's policies on other matters relating to planning agreements, such as review and modification, discharging of the developer's obligations under agreements, dispute resolution and enforcement mechanisms, and payment of costs relating to the preparation, negotiation, execution, monitoring and other administration of agreements.



## Part 3 Strategic considerations when using planning agreements

### 3.1 When to use planning agreements

This section provides guidance and strategic considerations on when to use planning agreements. Planning agreements should meet the considerations set out in Section 2.1 Fundamental principles and Section 2.5 Acceptability test and should fully comply with the specific requirements in these sections. Whether a planning agreement is acceptable and reasonable can only be judged in the circumstances of the case and considering State, regional or local planning policies.

Planning agreements have the potential to be used in a wide variety of circumstances. For example, they may be an appropriate contribution mechanism:

- In major development sites or precincts that are owned by a single landowner or a consortium of landowners.
- Where the developer has a direct incentive, such as bringing forward potential development, to be involved in the delivery of community infrastructure.
- Where the developer wants to provide community infrastructure in addition to, or at a higher standard than, what has been specified under the contributions plan.
- Where a council and the developer negotiate a different and better or more innovative outcome than can be achieved through imposing direct or indirect contributions.
- Where a proposed development has not been anticipated by local council and thus works and facilities to cater for this development have not been identified. A planning agreement can be prepared to specifically target the needs of the development.

#### Objectives of planning agreements

The objectives of planning agreements will be dictated by the circumstances of each case and the policies of planning authorities in relation to their use. However, as a general indication, planning agreements may be directed towards achieving the following broad objectives:

- Meeting the demands created by the development for new or augmented public infrastructure, amenities and services.
- Securing off-site benefits for the community so that development delivers a net community benefit.
- Compensating for the loss of or damage to a public amenity, service, resource or asset by development through replacement, substitution, repair or regeneration.

#### Relationship to other contributions mechanisms

Planning agreements should complement other contribution mechanisms. They can be used to deliver infrastructure outcomes for which these contributions are required, or additional public benefit. Planning agreements should not be used as de facto substitutes for contributions plans.

There is a clear legislative, regulatory and policy framework supporting contributions plans which does not apply to planning agreements. Where there is need for public infrastructure across a development area with a range of landowners, a contributions plan is likely to be more appropriate because it simplifies transactions and is underpinned by clear strategic planning.

Planning agreements may be used to overcome past deficiencies in infrastructure provision that would otherwise prevent development from occurring. This may involve the conferring of a public benefit under the agreement.



## 3.2 Land use and strategic infrastructure planning

This section provides advice on how planning agreements can support broader strategic infrastructure planning, particularly in areas where there is significant growth, and where a planning agreement may be associated with a planning proposal.

Land use planning should occur concurrently with strategic infrastructure planning to ensure that built form provisions and infrastructure contributions deliver both appropriate urban forms and contributions related to the development.

Strategic infrastructure planning should be undertaken regularly and address expected growth, infrastructure demand resulting from this growth, and the apportioned cost of these infrastructure provisions. Planning agreements should be used towards public benefits that are in accordance with the council's infrastructure planning and funding policies and strategies. Planning agreements should not be used as a substitute to proper strategic infrastructure planning.

### Local Strategic Planning Statements

Local strategic planning statements set out the 20-year vision for land use in the local area, including how change will be managed into the future. These statements need to align with the regional and district plans, and council's own priorities in the community strategic plan it prepares under the *Local Government Act 1993*. The statements identify the planning priorities for an area and explain how these are to be delivered.

In this regard, local strategic planning statements will identify upfront the strategic planning priorities and infrastructure needs for an area, which should be reflected in planning agreements that demonstrate a comprehensive approach to infrastructure planning and funding.

### Impact of planning proposals

There may be circumstances where a developer lodges a planning proposal that was not anticipated at the time the local strategic planning statement was prepared. It is common site-specific planning proposals in locations where development had not been anticipated to be accompanied by offers to enter into planning agreements. While it is appropriate that applications for more intensive development also consider opportunities for public benefit associated with development, this must be in a way that is mutually agreeable between the planning authority and the developer.

Planning authorities must ensure that adequate infrastructure is available to support the development, that the community can be confident in the integrity of the planning decision and that the planning authority is not improperly relying on its statutory role to extract unreasonable contributions.

Site specific planning proposals must not be prioritised on the basis they provide an opportunity for public benefits. Public benefits to be delivered by development should not be wholly unrelated to the development and the costs should be clearly set out and justified in the planning agreement. It is important that planning agreements in relation to planning proposals complement a comprehensive approach to infrastructure planning and funding.

## Part 4 Procedures and decision making

### 4.1 Basic procedures for entering into a planning agreement

Planning agreements may be negotiated between planning authorities and developers in relation to development applications or changes sought by developers to local environmental plans. Where possible, planning agreements should be negotiated between planning authorities and developers before the related development application is determined or the local environmental plan giving effect to the planning proposal is made so that the development application or planning proposal may be exhibited or notified alongside the draft planning agreement. The steps below are provided for general guidance and are indicative only. The actual steps taken in negotiating each specific planning agreement may differ.

#### Indicative steps for planning agreements

**Step 1 Commencement** Before making a development application or submitting a planning proposal, the planning authority and developer decide whether to negotiate a planning agreement. In making this decision consideration should be given to this practice note, relevant legislation and any relevant policies. The parties consider whether other planning authorities and other persons associated with the development should be additional parties to the planning agreement, such as the landowner if the landowner is a different person to the developer.

**Step 2 Negotiation** If an agreement or arrangement is negotiated, it is documented as a draft planning agreement with an accompanying explanatory note. The draft planning agreement should be assessed against the acceptability test outlined in this practice note. The parties should consider how the draft planning agreement will be enforced and when the draft planning agreement will be executed, as this will inform the security provisions and conditions of the agreement. Legal advice should be sought in each case to ensure that the appropriate provisions are included in the planning agreement.

**Step 3 Application** When the developer makes the application or submits a planning proposal to the relevant authority, it should be accompanied by the draft planning agreement that has been signed by the developer and the explanatory note.

**Step 4 Notification** Relevant public authorities are consulted and the application or planning proposal, draft planning agreement and explanatory note are publicly notified in accordance with the EP&A Act and EP&A Regulation. Any amendments required to the application or planning proposal and draft agreement as a result of submissions received are made. If necessary, the amended application, draft planning agreement and explanatory note are re-notified.

**Step 5 Assessment** The draft planning agreement and public submissions are considered in the determination of the related application. The weight given to the draft planning agreement and public submissions is a matter for the relevant authority acting reasonably.

**Step 6 Execution** The draft planning agreement is either executed before the relevant application is determined or not long after the application is determined.

## 4.2 Offer and negotiation

### Offer to enter into a planning agreement

The EP&A Act does not define what constitutes an 'offer' for the purpose of section 7.7(3) of the EP&A Act. However, an offer should:

- Be in writing.
- Be addressed to the planning authority to whom it is made.
- Be signed by or on behalf of all parties to the proposed planning agreement other than the planning authority to whom the offer is made.
- Outline in sufficient detail the matters required to be included in a planning agreement as specified in s7.4 (3) of the EP&A Act to allow proper consideration of the offer by the planning authority.
- Address in sufficient detail any relevant matters required to be included in an offer as specified in any applicable planning agreements policy published by the planning authority to whom the offer is made to allow proper consideration by the planning authority.
- Outline in sufficient detail all other key terms and conditions proposed to be contained in the planning agreement to allow proper consideration by the planning authority.

