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DRAFT MODEL CODE OF CONDUCT

The Local Government Act 1993 requires councils to prepare or adopt a code of conduct. In 1994 the department issued a Code of Conduct Practice Note to councils as a guide for developing their codes of conduct. Many councils have adopted, in whole or with some variations, the model code issued in 1994.

Over the past few months, the department has worked with a review group of representatives from local government and key State agencies to review this Practice Note. The review has involved updating the model code taking into account recent standards of good practice.

Once finalised, the new model code of conduct and guidelines will assist councils to review and enhance their codes of conduct. The guidelines will also provide guidance to councils in achieving better practice in this area.

The Local Government Amendment (Discipline) Bill 2004, currently before the NSW Parliament, makes provision for prescribed model code of conduct applying to all councillors and council staff. The draft model code will form the basis for the prescribed code should this Bill become law.

Council is invited to lodge its comments on the attached draft "Model Code of Conduct and Guidelines" by emailing lyn.brown@dlg.nsw.gov.au by 17 September 2004.

If you have any enquiries in relation to this matter, please contact Mrs Lyn Brown on 4428 4161.

Garry Payne
Director General



Department of Local Government

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**MODEL CODE OF CONDUCT AND
GUIDELINES**

AUGUST 2004

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The Department of Local Government would like to thank the following organisations for participation as members of the project review group:

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Independent Commission Against Corruption
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Local Government and Shires Associations of NSW
Mosman Municipal Council
NSW Ombudsman
Wollongong City Council

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Local Government Managers Australia
Manly Council
Mosman Municipal Council
Narromine Shire Council
NSW Ombudsman's Office
Penrith City Council
Ryde City Council
Singleton Shire Council
Sutherland Shire Council
Warringah Council
Wyong Shire Council

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HOW TO USE THIS DOCUMENT

This document has two parts.

Part A is the Model Code of Conduct.

The model code replaces the Department of Local Government Practice Note No 6 (the previous model code of conduct). All councils should review their existing codes to ensure that they reflect the minimum requirements specified in the revised model code of conduct.

Part B is a set of guidelines to assist councils to develop their own code and provide guidance in achieving better practice.

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PART A

MODEL CODE OF CONDUCT

1 INTRODUCTION

The *Local Government Act 1993* requires every council to adopt a code of conduct for observance by all councillors, members of staff and delegates representing the council. It is the personal responsibility of council officials to comply with the standards in the code and regularly review their personal circumstances with this in mind. Council contractors and volunteers will also be required to observe the council's code of conduct.

2 PURPOSE OF THE CODE OF CONDUCT

This code of conduct has been developed to assist council officials to:

- Understand the standards of conduct that are expected of them
- Enable them to fulfil their statutory duty to act honestly and exercise a reasonable degree of care and diligence (s439)
- Act in a way that enhances public confidence in the integrity of local government

3 KEY PRINCIPLES

The code of conduct applies equally to formal and informal dealings between councillors, staff and others. The general principles upon which codes must be based are:

3.1 Selflessness

Council officials have a duty to make decisions solely in the public interest. Officials must not act in order to gain financial or other benefits for themselves, their family or friends. *This means making decisions because they benefit the public, not because they benefit the decision maker.*

3.2 Integrity

Council officials must not place themselves under any financial or other obligation to any individual or organisation that might reasonably be thought to influence them in the performance of their duties.

3.3 Objectivity

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

3.4 Accountability

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

3.5 Openness

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

3.6 Honesty

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

3.7 Leadership

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

3.8 Respect

Council officials must treat with respect other council officials and the role they play, treating them with courtesy at all times.

4 GENERAL CONDUCT OBLIGATIONS

General conduct

- 4.1 You have an obligation to comply with the provisions of the *Local Government Act 1993*, the associated regulations and council's policies.
- 4.2 You must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions under the *Local Government Act 1993* or any other Act. (*section 439 of the Local Government Act 1993*)
- 4.3 You must respect all community members and other council officials and the role they play, treating them with courtesy at all times.
- 4.4 Councillors must avoid behaviour that could be deemed to be an act of disorder or misbehaviour. This includes conduct that:
- Contravenes the *Local Government Act 1993* or associated regulations
 - Is detrimental to the pursuit of the charter of a council
 - Is improper or unethical
 - Is an abuse of power or otherwise amounts to misconduct
 - Causes, comprises or involves intimidation, harassment or verbal abuse
 - Causes, comprises or involves discrimination, disadvantage or adverse treatment in relation to employment
 - Causes, comprises or involves prejudice in the provision of a service to the community
 - Causes, comprises or involves improperly directing or influencing or attempting to direct or influence a member of the staff of the council or a delegate of the council in the exercise of the functions of the member or delegate.

Fairness and equity

- 4.5 You have an obligation to consider issues consistently, promptly and fairly. This involves dealing with matters in accordance with established procedures, in a non-discriminatory manner.
- 4.6 You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case. You must not take irrelevant matters or circumstances into consideration when making decisions.

Harassment and discrimination

- 4.7 You must not harass, discriminate, or support others who harass and discriminate against colleagues or members of the public on the grounds of sex, pregnancy, age, race (including their colour, nationality, descent, ethnic or religious background), political affiliation, marital status, disability, homosexuality or transgender.

Guide to ethical decision-making

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

- Is the decision or conduct lawful?
- Is the decision or conduct consistent with council's policy and with council's objectives and the code of conduct?
- What will the outcome be for the employee or councillor, work colleagues, the council and any other parties?
- Do these outcomes raise a conflict of interest or lead to private gain at public expense?
- Can the decision or conduct be justified in terms of the public interest and would it withstand public scrutiny?