A consent authority cannot refuse to grant development consent on the grounds that a planning agreement has not been entered into in relation to the proposed development or that the developer has not offered to enter into such an agreement.

However, if a developer has offered to enter into a planning agreement in connection with the development application or a change to an environmental planning instrument, then a consent authority is authorised to require a planning agreement to be entered into in the terms of the offer as a condition of development consent.

### Efficient negotiation systems

Planning authorities, particularly councils, should implement fast, predictable, transparent and accountable negotiation systems for planning agreements. Negotiation of planning agreements should not unnecessarily delay ordinary planning processes and should run in parallel with applications to change environmental planning instruments or development applications. This includes through pre-application negotiation in appropriate cases. Negotiation should be based on principles of co-operation, full disclosure, early warning, and agreed working practices and timetables.

### Involvement of independent third parties

Independent third parties can be used in a variety of situations involving planning agreements. Planning authorities and developers are encouraged to make appropriate use of them during negotiation, including where:

- An independent assessment of a proposed change to an environmental planning instrument or development application is necessary or desirable.
- Factual information requires validation.
- Sensitive financial or other confidential information must be verified or established in the course of negotiations.
- Facilitation of complex negotiations is required for large projects or where numerous parties or stakeholders are involved.
- Dispute resolution is required.

## **Dispute resolution**

Different kinds of dispute resolution mechanisms may suit different disputes, and this should be reflected in a planning agreement. For example, mediation may be suitable to deal with disputes arising from grievances, while expert determination may be suitable to resolve disputes of a technical nature and arbitration may be suitable for resolving commercial disputes.

## **4.3 Costs and charges**

### **Costs**

There is no comprehensive policy on the extent to which a planning authority may recover costs for negotiating, preparing, executing, registering, monitoring, enforcing and otherwise administering planning agreements. Wherever possible, planning authorities and developers should negotiate and agree costs at the earliest opportunity.

### **GST considerations**

Both parties to a planning agreement have a potential GST liability and they should obtain advice in every case on whether a potential GST liability attaches to the agreement.

### **Recurrent costs and maintenance payments**

Planning agreements may require developers to make contributions towards the recurrent costs of facilities that primarily serve the development to which the planning agreement applies or neighbouring development in perpetuity. However, where the facilities are intended to serve the wider community, planning agreements should only require the developer to make contributions towards the recurrent costs of the facility until a public revenue stream is established to support the on-going costs of the facility.

## **4.4 Registration and administration**

### **Standard form planning agreements**

Planning authorities are encouraged to publish and use standard form planning agreements or standard clauses for inclusion in planning agreements in the interests of process efficiency.

### **Documentation of planning agreements**

The parties to a planning agreement should agree on which party is to draft the agreement to avoid duplication of resources and costs.

Councils are required to keep and make available a register of planning agreements. The register should be made available online or incorporated into the online planning register of the planning authority's website.

### **Monitoring and review of planning agreements**

Planning authorities should use standardised systems to monitor the implementation of planning agreements in a systematic and transparent way. This may involve co-operation by different parts of planning authorities.

Monitoring systems should enable information about the implementation of planning agreements to be made readily available to public agencies, developers and the community. Planning agreements should contain a mechanism for their periodic review that should involve the participation of all parties.

## Security for enforcement of developer's obligations

Parties should consider the means by which a planning agreement may be enforced. The most suitable means of enforcement may depend on:

- The circumstances of the planning agreement.
- The nature and extent of the developer's obligations under the planning agreement.
- The planning authority's reasonable assessment of the risk and consequences of non-performance.

Tying the performance of the developer's obligations to the issuing of construction, subdivision or occupation certificates may provide a suitable means of enforcing planning agreement obligations in some cases. The EP&A Act and the EP&A Regulation restrict the issuing of a construction certificate, subdivision certificate or occupation certificate by a certifier until any preconditions to the issuing of the certificate specified in a planning agreement have been complied with. Where adopting this approach, consideration should be given to including provisions to allow a developer to provide a financial security, such as a bond or bank guarantee, if they subsequently seek release of a certificate before completing the required obligations. This will avoid the need to amend the planning agreement.

Financial security, such as a bond or bank guarantee, can be a suitable means of enforcement where a planning agreement requires the carrying out of works or the dedication of land by the developer. Financial security can be called on by the planning authority in the event of default, coupled with step-in rights by the planning authority. The value of the financial security should relate to the potential costs that may be incurred by the planning authority in carrying out the relevant works obligations of the developer in the event of default by the developer.

Financial security or additional financial security may also be appropriate where the developer seeks to postpone obligations under a planning agreement to a time later than the time originally specified for performance. An amendment to the planning agreement would ordinarily be required in such circumstances unless the planning agreement already makes provision for such an arrangement.

## Registration on title

Registration is important to inform people of the existence of a planning agreement affecting the land and for the enforcement of a planning agreement. Registration on title may bind future owners of the land to the agreement.

To ensure that the intention of the parties to register the planning agreement is not defeated, the developer should get written agreement to the registration from each person with an estate or interest in the land to which the planning agreement applies. This should be provided to the planning authority as a precondition to the execution of the planning agreement.

Provision should be made in a registered planning agreement about when the notation of the planning agreement on the title to land can be removed. For example, when:

- The developer has complied with the obligations under the planning agreement in respect of a part of the land and the notation of the planning agreement will be removed from that part of the land.
- Land the subject of the planning agreement is subdivided and titles for new lots are created and the developer has complied with all relevant planning agreement obligations relating to the subdivision.
- Additional valuable security for performance of the planning agreement acceptable to the planning authority is provided by the developer in exchange for removal of the registration of the planning agreement from the title to land.

## **Discharge of developer's obligations**

Planning agreements should not impose obligations on developers indefinitely. Planning agreements should set out the circumstances in which the parties agree to discharge the developer's obligations under the agreement.

## **4.5 Public participation and notification**

Planning agreements must be publicly notified and made available for public inspection before they can be entered into.

The EP&A Regulation requires that the notification of a proposed planning agreement occurs at the same time as the planning proposal or development application, or if this is not practicable, as soon as possible after.

The terms of the planning agreement and its proposed public benefits should be clearly shown as part of consultation material. This will help the community make a fully informed decision on the overall proposal.

Planning agreements must be accompanied by an explanatory note to assist the public in understanding the agreement. Other types of consultation material are encouraged in addition to the explanatory note. This might include additional written material, diagrams or plans.

### **Amendment to proposed planning agreement after public notification**

Any material changes that are proposed to be made to a planning agreement after a public notice has been given should be subject to renotification if the changes would materially affect:

- How any of the matters specified in section 7.4 of the EP&A Act are dealt with by the planning agreement.
- Other key terms and conditions of the planning agreement.
- The planning authority's interests or the public interest under the planning agreement.
- Whether a non-involved member of the community would have made a submission objecting to the change if it had been publicly notified.

## **4.6 Explanatory notes**

Planning agreements are legal documents and may not be easily understood by the public. An explanatory note can help the public understand a planning agreement and facilitate informed discussion. The EP&A Regulation requires that an explanatory note is provided with the public notice of a planning agreement.

In practice, the explanatory note can be prepared by one of the parties but should be reviewed and agreed on by any other party to the agreement.

The explanatory note must help the broader community to simply and clearly understand what a planning agreement is proposing, how it delivers public benefit, and why it is acceptable and in the public interest. It should be easy to understand, written in plain English and address all considerations outlined in this practice note.

The explanatory note must:

- Identify how the agreement promotes the public interest.
- Identify whether the agreement conforms with the planning authority's capital works program, if any.
- State whether the agreement specifies that certain requirements of the agreement must be

complied with before a construction certificate, occupation certificate or subdivision certificate is issued.

It should be possible for a person to be able to readily understand the nature of the development proposed and the public benefits to be provided. The explanatory note should indicate timing of delivery and should include maps, diagrams and other material to help explain what is proposed.

An explanatory note must summarise the objectives, nature and effect of the proposed agreement and contain an assessment of the merits of the proposed agreement, including the impact on the public or relevant section of the public.



## Part 5 Examples of the use of planning agreements

Planning agreements have the potential to be used in a wide variety of planning circumstances and to achieve many different planning outcomes. Their use will be dictated by the circumstances of individual cases and the policies of planning authorities. Accordingly, it is not possible to set out all the circumstances in which a planning agreement may be appropriately entered into.

Below are some examples of the potential scope and application of planning agreements.

### Compensation for loss or damage caused by development

Planning agreements can provide for development contributions that compensate for increased demand on the use of a public amenity, service, resource or asset that will or is likely to result from the carrying out the development.

For example, development may result in the loss of or increased impact on the provision of public open space, public car parking, public access, water and air quality, bushland, wildlife habitat or other natural areas.

The planning agreement could impose planning obligations directed towards replacing, substituting, or restoring the public amenity, service, resource or asset to an equivalent standard to that existing before the development is carried out.

In this way, planning agreements can offset development impacts that may otherwise be unacceptable.

### Meeting demand created by development

Planning agreements can also provide for development contributions that meet the demand for new public infrastructure, amenities and services created by development. For example, development may create a demand for public transport, drainage services, public roads, public open space, streetscape and other public domain improvements, community and recreational facilities.

The public benefit provided under the agreement could be the provision, extension or improvement of public infrastructure, amenities and services to meet the additional demand created by the development. An agreement may be used to meet the requirements set out in a contributions plan in relation to certain land, or, potentially in the case of a large development area being delivered by one or a small number of developers, provide public amenities and services in lieu of preparing a contributions plan.

### Prescribing inclusions in development

Planning agreements can be used to secure the implementation of particular planning policies by requiring development to incorporate particular elements that confer a public benefit.

Examples include agreements that require the provision of public facilities, open space or the retention of urban bushland. Agreements may also require development, in the public interest, to meet aesthetic standards, such as design excellence.

### Providing benefits to the wider community

Planning agreements can also be used to secure the provision of broader benefits for the wider community. Broader benefits provided through planning agreements involve an agreement between a developer and a planning authority to allow the wider community to share in benefits



resulting from the development. The benefit may be provided in conjunction with planning obligations or other measures that address the impacts of the development on surrounding land or the wider community.

Alternatively, the benefit could wholly or partly replace such measures if the developer and the planning authority agree to a redistribution of the costs and benefits of development in order to allow the wider community, the planning authority and the developer to realise their specific preferences for the provision of public benefits.

Broader benefits may take the form of additional or better-quality public facilities than is required for a particular development. Alternatively, benefits may involve the provision of public facilities that, although not strictly required to make the development acceptable in planning terms, are not wholly unrelated to the development.

## Recurrent funding

Planning agreements may provide for public benefits that take the form of development contributions towards the recurrent costs of infrastructure, facilities and services. Such benefits may relate to the recurrent costs of items that primarily serve the development to which the planning agreement applies or neighbouring development. In such cases, the planning agreement may establish an endowment fund managed by a trust, to pay for the recurrent costs of the relevant item.

For example, a planning agreement may fund the recurrent costs of water quality management in respect of development that will have a demonstrated impact on a natural watercourse that flows through or nearby to the development.

Broader benefits may also take the form of interim funding of the recurrent costs of infrastructure, facilities and services that will ultimately serve the wider community. The planning agreement would only require the developer to make such contributions until a public revenue stream is established to support the on-going costs of the facility.

## Biodiversity offsetting

A planning agreement may make provision with respect to the offset of the impact on biodiversity values of proposed development, including by the retirement of biodiversity credits in accordance with the *Biodiversity Conservation Act 2016* (see section 7.18 of that Act).

# COUNCILLOR AND STAFF INTERACTION POLICY

## POLICY ADMINISTRATION

<b>Dates</b>	Policy approved 26 October 2021 This policy is effective upon its approval Policy is due for review October 2024
<b>Approved by</b>	Executive Team on 26 October 2021 (Version 4)
<b>Policy Type</b>	<input type="checkbox"/> Executive Policy <input checked="" type="checkbox"/> Council Policy
<b>Policy Owner</b>	Manager, Office of the General Manager
<b>Related Documents</b>	Georges River Council's Code of Conduct Georges River Council's Code of Meeting Practice Georges River Council's Terms of Reference for Committees Georges River Council's Enforcement Policy
<b>References &amp; Legislation</b>	Local Government Act 1993 Local Government (General) Regulation 2021 Public Interest Disclosures Act 1994 Independent Commission Against Corruption Act 1988
<b>Document Identifier</b>	Policy #: Pol-030.04 Doc #: D17/138096
<b>Breaches of Policy</b>	Breaches of any policy will be dealt with and responded to in accordance with adopted codes and/or relevant legislation.
<b>Record Keeping</b>	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.

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## 1. PURPOSE

- 1.1 Georges River Council supports Councillors' requirement to access Council information and staff in order to exercise their civic duties under the NSW *Local Government Act 1993* ('The Act'). Interactions between Councillors and staff are necessary to facilitate strong governance, best practice policies and decisions and to provide customer-focused service delivery.
- 1.2 The Georges River Council Councillor and Staff Interaction Policy provides a structure for how Councillors interact with authorised staff and supports the professional working relationship with the Executive Team.
- 1.3 The Georges River Council Councillor and Staff Interaction Policy aims to facilitate a progressive and productive working relationship between Councillors and Council staff.

## 2. SCOPE

- 2.1 This Policy applies to Councillors and Council employees, including contract and casual employees engaged by Council. This Policy is an enforceable component of the Georges River Council Code of Conduct.

## 3. DEFINITION OF TERMS

Term	Meaning
<i>Authorised staff</i>	Staff nominated by the General Manager who can interact with or provide advice to Councillors.