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

Independent Commission Against Corruption	8281 5999
NSW Ombudsman	9286 1000

5 CONFLICT OF INTERESTS

Pecuniary and non-pecuniary conflict of interests

- 5.1 A conflict of interests exists when you could be influenced, or a reasonable person would perceive that you could be influenced by a personal interest when carrying out your public duty.
- 5.2 You must appropriately resolve any conflict or incompatibility between your private or personal interests and the impartial performance of your public or professional duties.
- 5.3 Any conflict between your interests and those of council must be resolved to the satisfaction of the council. When considering whether or not you have a conflict of interests, it is always important to think about how others would view your situation.
- 5.4 It is essential that you properly address conflict of interests issues that may arise. You must:
- Try to understand the concept and practical implications of conflict of interests issues
 - Accept that failure to resolve an actual or reasonably perceived conflict of interests is unacceptable in local government
 - Take timely and appropriate action to avoid, or if not, to disclose any actual, potential or reasonably perceived conflict of interests.
- 5.5 Perceptions of a conflict of interests are as important as actual conflict of interests. The onus is on you to identify a conflict of interests, whether perceived or real, and take the appropriate action to resolve the conflict in favour of your public duty.
- 5.6 Where necessary, you must disclose an interest promptly, fully and in writing. If a disclosure is made at a council or committee meeting, both the disclosure and nature of an interest must be recorded in the minutes.
- 5.7 If you are in doubt whether a conflict of interests exists, you should seek legal or other appropriate advice.
- 5.8 A conflict of interests can be of two types:

Pecuniary - 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 or another person with whom the person is associated. (*sections 442, 443 of the Local Government Act 1993*)

Non-pecuniary - A private or personal interest the councillor, staff member or delegate has that does not amount to a pecuniary interest as defined in the *Local Government Act 1993* (for example; a friendship, membership of an association, society or trade union or involvement or interest in an activity).

- 5.9 Where the interest is a pecuniary one, you must comply with the Act. If you do not comply with the Act, the consequences may be severe.

The Act requires that if a pecuniary interest exists in a matter, you must not be involved in consideration or discussion of the matter in which you have the interest and must not participate in the decision-making process or vote on any question relating to the matter. The Act requires that:

- Councillors and designated persons lodge an initial and an annual written disclosure of interests that could potentially be in conflict with their public or professional duties (*section 449 of the Local Government Act 1993*)
- Councillors or members of council committees disclose an interest at a meeting, leave the meeting and be out of sight of the meeting and not participate in discussions or voting on the matter (*section 451 of the Local Government Act 1993*)
- Designated persons immediately declare, in writing, any pecuniary interest (*section 459 of the Local Government Act 1993*)

Designated persons are defined at section 441 of the *Local Government Act 1993*.

- 5.10 Where the interest is a non-pecuniary one you have a broader range of options for managing the interest. The option you choose will depend on an assessment of the circumstances of the matter, the degree of the interest and the significance of the issue being dealt with. You must deal with a conflict of interests in at least one of these ways:

- Take no action because the potential for conflict is minimal. Council officials should consider providing an explanation of why they consider a conflict does not exist
- Disclose the nature of the conflict
- Limit involvement if practical (for example, participate in discussion but not in decision making) or restrict your access to all relevant information. Care needs to be taken when exercising this option
- Remove the source of the conflict (for example, relinquishing or divesting the personal interest that creates the conflict or reallocating the conflicting duties to another officer)
- Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue, particularly if you have a significant interest
- Include an independent in the process to provide assurances of probity (for example, for tendering or recruitment selection panels)

Other business or employment

- 5.11 A member of staff who is considering outside employment that relates to the business of the council or that might conflict with their council duties, must notify and seek the approval of the general manager in writing. (*section 353 of the Local Government Act 1993*)

Political support

5.12 Councillors should note that matters before council for determination that involve campaign donors or supporters have the potential to place the councillor in a position of having a pecuniary or non-pecuniary conflict of interests.

Personal dealings with council

5.13 You will inevitably deal personally with your council (for example, as a ratepayer, recipient of a council service or applicant for a consent granted by council). You must not expect or request preferential treatment for yourself or your family because of your position. You must avoid any action that could lead members of the public to believe that you are seeking preferential treatment.

6 PERSONAL BENEFIT

Gifts or benefits

6.1 You must not:

- Seek or accept a bribe or other improper inducement
- By virtue of your position acquire a personal profit or advantage which has a monetary value, other than one of a token value

6.2 You must not seek or accept any payment, gift or benefit intended or likely to influence, or that could be reasonably perceived by an impartial observer as intended or likely to influence you to:

- act in a particular way (including making a particular decision)
- fail to act in a particular circumstance
- otherwise deviate from the proper exercise of your official duties.

6.3 You may accept gifts or benefits of a nominal or token value and that do not create a sense of obligation on your part.

Token gifts

6.4 Generally speaking, token gifts and moderate acts of hospitality could include:

- Gifts of single bottles of reasonably priced alcohol to individual council officials at end of year functions, public occasions or in recognition of work done (such as providing a lecture/training session/address)
- Free or subsidised meals, of a modest nature, and/or beverages provided infrequently (and/or reciprocally) that have been arranged primarily for, or in connection with, the discussion of official business
- Free meals, of a modest nature, and/or beverages provided to council officials who formally represent their council at work related events such as training, education sessions, workshops
- Refreshments, of a modest nature, provided at conferences where you are a speaker
- Ties, scarves, coasters, tie pins, diaries, chocolates, flowers and small amounts of beverages
- Invitations to appropriate out of hours “cocktail parties” or social functions organised by groups, such as, council committees and community organisations

Gifts of value

6.5 You must never accept an offer of money, regardless of the amount.

6.6 Gifts and benefits that have more than a nominal or token value include tickets to major sporting events, corporate hospitality at a corporate facility at a sporting venue, discounted products for personal use, the frequent use of facilities such as gyms, use of holiday homes, free or discounted travel and free training excursions.

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- 6.7 If you receive a gift of more than token value in circumstances where it cannot reasonably be refused or returned, you should accept the gift and disclose this promptly to your supervisor or the general manager. The supervisor or general manager will ensure that any gifts received are recorded in a Gifts Register.
- 6.8 You must avoid situations in which the appearance may be created that any person or body, through the provision of hospitality or benefits of any kind, is securing or attempting to influence or secure a favour from you or the council.
- 6.9 You must also take all reasonable steps to ensure that your immediate family members do not receive gifts or benefits that could appear to an impartial observer to be an attempt to influence or secure a favour. Immediate family members ordinarily include parents, spouses, children and siblings.
- 6.10 Councillors and designated persons must by law disclose a description of any gift or gifts totalling a value exceeding \$500 made by the same person during a period of 12 months or less. *(required to be included in the disclosure of interests returns – section 449 of the Local Government Act 1993)*

Improper and undue influence

- 6.11 You must not take advantage of your position to improperly influence other council officials in the performance of their public or professional duties to secure a private benefit for yourself or for somebody else.
- 6.12 You must not take advantage (or seek to take advantage) of your status or position with, or functions performed for, council in order to obtain unauthorised or unfair benefit for yourself or for any other person or body.

7 RELATIONSHIP BETWEEN COUNCIL OFFICIALS

Obligations of councillors

7.1 Each council is a statutory corporation. The councillors are the governing body of the corporation. Councillors have the responsibility of directing and controlling the affairs of the council in accordance with the *Local Government Act 1993*.

7.2 Councillors must:

- Only provide, by way of council or committee resolution, or by the Mayor exercising their power under s226 of the *Local Government Act 1993*, proper and appropriate direction to the general manager in the performance of council's functions
- Refrain from, in any public or private forum, directing or improperly influencing, or attempting to direct or improperly influence, any other member of the staff of the council or a delegate of the council in the exercise of the functions of the member or delegate
- Only contact a member of the staff of the council in accordance with procedures governing the interaction of councillors and council staff that have been authorised by the general manager
- Not contact or issue instructions to any of council's contractors or tenderers, including council's legal advisers.

Role of the Mayor

7.3 The role of the Mayor is defined by section 226 of the *Local Government Act 1993*. This role is the same whether the Mayor is popularly elected or elected by the councillors.

Obligations of staff

7.4 The General Manager is responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation of, without delay, the decisions of the council.

7.5 Council staff have an obligation to:

- Give their attention to the business of council while on duty
- Ensure that their work is carried out efficiently, economically and effectively
- Carry out lawful directions given by any person having authority to give such directions
- Give effect to the lawful policies, decisions and practices of the council, whether or not the staff member agrees with or approves of them.

Obligations during meetings

- 7.6 You must act in accordance with council's Code of Meeting Practice and the *Local Government (Meetings) Regulation 1999* during council and committee meetings.
- 7.7 You must respect the chair, other council officials and any members of the public present during council and committee meetings or other formal proceedings of the council.

Inappropriate interactions

- 7.8 The following interactions are inappropriate:
- Councillors approaching junior members of staff for information on sensitive or controversial matters
 - Members of staff approaching councillors directly (rather than via their director, staff representative or union delegate) on staffing or political issues
 - Councillors approaching staff outside the council building or outside hours of work to discuss council business
 - Staff refusing to give information which is available to other councillors to a particular councillor because of the staff member's or councillor's political views
 - Councillors who have a development application before council discussing the matter with junior staff in staff-only areas of the council
 - Junior staff being asked to answer questions or provide documents to councillors who are overbearing or threatening
 - Councillors directing or pressuring staff in the performance of their work, or recommendations they should make
 - 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
 - Councillors approaching council staff organisations; for example unions and associations; in relation to staffing matters.

8 ACCESS TO INFORMATION AND COUNCIL RESOURCES

Councillor access to information

- 8.1 A council must provide access to the documents listed in section 12 of the *Local Government Act 1993* to all members of the public, and to councillors. A council must also provide councillors with information sufficient to enable them to carry out their civic functions.
- 8.2 Any information that is given to a particular councillor in the pursuit of their civic duties must also be available to any other councillor who requests it.
- 8.3 Councillors who have a personal (as distinct from civic) interest in a document of council have the same rights of access as any member of the public.
- 8.4 Council staff have an obligation to provide full and timely information to councillors about matters that they are dealing with.
- 8.5 Councillors have an obligation to properly examine all the information provided to them relating to matters that they are dealing with, sufficient to make a decision on the matter in accordance with council's charter.

Refusal of access to documents

- 8.6 The general manager and public officer must act reasonably in deciding whether a document sought by a councillor should be made available under section 12 of the *Local Government Act 1993* or because it is relevant to the performance of the councillor's civic duty. The general manager or public officer must state the reasons for the decision if access is refused.

Use of council information

- 8.7 Council officials must:
- Protect confidential information
 - Only access information needed for council business
 - Not use confidential information for any non-official purpose
 - Only release confidential information if you have authority to do so
 - Only use confidential information for the purpose it is intended to be used
 - Only release other information in accordance with established council policies and procedures and in compliance with relevant legislation.
 - Not use council information for personal purposes.
 - Not disclose any information discussed during a confidential session of a council meeting.
- 8.8 You must carry out your duties in a manner that allows councillors, members of staff, delegates and the public to remain informed about local government activity and practices.
- 8.9 You must not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person.

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8.10 You must 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 had access in the exercise of your official functions or duties by virtue of your office or position.

8.11 You must not use confidential information with the intention to improperly cause harm or detriment to your council.

Security of information

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

8.13 You must comply with the information protection principles, council's privacy management plan and legislation when dealing with personal information. Personal information is information or an opinion about a person whose identity is apparent, or can be determined from the information or opinion.

Use of council resources

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

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

8.16 You must avoid any action or situation which could create the impression that council property, official services or public facilities are being improperly used for your own or any other person or body's private benefit or gain.

8.17 The interests of a councillor in their re-election is considered to be a personal interest and as such the reimbursement of travel expenses incurred on election matters is not appropriate. The use of council letterhead, council crests and other information that gives the impression it is official council material must not be used for these purposes.

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

8.19 You must not use council's computer resources to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature. In the case of council staff this is likely to constitute a disciplinary offence.