## 4. POLICY STATEMENT

- 4.1 Effective governance and customer-focused service delivery require a productive and professional working relationship between the elected members and the organisation. Effective governance also requires clear and effective communication protocols for Councillors and senior staff which provide for courteous and respectful communication.
- 4.2 The NSW *Local Government Act 1993* defines the roles and responsibilities of the Mayor and Councillors and specifies that the General Manager is to direct staff in the performance of their duties. Interactions between Councillors and staff are necessary to facilitate well-informed decisions and the provision of Council services.
- 4.3 In accordance with Council's Code of Conduct, Councillors and staff are expected to conduct their interactions with each other with respect, professionalism, objectivity, honesty and to a high standard of ethical behaviour. This Policy supplements the Code of Conduct and nominates those Council staff (Sections 14-17) that Councillors may access to exercise their civic leadership and represent the views of the community. This Policy should be read and applied in conjunction with Council's Code of Conduct and Code of Meeting Practice.
- 4.4 While this Policy, and the Code of Conduct, governs the interactions between Councillors and staff, it does not prevent Councillors and staff from communicating

generally. From time to time, Councillors and staff may be present at social and community events. In such situations, both parties should refrain from discussing matters relating to Council business.

## **5. ACCESS TO STAFF BY MEMBERS OF PARLIAMENT**

- 5.1 Only members of the Executive Team are authorised to advise and interact with State and Federal Members of Parliament, as outlined in Section 17 of this Policy.

## **6. ACCESS TO STAFF OTHER THAN THE GENERAL MANAGER BY COUNCILLORS**

- 6.1 All access to staff by Councillors, other than the General Manager, is to be authorised by the General Manager.
- 6.2 Only those staff authorised by the General Manager (Section 14) can provide advice to Councillors within the limits of their delegated responsibilities. Only those staff authorised by the General Manager may be contacted for a Public Interest Disclosure (Section 15), in accordance with Section 4A of the *Public Interest Disclosures Act 1994* or a Code of Conduct matter (Section 16), in accordance with Section 440 of the *NSW Local Government Act 1993*.
- 6.3 The General Manager may amend the lists of nominated officers from time to time to reflect changes to positions. Further, the General Manager may nominate officers to interact with Councillors on a specific issue and temporary basis, as required.
- 6.4 Should a Council officer be acting in any of the nominated positions included in this schedule, the person so acting will be a nominated officer unless otherwise determined by the General Manager.

## **7. COUNCILLOR AND COUNCIL STAFF INTERACTION**

- 7.1 Councillors should be aware that under Section 7.2 of the Georges River Council Code of Conduct, Councillors must not attempt to direct Council staff in the performance of their duties or request that staff undertake work on their behalf.
- 7.2 A Councillor or member of Council staff should not take advantage of their official position to improperly influence other Councillors or members of Council staff in the performance of their civic or professional duties for the purpose of securing private benefit for themselves or for another person.
- 7.3 In circumstances where staff are unsure whether or not they should provide information to, or respond to a request from a Councillor, they should refer the matter to their Director or the General Manager, or request that the Councillor make the request through the General Manager.

## **8. COUNCILLOR AND COUNCIL STAFF INTERACTION IN MEETINGS**

- 8.1 To ensure the effective running of Council Meetings, Standing Committees, Advisory Committees and other meetings and events of Council, Councillors and Council staff should abide by the Georges River Council Code of Conduct and Code of Meeting Practice.

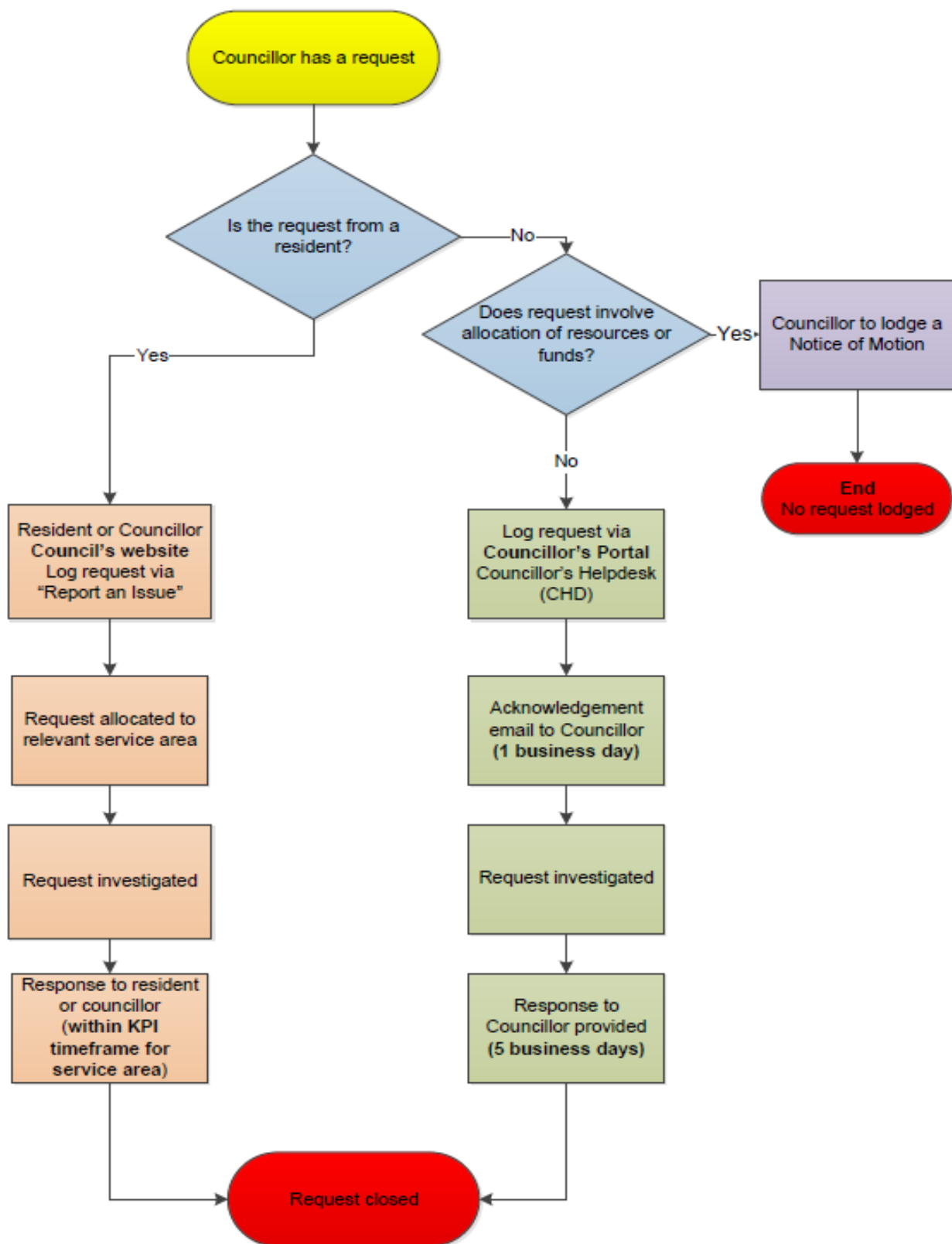
- 8.2 Within the context of Council Meetings and in accordance with Section 249 (1)(b) of the *Local Government (General) Regulation 2021*, a Councillor may, through the General Manager, put a question to a council staff member. Further, “a Councillor or Council employee to whom a question is put is entitled to be given reasonable notice of the question and, in particular, sufficient notice to enable reference to be made to other persons or to documents” (Section 249 (2) of the *Local Government (General) Regulation 2021*).
- 8.3 At Standing Committee and Advisory Committee meetings, Councillors may approach designated support staff, as referenced in the relevant Terms of Reference, for advice in relation to activities of that Committee.