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Councillor access to council buildings

- 8.20 As elected members of the council, councillors are entitled to have access to the council chamber, committee room, mayor's office (subject to the mayor's approval), councillor's rooms, and public areas of council's buildings during normal business hours and for meetings. Should councillors need access to these facilities at other times, authority is required from the general manager in order that necessary arrangements can be made.
- 8.21 Councillors must not enter staff-only areas of council buildings without the approval of the general manager (or delegate) or as provided in the procedures governing the interaction of councillors and council staff.
- 8.22 Councillors must ensure that when they are within a staff area they are cognisant of potential conflict or pecuniary interest matters and /or a perception that they may bring influence to bear on council staff decisions and should conduct themselves accordingly.

9 REPORTING BREACHES, INVESTIGATION PROCEDURES & SANCTIONS

Corrupt conduct, maladministration and waste of public resources

- 9.1 You have an obligation to act honestly and to report any instances of suspected corrupt conduct, maladministration and serious and substantial waste of public resources in accordance with council's internal reporting policy.
- 9.2 The Protected Disclosures Act 1994 provides certain protections against reprisals for council officials who report such matters. It is an offence to take detrimental action against people who make such reports.

Reporting breaches of the code of conduct

- 9.3 You also have an obligation to report suspected breaches of the code of conduct to the general manager.

Investigation procedures – staff conduct (excluding the general manager)

- 9.4 The general manager will investigate breaches of the code of conduct regarding council staff and others engaged by the council and will determine the matter.

Investigation procedures – councillor and general manager conduct

- 9.5 Council will establish a conduct committee that will consist of the Mayor, the general manager and council's nominated legal adviser or other independent person of appropriate standing. In the instance of a complaint being made against the Mayor or the general manager, the Deputy Mayor will take the place of the Mayor or general manager on the committee.
- 9.6 Councillors must report suspected breaches of the code of conduct to the general manager in the first instance and refrain from making allegations at open council meetings. The general manager is responsible for reporting the matter to the conduct committee.
- 9.7 Where a councillor believes that the general manager has failed to comply with this code, the councillor should report the matter to the Mayor who will report the matter to the conduct committee.
- 9.8 Council's conduct committee will be responsible for the investigation of allegations of breaches of the code of conduct by councillors and must either:
- Investigate the alleged breach; or
 - engage an independent person to investigate the allegation.
- 9.9 An investigation conducted by the general manager or the conduct committee will follow the rules of procedural fairness. The investigator must:
- Inform the person/s against whose interests a decision may be made of any allegations against them and the substance of any adverse comment in respect of them
 - Provide the person/s with a reasonable opportunity to put their case
 - Hear all parties to a matter and consider submissions
 - Make reasonable inquiries or investigations before making a decision
 - Ensure that no person decides a case in which they have a direct interest

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- Act fairly and without bias, and
- Conduct the investigation without undue delay.

9.10 Council's conduct committee must decide whether a matter reported to it under this policy reveals a breach. The committee may recommend that council take any actions provided for in this policy that it considers reasonable in the circumstances.

Sanctions

9.11 Where the council finds that a councillor has breached the code, it may decide by resolution to:

- Require the councillor to apologise to any person adversely affected by the breach
- Counsel the councillor
- Reprimand the councillor
- Censure the councillor
- Make public disclosures of inappropriate conduct
- Refer the matter to an appropriate investigative body if the matter is serious (for example, the Department of Local Government, the Independent Commission Against Corruption, the NSW Ombudsman or the NSW Police)
- Prosecute for any breach of law

9.12 Sanctions for staff depend on the severity, scale and importance of the breach and must be in accordance with any staff agreements, awards, industrial agreements and contracts.

10 GLOSSARY

Council official	includes council staff, councillors and council delegates
Council delegate	includes council's contractors, consultants, volunteers, members of advisory and section 355 committees and community representatives
Designated person	see the definition in section 441 of the Local Government Act 1993
Act of disorder	see the definition in clause 29 of the Local Government (Meeting) Regulation 1999

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PART B

CODE OF CONDUCT GUIDELINES

1 PURPOSE OF THESE GUIDELINES

These guidelines have been developed to assist councils to review and enhance their codes of conduct. All councils must adopt a code of conduct pursuant to section 440 of the *Local Government Act 1993*. Once adopted, council officials should observe the code of conduct.

The model code of conduct accompanying these guidelines replaces the Department of Local Government Practice Note No 6 (the previous model code of conduct). All councils should review their existing codes to ensure that they reflect the minimum requirements specified in the revised model code of conduct. These guidelines will assist councils to develop their codes of conduct and provide guidance in achieving better practice.

2 INTRODUCTION.

These guidelines contain a set of minimum requirements that collectively form the model code of conduct. These minimum requirements are identified in the boxed sections of the document. Councils may adopt these provisions as their code of conduct or use them as a benchmark. These guidelines also provide information to assist councils to develop a code of conduct that meets their individual needs.

These guidelines identify the key topics that should be addressed in every council's code of conduct and the relevant principles and key legislation that underpin these areas. Some sections also include **optional** better practice suggestions and concepts on the topic that councils may consider including in their code. Where appropriate, examples and further reference material on the topic are provided.

These guidelines also set out the administrative procedures that councils should apply to reporting alleged breaches, dealing with allegations and sanctions that may be applied for proven breaches.

These guidelines contain:

- An introduction to the guidelines
- The role of the code of conduct
- The development, implementation and review of the code of conduct
- The key principles that must be addressed in the council's code
- Specific topics to be included in the code of conduct
- A glossary and relevant resources on code of conduct issues

3 STATUTORY REQUIREMENTS

Section 440 of the *Local Government Act 1993* requires that every council prepare and adopt a code of conduct to be observed by councillors, members of staff and delegates of the council. A council must, within 12 months after each ordinary election, review its code of conduct and make such changes as it considers appropriate.

Section 440 states:

- (1) *Every council must prepare or adopt a code of conduct to be observed by councillors, members of staff of the council and delegates of the council.*
- (2) *The Minister may prepare and issue a model code of conduct. A council may, but need not, adopt the model code.*
- (3) *A council must, within 12 months after each ordinary election, review its code of conduct and make such changes to it as it considers appropriate.*
- (4) *This section does not apply if the regulations prescribe a code of conduct to be observed by councillors, members of staff of the council and delegates of the council.*

(**NOTE: The Department of Local Government considers that section 440(1) means that council must adopt a code of conduct that is either the model code or one prepared by council. This is partly based on the intent of the introduction to Chapter 14 where it states "This Chapter...requires councils to adopt a code of conduct...".)

4 ROLE OF THE CODE OF CONDUCT

Councils have a responsibility to serve the community in fulfilling the requirements of their charter under section 8 of the *Local Government Act 1993*.

Councillors are elected to represent the interests of the residents and ratepayers. As a member of the governing body of the council, councillors play a key role in creating and reviewing the council's policies and objectives. Staff have the responsibility of serving the community and owe their allegiance to the council as their employer. Staff must also know and understand the law relevant to the performance of their official duties.

The community rightly expects councillors and staff to be honest, reasonable and equitable in their dealings with them and to have the public interest at heart. The code of conduct is a key mechanism to assist council officials to act honestly, ethically, responsibly and with accountability.

In this guideline the term council official is used to describe councillors, council staff and council delegates. Council delegates may include council's contractors, consultants, volunteers, members of advisory and section 355 committees and community representatives.

4.1 Who does the code apply to?

The code of conduct applies to councillors, council staff and council delegates (council officials). It requires them to act honestly, ethically and responsibly in the performance of their duties.

Contractors working with council will be required to adhere to the relevant provisions of council's code of conduct during their contract period. Councils should make provision in contracts to reflect this condition.

Community representatives and volunteers working with council should also be required to observe the relevant provisions of council's code of conduct.

Council should consider developing separate codes of conduct, based on the relevant provisions of the model, for contractors, council volunteers and community representatives.

4.2 Are council officials obliged to comply with the code?

The model code sets out a standard of conduct that meets accepted principles and statutory provisions applicable to local government activities. Council officials should observe the provisions within the code. It is their personal responsibility to observe the standards in the code and regularly review their personal circumstances with this in mind.

5 DEVELOPMENT, IMPLEMENTATION AND REVIEW

A council must, within 12 months after each ordinary election, review its code of conduct and make such changes as it considers appropriate. Councils may wish to review their codes of conduct more frequently. Periodic reviews are a good way to ensure the code remains relevant.

5.1 Using these guidelines

All councils should consider including in their codes the minimum requirements outlined in the model code of conduct together with additional topics that reflect the specific needs of council.

The topic sections of these guidelines provide additional information on how the principles listed in section 6 should be interpreted and applied in practice. Councils should also consider adopting a number of policies to support the code of conduct. Where possible, policies that relate to the code of conduct should be referenced in the code. This enables council officials to gain further information and guidance in relation to particular topics.

These guidelines include a number of examples and case studies to illustrate the ethical problems that council officials might encounter and strategies for dealing with them. These examples can be used to assist councils to develop their own examples that are relevant to their circumstances.

5.2 Developing council's code of conduct

When councils develop their codes of conduct they should consider how the document will be integrated into their organisation's culture. Codes of conduct should be developed by each council and its staff to meet their specific needs, and should promote an ethical culture within the council.

Selecting the appropriate language and terms will assist council officials to understand the requirements outlined in the code. Councils may decide to emphasise the collective obligations of councillors, council staff and delegates by the use of the term "we". Alternatively, councils may emphasise individual obligations through the use of the term "I" or "you".

Councils should require all officials to sign a statement that they have received, read and understood their obligations under the code of conduct.

Councils may wish to consider developing a summary of their code of conduct that can be readily distributed throughout the organisation. This summary should be supported by the more detailed code of conduct.

Councils could also consider providing a copy of the code of conduct to prospective councillors on nomination to assist them to understand their obligations.

Councils are encouraged to use the ICAC publication, 'Codes of Conduct: The next stage' to assist in developing their code of conduct. This publication includes a checklist as a guide in developing, implementing and reviewing the code.

There is also an Australian Standard (AS 8002-2003) on Organizational Codes of Conduct. Councils are encouraged to ensure that their code of conduct meets the Standard's requirements.

Simply having a code of conduct is not enough. The process used to develop, implement and regularly and systematically review the code is critical in ensuring its effectiveness. Developing a code of conduct is not just a project. It is a process that requires a range of strategies to reinforce the standards of behaviour that are expected from council officials.

5.3 Promoting council's code of conduct

A code of conduct needs to be an active policy document that is promoted throughout council. Some strategies to promote the code include:

- providing regular on-going training, awareness raising and information sessions. This training should be provided and made available to all council officials.
- training tailored to meet the needs of the particular council officials, such as in-depth sessions on matters that relate to the duties of particular staff members.
- ensuring that the induction process emphasises the importance and relevance of the code of conduct and provide new officials with a thorough understanding of its content and consequences of non-compliance.
- nominating an officer to be responsible for ensuring that training is conducted and the code of conduct is actively promoted throughout the organisation.
- including the code of conduct in information packages sent to job applicants, attached to letters of offer to prospective staff members and referred to during job interviews
- including regular segments about aspects of the code of conduct in staff circulars and newsletters
- explicitly considering the code of conduct in the context of policy and procedural reviews
- ensuring that the code of conduct is readily accessible to all council officials

Councils should also promote their codes of conduct to the community by placing them on their websites and making them easily accessible. Councils should ensure that the code of conduct is easy to locate. In this way community awareness is raised about the standards that are expected from council officials.

6 KEY PRINCIPLES

The code of conduct applies equally to formal and informal dealings between councillors, staff and others. The general principles upon which codes must be based are:

6.1 Selflessness

Council officials have a duty to make decisions solely in the public interest. Officials must not act in order to gain financial or other benefits for themselves, their family or friends.