## 9. COUNCILLOR PORTAL

- 9.1 The online Councillor Portal provides Councillors with 24/7 access to relevant Georges River Council resources. Councillors are encouraged to utilise this Portal as the first point of reference in fulfilling their civic duties.
- 9.2 Resources available on the Councillor Portal include:
- Policies and Codes
  - Councillor’s HelpDesk
  - Calendar of Events
  - Councillor Information Bulletin
  - Business Papers

## 10. COUNCILLOR HELPDESK

- 10.1 Service requests on behalf of residents should be submitted as a service request from Council’s website by clicking on the ‘Report an Issue’ quick link on [www.georgesriver.nsw.gov.au](http://www.georgesriver.nsw.gov.au). Such requests might include queries and complaints received from residents.
- 10.2 To ensure the timely and accurate completion of requests, Councillors are asked to make all other Councillor requests through the Councillor HelpDesk (‘CHD’). The CHD is accessible through the Councillor Portal. Such requests might include requests for information and/or actions, or requests for updates on Council’s operations. Requests made via other channels such as telephone, email or SMS will be forwarded to the CHD. In the event that CHD requests are made directly to Council staff, the staff are directed to refer Councillor’s to the CHD to submit their request or transfer the Councillor to the Executive Services team to assist the Councillor with submission of the CHD request.
- 10.3 These channels are outlined in the flowchart below.





- 10.4 The CHD allows Councillors to:
- Make requests for information and/or actions
  - Seek updates on Council's operations
- 10.5 All CHD requests will be acknowledged via email with an initial response to the Councillor within five (5) business days.
- 10.6 Where a Councillor's request requires the allocation of resources or expenditure of funds, the Councillor may be requested to consider a Notice of Motion.
- 10.7 If a Councillor would like staff to contact and update a resident directly, they should indicate this in their request. When sending a service request to the CHD, Councillors should include sufficient information to enable staff to respond, for example, the name and contact details of a resident, if staff are required to contact them.
- 10.8 Responses to Councillors following CHD requests are for the information of Councillors only and should not be forwarded to other parties.

## 11. SERVICE STANDARDS

Action	Standard
Councillor HelpDesk request - acknowledgement	1 business day
Councillor HelpDesk request - response	5 business days
Councillor requests made through channels other than the Councillor HelpDesk	No service standard applies
Phone calls to Directors and authorised staff – during business hours	Calls returned on the same day
Phone calls to Directors and authorised staff – outside business hours	Where possible calls are returned on the same day. Alternatively, messages left will be replied to on the next business day

## **12. COUNCILLOR ACCESS TO COUNCIL CIVIC CENTRE OFFICES**

12.1 Councillor access to the Georges River Council Civic Centre offices includes:

- Councillor office
- Councillor's Suite
- Council Chambers
- Office of the Executive Assistant to the Mayor (during office hours)
- Mayor's office (with the consent of the Mayor)
- Public areas

## **13. COUNCILLOR INFORMATION BULLETIN**

13.1 A Councillor Information Bulletin will be published regularly for the information of all Councillors. The Councillor Information Bulletin will include (but will not be limited to):

- Civic Events calendar
- Determined Development Applications
- Project updates
- Quarterly reporting on HelpDesk statistics

13.2 The Councillor Information Bulletin is a confidential publication for the information of Councillors only and must not be disseminated to other parties.

## **14. NOMINATED STAFF AUTHORISED TO INTERACT WITH COUNCILLORS**

14.1 **OFFICE OF THE GENERAL MANAGER**

- General Manager
- Director Legal Services and General Counsel
- Chief Audit Executive
- Manager, Office of the General Manager
- Executive Services Officer
- Research and Projects Officer
- Senior Solicitor
- Executive Assistant to the Mayor
- Executive Assistant to the General Manager
- Executive Assistant to Director Legal Services and General Counsel

14.2 **ASSETS AND INFRASTRUCTURE**

- Director Assets and Infrastructure

- Executive Manager City Operational Services
- Manager Strategic Placemaking
- Manager City Technical Services
- Executive Assistant to the Director Assets and Infrastructure
- Personal Assistant to the Executive Manager City Operational Services

#### 14.3 **COMMUNITY AND CULTURE**

- Director Community and Culture
- Manager City Life
- Manager Community and Early Learning Services
- Manager Cultural Engagement and Library Services
- Executive Assistant to the Director Community and Culture
- Business Improvement Officer

#### 14.4 **ENVIRONMENT AND PLANNING**

- Director Environment and Planning
- Manager Strategic Planning
- Manager Development and Building
- Manager Environment, Health and Regulatory Services
- Executive Assistant to the Director Environment and Planning
- Personal Assistant to Manager Development and Building
- Personal Assistant to Manager Environment, Health and Regulatory Services

#### 14.5 **BUSINESS AND CORPORATE SERVICES**

- Director Business and Corporate Services
- Chief Financial Officer
- Chief Information Officer
- Head of Corporate Governance and Risk
- Coordinator Corporate Governance
- Executive Assistant to the Director Business and Corporate Services

#### 14.6 **CITY STRATEGY AND INNOVATION**

- Director City Strategy and Innovation
- Coordinator Communications and Engagement
- Project Support Officer

## **15. NOMINATED STAFF AUTHORISED TO INTERACT WITH COUNCILLORS IN RELATION TO PUBLIC INTEREST DISCLOSURES (PIDS)**

15.1 Only those staff authorised by the General Manager, as listed below, may be contacted for a Public Interest Disclosure in accordance with Section 4A of the *Public Interest Disclosures Act 1994*:

- General Manager
- Director Legal Services and General Counsel
- Director Business and Corporate Services
- Head of Corporate Governance and Risk
- Chief Audit Executive
- Executive Manager City Operational Services
- Coordinator Fleet and Operational Procurement
- Team Leader Content and Discovery

## **16. NOMINATED STAFF AUTHORISED TO INTERACT WITH COUNCILLORS IN RELATION TO CODE OF CONDUCT REVIEWS**

16.1 Only those staff authorised by the General Manager, as listed below, may be contacted in relation to a Code of Conduct matter in accordance with Section 440 of the *NSW Local Government Act 1993*:

- General Manager
- Director Legal Services and General Counsel
- Head of Corporate Governance and Risk

## **17. NOMINATED STAFF AUTHORISED TO INTERACT WITH STATE AND FEDERAL MEMBERS OF PARLIAMENT**

17.1 Only members of the Executive Team are authorised by the General Manager to advise and interact with State and Federal Members of Parliament. The Executive Team includes:

- General Manager
- Director Legal Services and General Counsel
- Director Assets and Infrastructure
- Director Community and Culture
- Director Environment and Planning
- Director Business and Corporate Services
- Director City Strategy and Innovation
- Manager, Office of the General Manager

- Executive Assistant to the General Manager
- Executive Assistant to the Mayor

## 18. VERSION CONTROL AND CHANGE HISTORY

Version	Amendment Details	Policy Owner	Period Active
1.0	Complete new Georges River Council Councillor and Staff Interaction Policy  (Council Resolution CCL196-17)	Executive Manager Office of the General Manager	04/09/2017 – 09/07/2018
1.1	Minor administrative amendments <b>following Council Resolution</b> on Organisation Structure and inclusion of three positions	Executive Manager Office of the General Manager	09/07/2018 – 12/05/2020
2.0	Minor amendments to reflect organisational changes and correct position titles as <b>endorsed by the Executive Team</b>	Manager, Office of the General Manager	12/05/2020 – 06/04/2021
3.0	Minor amendments to reflect organisational changes and correct position titles as <b>endorsed by the Executive Team</b>	Manager, Office of the General Manager	06/04/2021 – 1/9/2021
3.1	<b>Editorial amendment</b> made to the title of the Local Government (General) Regulation 2021 referenced in the policy which commenced on 1 September 2021.	Manager, Office of the General Manager	1/09/2021 – 26/10/2021
4.0	Minor amendments to reflect organisational changes and correct position titles as <b>endorsed by the Executive Team</b>	Manager, Office of the General Manager	26/10/2021 - ongoing

# MODEL COUNCILLOR AND STAFF INTERACTION POLICY

2022



## **MODEL COUNCILLOR AND STAFF INTERACTION POLICY**

2022

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## Preface

### Positive working relationships between councillors and staff: a council's key asset

Positive, professional working relationships between councillors and staff are a key element of any council's success. If relationships between councillors and staff are functioning effectively, the council is more likely to perform effectively. If these relationships break down, it can lead to dysfunction, create a potential corruption risk<sup>1</sup>, and ultimately the council's performance will suffer.

A good relationship between councillors and staff is based, in large part, on both having a mutual understanding and respect for each other's roles and responsibilities. These are defined in the *Local Government Act 1993* (the LGA) and the *Model Code of Conduct for Local Councils in NSW* (the Model Code of Conduct).

In broad terms, a councillor's role is a strategic one. As members of the governing body, councillors are responsible not only for representing the community, but also for setting the strategic direction of the council and keeping its performance under review. A comprehensive outline of the role of a councillor is provided in Part 4 of this Policy.

The role of council staff, under the leadership of the general manager, is to carry out the day-to-day operations of the council and to implement the decisions, plans, programs and policies adopted by the governing body.

### Access to information: the key to the relationship

Councillors need access to information about the council's strategic position and performance to perform their civic functions effectively. The general manager and staff are responsible for providing councillors with this information to facilitate the decision-making process.

Given councillors' role in setting the council's strategic direction and keeping its performance under review, councillors are entitled to request information about a range of issues.

However, in requesting information, councillors should not be seeking to interrogate the minutiae of the council's operations or to direct or influence staff in the performance of their duties. Councillors should also recognise that a council's resources are finite, and they need to be mindful of the impact of their requests.

Above all, interactions between councillors and staff should be positive, respectful and professional.

### Official capacity versus private capacity

It is also inevitable that councillors and council staff will engage with their council in their private capacity. This can be for something as simple as borrowing a book from a council library, to more complex matters, such as submitting a development application.

In these circumstances, it is vital that councillors and council staff do not seek to use, or appear to use, their position within council to obtain a private benefit. To do so could be seen as an attempt to exert pressure on councillors and/or council staff with a view to obtaining preferential treatment. Such conduct has the potential to undermine both the integrity of a council's decision-making processes, as well as the community's confidence in council, and so must be avoided.

### The development and intent of this policy

This Model Councillor and Staff Interaction Policy has been developed by the Office of Local Government (OLG) in consultation with councils. It is applicable to councils, county councils and joint organisations.

It provides an exemplar approach, incorporating examples of best practice from a

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<sup>1</sup> As highlighted by the NSW Independent Commission Against Corruption's Operation Dasha <https://www.icac.nsw.gov.au>

diverse range of NSW councils. At its core, the policy has three main goals:

- to establish a framework by which councillors can access the information they need to perform their civic functions,
- to promote positive and respectful interactions between councillors and staff, and
- to advise where concerns can be directed if there is a breakdown in the relationship between councillors and staff.

The Model Councillor and Staff Interaction Policy is structured as follows:

<b>Part 1</b>	Introduction
<b>Part 2</b>	Sets out the scope of the policy
<b>Part 3</b>	Describes the policy's objectives
<b>Part 4</b>	Sets out the respective roles and responsibilities of councillors and staff and the principles that should guide their interactions
<b>Part 5</b>	Sets out the administrative framework for a councillor requests system
<b>Part 6</b>	Identifies which staff councillors can contact directly
<b>Part 7</b>	Addresses councillors' entitlement to access council buildings
<b>Part 8</b>	Describes appropriate and inappropriate interactions between councillors and staff
<b>Part 9</b>	Provides advice about who complaints can be made to
<b>Schedule 1</b>	Contains a template for a list of staff councillors can contact directly under Part 6 of the policy

## Adoption

While not mandatory, the Model Councillor and Staff Interaction Policy reflects best practice and all councils, county councils and joint organisations are encouraged to adopt it. In doing so, they are free to adapt the policy to suit their local circumstances and operating environments or to supplement it with their own provisions.

Provisions which can be adjusted are marked in red.

**Note:** In adopting the policy, joint organisations should adapt it to substitute the terms "board" for "council", "chairperson" for "mayor", "voting representative" for "councillor" and "executive officer" for "general manager".

**Note:** In adopting the policy, county councils should adapt it to substitute the term "chairperson" for "mayor" and "member" for "councillor".

## **Enforcement**

Clause 3.1(b) of the Model Code of Conduct provides that council officials must not conduct themselves in a manner that is contrary to a council's policies. If adopted by a council, a breach of the policy may also constitute a breach of council's code of conduct.

Concerns or complaints about the administration of a council's councillor request system should be raised with the general manager (or the mayor in the case of a complaint about the general manager). If the matter cannot be resolved locally, councillors may raise their concerns with OLG.

## **Acknowledgements**

OLG wishes to thank Local Government NSW, the NSW Independent Commission Against Corruption, Local Government Professionals, United Services Union, and the councils involved for their invaluable assistance in developing the Model Councillor and Staff Interaction Policy.

# Model Councillor and Staff Interaction Policy

## Part 1 – Introduction

- 1.1 *The Councillor and Staff Interaction Policy* (the Policy) provides a framework for councillors when exercising their civic functions by specifically addressing their ability to interact with, and receive advice from, authorised staff.
- 1.2 The Policy complements and should be read in conjunction with **(Insert name of Council's)** *Code of Conduct* (the Code of Conduct).
- 1.3 The aim of the Policy is to facilitate a positive working relationship between councillors, as the community's elected representatives, and staff, who are employed to administer the operations of the Council. The Policy provides direction on interactions between councillors and staff to assist both parties in carrying out their day-to-day duties professionally, ethically and respectfully.
- 1.4 It is important to have an effective working relationship that recognises the important but differing contribution both parties bring to their complementary roles.

## Part 2 – Application

- 2.1 This Policy applies to all councillors and council staff.
- 2.2 This Policy applies to all interactions between councillors and staff, whether face-to-face, online (including social media and virtual meeting platforms), by phone, text message or in writing.
- 2.3 This Policy applies whenever interactions between councillors and staff occur, including inside or outside of work hours, and at both council and non-council venues and events.
- 2.4 This Policy does not confer any delegated authority upon any person. All delegations to staff are made by the General Manager.
- 2.5 The Code of Conduct provides that council officials must not conduct themselves in a manner that is contrary to the Council's policies. A breach of this Policy will be a breach of the Code of Conduct.

## Part 3 – Policy objectives

3.1 The objectives of the Policy are to:

- a) establish positive, effective and professional working relationships between councillors and staff defined by mutual respect and courtesy
- b) enable councillors and staff to work together appropriately and effectively to support each other in their respective roles
- c) ensure that councillors receive advice in an orderly, courteous and appropriate manner to assist them in the performance of their civic duties
- d) ensure councillors have adequate access to information to exercise their statutory roles
- e) provide direction on, and guide councillor interactions with, staff for both obtaining information and in general situations
- f) maintain transparent decision making and good governance arrangements
- g) ensure the reputation of Council is enhanced by councillors and staff interacting consistently, professionally and positively in their day-to-day duties
- h) provide a clear and consistent framework through which breaches of the Policy will be managed in accordance with the Code of Conduct.

## Part 4 – Principles, roles and responsibilities

- 4.1 Several factors contribute to a good relationship between councillors and staff. These include goodwill, understanding of roles, communication, protocols, and a good understanding of legislative requirements.
- 4.2 The Council's governing body and its administration (being staff within the organisation) must have a clear and sophisticated understanding of their different roles, and the fact that these operate within a hierarchy. The administration is accountable to the General Manager, who in turn, is accountable to the Council's governing body.
- 4.3 Section 232 of the *Local Government Act 1993* (the LGA) states that the role of a councillor is as follows:
  - a) to be an active and contributing member of the governing body
  - b) to make considered and well-informed decisions as a member of the governing body
  - c) to participate in the development of the integrated planning and reporting framework
  - d) to represent the collective interests of residents, ratepayers and the local community
  - e) to facilitate communication between the local community and the governing body
  - f) to uphold and represent accurately the policies and decisions of the governing body
  - g) to make all reasonable efforts to acquire and maintain the skills

necessary to perform the role of a councillor.

4.4 The administration’s role is to advise the governing body, implement Council’s decisions and to oversee service delivery.

4.5 It is beneficial if the administration recognises the complex political environments in which elected members operate and acknowledge that they work within a system that is based on democratic governance. Councillors similarly need to understand that it is a highly complex task to prepare information and provide quality advice on the very wide range of issues that Council operations cover.

4.6 Council commits to the following principles to guide interactions between councillors and staff:

**Principle**

**Achieved by**

**Equitable and consistent**

Ensuring appropriate, consistent and equitable access to information for all councillors within established service levels

**Considerate and respectful**

Councillors and staff working supportively together in the interests of the whole community, based on mutual respect and consideration of their respective positions

**Ethical, open and transparent**

Ensuring that interactions between councillors and staff are ethical, open, transparent, honest and display the highest standards of professional conduct

**Fit for purpose**

Ensuring that the provision of equipment and information to councillors is

done in a way that is suitable, practical and of an appropriate size, scale and cost for a client group of (Council to insert the number of councillors) people.

**Accountable and measurable**

Providing support to councillors in the performance of their role in a way that can be measured, reviewed and improved based on qualitative and quantitative data

4.7 Councillors are members of the Council’s governing body, which is responsible for directing and controlling the affairs of the Council in accordance with the LGA. Councillors need to accept that:

- a) responses to requests for information from councillors may take time and consultation to prepare and be approved prior to responding
- b) staff are not accountable to them individually
- c) they must not direct staff except by giving appropriate direction to the General Manager by way of a council or committee resolution, or by the mayor exercising their functions under section 226 of the LGA
- d) they must not, in any public or private forum, direct or influence, or attempt to direct or influence, a member of staff in the exercise of their functions
- e) they must not contact a member of staff on council-related business unless in accordance with this Policy

- f) they must not use their position to attempt to receive favourable treatment for themselves or others.

4.8 The General Manager is responsible for the efficient and effective day-to-day operation of the Council and for ensuring that the lawful decisions of the Council are implemented without undue delay. Council staff need to understand:

- a) they are not accountable to individual councillors and do not take direction from them. They are accountable to the General Manager, who is in turn accountable to the Council's governing body
- b) they should not provide advice to councillors unless it has been approved by the General Manager or a staff member with a delegation to approve advice to councillors
- c) they must carry out reasonable and lawful directions given by any person having the authority to give such directions in an efficient and effective manner
- d) they must ensure that participation in political activities outside the service of the Council does not interfere with the performance of their official duties
- e) they must provide full and timely information to councillors sufficient to enable them to exercise their civic functions in accordance with this Policy.

## Part 5 – The councillor requests system

5.1 Councillors have a right to request information provided it is relevant to councillor's exercise of their civic functions. This right does not extend to matters about which a councillor is merely curious.

5.2 Councillors do not have a right to request information about matters that they are prevented from participating in decision-making on because of a conflict of interest, unless the information is otherwise publicly available.

5.3 The General Manager may identify Council support staff (**the Councillor Support Officer**) under this Policy for the management of requests from councillors.

5.4 Councillors can use the councillor requests system to:

- a) request information or ask questions that relate to the strategic position, performance or operation of the Council
- b) bring concerns that have been raised by members of the public to the attention of staff
- c) request ICT or other support from the Council administration
- d) **request that a staff member be present at a meeting (other than a meeting of the council) for the purpose of providing advice to the meeting.**

5.5 Councillors must, to the best of their knowledge, be specific about what information they are requesting, and make their requests respectfully. Where a councillor's request lacks specificity, the General Manager or staff member authorised to manage the matter is

entitled to ask the councillor to clarify their request and the reason(s) why they are seeking the information.

5.6 Staff must make every reasonable effort to assist councillors with their requests and do so in a respectful manner.

5.7 The General Manager or the staff member authorised to manage a councillor request will provide a response within (Council to insert timeframes for responding to councillor requests). Where a response cannot be provided within that timeframe, the councillor will be advised, and the information will be provided as soon as practicable.

5.8 Requests under clause 5.4 (d) must be made (Council to specify time period) before the meeting. The General Manager, or members of staff that are listed at Schedule 1 of this Policy, are responsible for determining:

- a) whether a staff member can attend the meeting; and
- b) which staff member will attend the meeting.

Staff members who attend such meetings must be appropriately senior and be subject matter experts on the issues to be discussed at the meeting.