This means making decisions because they benefit the public, not because they benefit the decision maker.

6.2 Integrity

Council officials must not place themselves under any financial or other obligation to any individual or organisation that might reasonably be thought to influence them in the performance of their duties.

6.3 Objectivity

Council officials must make decisions solely on merit and in accordance with their statutory obligations when carrying out public business. This includes the making of appointments, awarding of contracts or recommending individuals for rewards or benefits.

This means fairness to all; impartial assessment; merit selection in recruitment and in purchase and sale of council's resources; considering only relevant matters.

6.4 Accountability

Council officials are accountable to the public for their decisions and actions and must consider issues on their merits, taking into account the views of others.

This means recording reasons for decisions; submitting to scrutiny; keeping proper records; establishing audit trails.

6.5 Openness

Council officials have a duty to be as open as possible about their decisions and actions, giving reasons for decisions and restricting information only when the wider public interest clearly demands.

This means giving and revealing reasons for decisions; revealing other avenues available to the client or business; when authorised, offering all information; communicating clearly.

6.6 Honesty

Council officials have a duty to act honestly. Officials must declare any private interests relating to their public duties and take steps to resolve any conflicts arising in such a way that protects the public interest.

This means obeying the law; following the letter and spirit of policies and procedures; observing codes of conduct; fully disclosing actual or potential conflict of interests and exercising any conferred power strictly for the purpose for which the power was conferred.

6.7 Leadership

Council officials have a duty to promote and support these principles by leadership and example and to maintain and strengthen the public's trust and confidence in the integrity of the council.

This means promoting public duty to others in the council and outside, by their own ethical behaviour.

6.8 Respect

Council officials must treat with respect other council officials and the role they play, treating them with courtesy at all times.

7 TOPICS TO BE ADDRESSED

This section of the guideline contains a number of key topics that should be included in council's code of conduct. Under each topic heading there is:

- An introduction to the topic
- The key legislation
- A reference to the relevant section in the model code
- Optional better practice suggestions (where applicable)
- Examples and case studies relevant to the topic (where applicable)
- Suggested policy requirements (where applicable)
- Resources (where applicable)

7.1 General conduct obligations

Council officials must act honestly and responsibly when carrying out their functions. They have a responsibility to behave professionally and to develop and maintain constructive working relationships.

Key legislation

- Local Government Act 1993, sections 8, 352, 439, 440 – (these sections refer to the council's charter, the independence of staff and the requirement for council officials to act honestly and with care.)
- Local Government (Meetings) Regulation 1999
- NSW Anti-Discrimination Act 1977
- Federal Anti-Discrimination legislation

Model code provisions

See Section 4 of the Model Code

Optional better practice

Council's code should function as an active guide to decision making. Codes of conduct will be more effective if they include information that assists council officials to understand and manage more difficult situations that may arise. Councils may wish to consider including these specific provisions in their codes of conduct.

Appointments to other organisations

Council officials may be appointed or nominated by the council as a member of another body or organisation. (For example, appointment to a regional organisation of councils.) If so, council officials will be bound by the rules of conduct of both organisations.

Alcohol and other drugs

Intoxication by alcohol or being drug affected is an unsafe personal condition and is proven to be a hindrance to the performance of official duties. A person, so affected, cannot provide the high standard of service required. Such a person could also expose others to an unacceptable level of risk.

Development decisions

It is your duty to ensure that development decisions are properly taken and that parties involved in the development process are dealt with fairly. You must not only avoid impropriety, but must at all times avoid any occasion for suspicion and any appearance of improper conduct.

Suggested policy requirements

Council's code should be consistent with other policies that council develops. Councils should consider developing policies that provide specific guidance on matters contained in the code of conduct. For example:

1. A policy and the procedures to be followed for reporting and managing situations related to the effects of drug and alcohol use.
2. A policy and procedures to prevent and deal with harassment and discrimination.
3. A Code of Meeting Practice to meet their individual circumstances. The Code should incorporate the provisions of the *Local Government (Meetings) Regulation 1999* and supplement those regulations with provisions that are not inconsistent with them. The Code of Meeting Practice should include examples of situations councillors may face during council meetings and strategies to deal with them.

7.2 Conflict of interests

The possibility of conflict between public duty and private interest is an ever-present risk for council officials. Sometimes, by virtue of their official status, position, functions or duties, council officials have the power to make decisions or act in ways that can further their own private interests. This may cause a real or perceived conflict between a council official's private interests and their public duty.

It does not matter whether a conflict of interests is actual or merely a conflict that could be reasonably perceived to exist by a third party. Both situations negatively impact on public confidence in the integrity of local government.

This section outlines the requirements for preventing and managing a conflict of interests.

Key legislation

- *Local Government Act 1993*, Chapters 11 and 14 – (these sections refer to how councils are staffed and the honesty and disclosure of interests.)
- *Local Government (General) Regulation 1999*, Part 5A, Schedule 2

Model code provisions

See Section 5 of the Model Code

Optional better practice

Council's code should function as an active guide to decision making. Codes of conduct will be more effective if they include additional relevant information that assists council officials to understand and manage more difficult situations as they arise. Councils may wish to consider including these specific provisions in their codes of conduct.

Club/organisation membership

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

Personal relationships

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

Lobbying

You may be lobbied by a wide range of people, including individuals, organisations, companies and developers. As a general rule it is an essential element of the democratic system that any individual should be able to lobby the council or a councillor. However, particular considerations apply when you are dealing with statutory powers such as planning. You must consider evidence and arguments put by a wide range of organisations and individuals in order to perform your duties effectively.

Caucus votes

Binding caucus votes on matters is inconsistent with the obligation of each councillor to consider the merits of the matter before them. Political group meetings must not be used to decide how councillors should vote on matters like development applications where there are specific statutory considerations for each decision-maker to consider.

Other business or employment

You must ensure that any outside employment or business that you are engaging in or considering will not:

- Conflict with your official duties
- Interfere with your council work
- Involve using confidential information or council resources obtained through your work with the council
- Require you to work while on council duty
- Discredit or disadvantage the council

Former council officials

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

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

- Return all council property, documents or items (keys, mobile phones etc)
- Not make public or otherwise use any confidential information gained as a consequence of your involvement with council.

Staff political participation

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

Councils may wish to consider including in their codes and associated policies, the following information to assist council officials:

Information to guide decisions about conflict of interests

There are a number of questions that council officials can ask themselves to help in deciding whether or not they have a conflict of interests or whether their behaviour could create the impression that there is a conflict. Councils could consider providing some of this information in their code of conduct to assist council officials. A detailed list of questions is located at:

- How to decide what is a conflict of interests, page 8, Under Careful Consideration: Key Issues for Local Government, 1997, ICAC/Department of Local Government.

There are some options for avoiding or dealing with a conflict of interests provided in the code of conduct minimum requirements. Councils could consider whether a more extensive list of options is useful for their circumstances. A more extensive list of options can be found at:

- Options to avoid or deal with a conflict of interests, Fact Sheet No 3, Conflict of Interests, 2003, NSW Ombudsman. (available on Ombudsman's website)
- Pre-requisites to avoid or manage conflict of interests, 2004, NSW Ombudsman

Senior adviser on conflict of interests

Councils should consider nominating a senior officer or engaging a suitably qualified person, such as a solicitor or auditor, to provide objective advice to council officials on conflict of interests matters. Alternatively, councils could include as part of the role of the conduct committee (provided for in the model code of conduct) providing advice to council officials on conflict of interests issues. This person (or committee) would provide advice only and not be involved in making the decision on how the matter should be handled. This advice should not be considered a legal opinion and council officials may need to obtain their own legal advice on the matter. The onus is on the individual to determine what action to take, particularly in relation to a non-pecuniary conflict of interests.

(Refer to the NSW Ombudsman Annual Report 2002-2003, page 38, for information on the establishment of a panel to provide advice on conflict of interests.)

Examples

Council's code should provide examples and/or case studies to illustrate the ethical problems that council officials might encounter and strategies for dealing with them. These guidelines include some examples to guide councils in developing their own examples relevant to their council's circumstances. Further case studies relating to conflict of interests can be found at:

- Case studies and examples, pages 5-14, Under Careful Consideration: Key Issues for Local Government, 1997

The possibility of conflict between public duty and private interest is an ever-present risk for council officials. A conflict of interests can be of two types: pecuniary and non-pecuniary. Where a conflict of interests is pecuniary in nature, you must comply with the Act.

Example 1: Pecuniary interest and perception

A council has a practice of suspending standing orders to enable councillors to freely discuss issues before them. During one of these times, councillors discuss a matter relating to the purchase of a property. One of the councillors is a property agent whose company is acting for the council in the transaction. The councillor participates in the discussion during the period while standing orders are suspended.

When standing orders are resumed, this councillor declares a pecuniary interest and leaves the room. The councillor does not believe that there is a pecuniary interest in the matter until there is a formal debate and vote on the matter.

If the councillor has a pecuniary interest in the matter, then a pecuniary interest exists during the entire period the matter is being considered, including during the discussion when standing orders are suspended.

Section 451 of the *Local Government Act 1993* requires that a councillor not only declare the nature of an interest in a matter before council for consideration, but must also not be present at, or in sight of, the meeting at any time during which the matter is being considered or discussed or voted on by the council or committee.

This applies to committee meetings, closed meetings and meetings where standing orders have been suspended. The practice of allowing an affected councillor to make a statement before leaving a room is a breach of the provisions of section 451 of the Act.



Example 2: Secondary employment

Secondary employment, with or without permission, can lead to a conflict of interests. A local government building trades overseer prepares a report for his manager on allocating council plumbing work. He has a plumbing company that put in a bid, but was not selected. There is a conflict of interests because the overseer responsible for recommending the awarding of contracts is also competing to secure the work and has not disclosed that personal interest.

Under the *Local Government Act 1993*, all council staff must obtain the consent of the general manager for any secondary employment that relates to the business of council or might conflict with their council duties. The general manager in this case would be entitled to refuse consent. To put strict measures in place to prevent the overseer from having any role in contract work may not be enough to prevent conflicts.

Example 3: Political support

A conflict can arise for a councillor when a campaign donor who contributes financially to the councillor's election campaign, or a campaign supporter who works on the election of the councillor by handing out how-to-vote cards or erecting election posters, has a matter before the council for determination. This could have potential to give rise to a conflict of interests.

In this situation a councillor should consider the public perception of the relationship. Options for the councillor include:

- Declaring an interest and not participating in discussion or voting on the matter
- Declaring an interest, participating in the discussion on the matter but not voting
- Declaring an interest in the matter and participating in the discussion and voting as the conflict is deemed to be insignificant

NOTE: Extreme care should be taken if the nature of the relationship may constitute a pecuniary interest (for example, where it could be perceived that an election donation has been given on the understanding that the councillor will provide support on a particular matter should he or she be elected). Such an arrangement could also constitute an offence under the Crimes Act.



Example 4: Development applications

Council staff from time to time lodge development applications with council. This may create problems, especially if the staff member works in the development assessment or planning areas of council.

In these circumstances there are a number of options that may be available to council to manage this situation:

- Council could outsource the assessment of the application
- A more senior member of staff could assess the application
- Council should restrict the staff member's access to information on the matter other than what they are entitled to as an ordinary applicant.

Example 5: Selection processes

Examples of appropriate action to resolve or avoid conflicts arising in job selection processes include:

- If an applicant is a personal friend, or past or present close work colleague of a member of an interview panel, that member should disclose the relationship to the other members of the panel (and in particular the independent member), at the time applications are reviewed.
- If a person is in a relationship with a party to a dispute or statutory application process over which they have to arbitrate, then that person should disclose the relationship to their supervisor or manager. Those duties should then be reallocated to another person who does not have a conflict.
- If a relative, personal friend or business partner has an interest in or may benefit from a tender, contract or application that a person is involved in the assessment or approval of, that person should disclose the relationship to their supervisor or manager. The person should then be removed from involvement in the process by reallocating those duties to another person who does not have a conflict.