5.9 Councillors are required to treat all information provided by staff appropriately and to observe any confidentiality requirements.

5.10 Staff will inform councillors of any confidentiality requirements for information they provide so councillors can handle the information appropriately.

5.11 Where a councillor is unsure of confidentiality requirements, they should contact the General Manager, or the staff member authorised to manage their request.

5.12 The General Manager may refuse access to information requested by a councillor if:

- a) the information is not necessary for the performance of the councillor's civic functions, or
- b) if responding to the request would, in the General Manager's opinion, result in an unreasonable diversion of staff time and resources, or
- c) the councillor has previously declared a conflict of interest in the matter and removed themselves from decision-making on it, or
- d) the General Manager is prevented by law from disclosing the information.

5.13 Where the General Manager refuses to provide information requested by a councillor, they must act reasonably. The General Manager must advise a councillor in writing of their reasons for refusing access to the information requested.

5.14 Where a councillor's request for information is refused by the General Manager on the grounds referred to under clause 5.12 (a) or (b), the councillor may instead request the information through a resolution of the council by way of a notice of motion. This clause does not apply where the General Manager refuses a councillor's request for information under clause 5.12 (c) or (d).

5.15 Nothing in clauses 5.12, 5.13, and 5.14 prevents a councillor from requesting the information in accordance with the *Government Information (Public Access) Act 2009*.

5.16 Where a councillor persistently makes requests for information which, in the General Manager's opinion, result in a significant and unreasonable diversion of staff time and resources the council may,



on the advice of the General Manager, resolve to limit the number of requests the councillor may make.

- 5.17 Councillor requests are state records and must be managed in accordance with the *State Records Act 1998*.
- 5.18 A report will be provided to (Council to specify frequency and regarding the performance and efficiency of the councillor requests system against established key performance indicators.

## Part 6 – Access to Council staff

- 6.1 Councillors may directly contact members of staff that are listed in Schedule 1 of this Policy. The General Manager may amend this list at any time and will advise councillors promptly of any changes.
- 6.2 Councillors can contact staff listed in Schedule 1 about matters that relate to the staff member's area of responsibility.
- 6.3 Councillors should as far as practicable, only contact staff during normal business hours.
- 6.4 If councillors would like to contact a member of staff not listed in Schedule 1, they must receive permission from the General Manager.
- 6.5 If a councillor is unsure which authorised staff member can help with their enquiry, they can contact the General Manager or the Councillor Support Officer who will provide advice about which authorised staff member to contact.
- 6.6 The General Manager or a member of the Council's executive leadership team may direct any staff member to contact councillors to provide specific information or clarification relating to a specific matter.
- 6.7 A councillor or member of staff must not take advantage of their official position to improperly influence other councillors or members of staff in the performance of their civic or professional duties for the purposes of securing a private benefit for themselves or for another person. Such conduct should be immediately reported to the General Manager or Mayor in the first instance, or alternatively to the Office of Local Government, NSW Ombudsman, or the NSW Independent Commission Against Corruption.

## Part 7 – Councillor access to council buildings

- 7.1 Councillors 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 for meetings. Councillors needing access to these facilities at other times must obtain approval from the General Manager.
- 7.2 Councillors must not enter staff-only areas of Council buildings without the approval of the General Manager.

## Part 8 – Appropriate and inappropriate interactions

- 8.1 Examples of appropriate interactions between councillors and staff include, but are not limited to, the following:
- a) councillors and council staff are courteous and display a positive and professional attitude towards one another
  - b) council staff ensure that information necessary for councillors to exercise their civic functions is made equally available to all councillors, in accordance with this Policy and any other relevant Council policies
  - c) council staff record the advice they give to councillors in the same way they would if it was provided to members of the public
  - d) council staff, including Council's executive team members, document councillor requests via the councillor requests system
  - e) council meetings and councillor briefings are used to establish positive working relationships and help councillors to gain an understanding of the complex issues related to their civic duties
  - f) councillors and council staff feel supported when seeking and providing clarification about council related business
  - g) councillors forward requests through the councillor requests system and staff respond in accordance with the timeframes stipulated in this Policy
- 8.2 Examples of inappropriate interactions between councillors and staff include, but are not limited to, the following:

- a) councillors and council staff conducting themselves in a manner which:
    - i) is contrary to their duties under the *Work Health and Safety Act 2011* and their responsibilities under any policies or procedures adopted by the Council to ensure workplace health and safety
    - ii) constitutes harassment and/or bullying within the meaning of the Code of Conduct, or is unlawfully discriminatory
  - b) councillors approaching staff and staff organisations to discuss individual or operational staff matters (other than matters relating to broader workforce policy such as, but not limited to, organisational restructures or outsourcing decisions), grievances, workplace investigations and disciplinary matters
  - c) staff approaching councillors to discuss individual or operational staff matters (other than matters relating to broader workforce policy such as, but not limited to, organisational restructures or outsourcing decisions), grievances, workplace investigations and disciplinary matters
  - d) subject to clause 5.12, staff refusing to give information that is available to other councillors to a particular councillor
  - e) councillors who have lodged an application with the council, discussing the matter with staff in staff-only areas of the council
  - f) councillors being overbearing or threatening to staff
  - g) staff being overbearing or threatening to councillors
  - h) councillors making personal attacks on staff or engaging in conduct towards staff that would be contrary to the general conduct provisions in Part 3 of the Code of Conduct in public forums including social media
  - i) councillors directing or pressuring staff in the performance of their work, or recommendations they should make
  - j) staff providing ad hoc advice to councillors without recording or documenting the interaction as they would if the advice was provided to a member of the community
- 8.3 Where a councillor engages in conduct that, in the opinion of the General Manager, puts the health, safety or welfare of staff at risk, the General Manager may restrict the councillor's access to staff.
- 8.4 Any concerns relating to the conduct of staff under this Policy should be raised with the General Manager.

## Part 9 – Complaints

- 9.1 Complaints about a breach of this policy should be made to the General Manager (if the complaint is about a councillor or member of council staff), or the Mayor (if the complaint is about the General Manager).
- 9.2 Clause 9.1 does not operate to prevent matters being reported to OLG, the NSW Ombudsman, the NSW Independent Commission Against Corruption or any other external agency.

## Schedule 1 – Authorised staff contacts for councillors (template table)

1. Clause 6.1 of this Policy provides that councillors may directly contact members of staff that are listed below. The General Manager may amend this list at any time.
2. Councillors can contact staff listed below about matters that relate to the staff member's area of responsibility.
3. Councillors should as far as practicable, only contact staff during normal business hours.
4. If councillors would like to contact a member of staff not listed below, they must receive permission from the General Manager or their delegate.
5. If a councillor is unsure which authorised staff member can help with their enquiry, they can contact the General Manager or the Councillor Support Officer who will provide advice about which authorised staff member to contact.
6. In some instances, the General Manager or a member of the Council's executive leadership team may direct a council staff member to contact councillors to provide specific information or clarification relating to a specific matter.

<b>Authorised staff members name</b>	<b>Position</b>
<i>[Insert staff member's name]</i>	<i>[Insert position title]</i>