Example 6A: Club membership

A councillor is a member of a club in a small community. The councillor is very active in the running of the club. While not an office holder, he is well known to all club members.

The club has recently submitted a development application to the council for a major extension of its facilities.

In this instance, there may be a public perception that the councillor's activities with the club would make it difficult for the councillor to view the matter before the council as a representative of residents and ratepayers generally. Therefore, the councillor should disclose his conflict of interests in the matter when it comes up for consideration. The councillor must then consider whether he should refrain from participating in council's discussion and voting on the matter. If the councillor decides not to vote then he should leave the room when the vote is being taken to ensure that the vote is not recorded in the negative.

Example 6B: Club membership

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

In this example, should a matter relating to the club arise at council, it is appropriate that the councillor informs the council of her membership. However, it is unlikely that her interest as a club member would conflict with her role as a councillor representing the view of residents and ratepayers generally. Therefore, she could participate in the decision-making process.

In both situations, the councillors have two different interests in the matters. The first is their interest as a councillor representing residents and ratepayers generally; the second is as club members who are keen to see the club prosper and provide better facilities for its members. There is nothing wrong with a councillor having community as well as civic interests, though there are times when these interests may be perceived as a conflict of interests.

The distinguishing features of examples 6A and 6B are that:

- The councillor's interests as a club member in example 6A are likely to conflict with and influence his role as a representative of residents and ratepayers generally. This would make it difficult for him to be objective; and
- The public perception of a lack of impartiality would be stronger in the first example particularly given the size of the community and the visibility of the councillor in the club's activities.

If a councillor is an office holder in a club or other organisation, the interest may constitute a pecuniary interest.

Suggested policy requirements

Council's code should be consistent with other policies that council develops. Councils should consider developing policies that provide specific guidance on matters contained in the code of conduct. For example:

1. A specific policy on secondary employment.
2. Council's Code of Meeting Practice should provide examples of how to deal with conflict of interests situations that may arise in meetings.

Resources

ICAC/Department of Local Government, 1997, *Under Careful Consideration: Key Issues for Local Government*.

ICAC, 2002, *Taking the devil out of development: recommendations for statutory reform, position paper*.

NSW Ombudsman, 2003, *Fact sheet no 3, Conflict of Interests*.

NSW Ombudsman, 2003, *Good Conduct and Administrative Practice: Guidelines for state and local government*.

ICAC, *Practical Guide to Corruption Prevention*.

NSW Ombudsman, 2004, *Pre-requisites to avoid or manage conflict of interests*.

7.3 Personal Benefit

Council officials, at some stage in their career may be offered a gift or benefit in the course of their work. The gift or benefit could be offered innocently in good faith or could be an attempt to influence. Feelings of obligation can arise if council officials accept a gift or benefit. Once such a gift is accepted, a council official can be compromised. Individuals attempting to corrupt council officials often start with small inducements that appear to have no improper motive behind them.

Corruptly receiving a gift or benefit is an offence under both the common law and NSW legislation. The offence extends to the offering or seeking of a gift or benefit.

Key legislation

- *Crimes Act 1900 (NSW)*, sections 249B(1), 249B(2) and 249J
- *Local Government (General) Regulation 1999*, clauses 40E and 40F

Model code provisions

See Section 6 of the Model Code

Examples

Council's code should provide examples and/or case studies to illustrate the ethical problems that council officials might encounter and strategies for dealing with them. These guidelines include some examples to guide councils in developing their own examples relevant to their council's circumstances. Some additional case studies relating to gifts and benefits can be found at:

- Case studies/examples provided in ICAC publication – Gifts, Benefits or Just Plain Bribes?

Example 1: Gifts, benefits and hospitality

A regular supplier offers the council's purchasing officer a free weekend for two at a beach resort. The officer's impartiality when dealing with the supplier would be compromised if he or she accepts the offer.

Planning and building staff are regularly offered alcohol, food, tickets to major sporting events and free lunches by developers, builders, project managers and suppliers. Staff sometimes accept these gifts without declaring them and argue that they are in return for providing good service and are an accepted way of "doing business". Again, this will be perceived to have compromised the impartiality of the staff concerned.

In this situation staff should, in the first instance, refuse any gift offered. If staff feel obliged to accept gifts, then they should declare the gift and have it recorded in council's gift register. Council may then determine how these gifts are dealt with and could, for example, donate specific items to charity.



Example 2: Acceptance of gifts and bribery

A local council employee is involved in a series of inspections on a building site. During the inspections, the developer offers the employee numerous gifts including alcohol and a present for the employee's new born child. The employee accepts the gifts as he feels they are offered as unconditional and genuine tokens of appreciation for his work, especially as the inspection involved a number of lengthy tasks.

The employee believes he is not compromised by the gifts and eventually makes a recommendation that is not in the developer's interests. After the recommendation is made, the developer complains to the council about the employee accepting the gifts.

Although the employee accepts the gifts in good faith, he nevertheless places himself in a vulnerable position. While each of the gifts is of modest value, when viewed in total, the value of the gifts seems quite substantial. The developer is able to manipulate the situation to allege the employee has accepted bribes.

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

Example 3: Acceptance of gifts and influence

A council's information technology manager attends two meetings with potential suppliers. During the first meeting the suppliers serve tea, coffee and biscuits. The second meeting is held at a restaurant and the suppliers pay for the manager's three course meal.

Both of the meetings arguably provide the manager's council with a benefit, namely the opportunity to discuss the supplier's products. Despite this, a contrast can be drawn between the meetings.

In the first, the refreshments are only modest in nature and consequently do not create the impression that an attempt is being made to gain the manager's favour.

In the second, the nature of the lunch creates the impression that an attempt is being made to compromise the manager's impartiality. The damage of this perception far outweighs any benefit associated with the manager's attendance.

Suggested policy requirements

Council's code should be consistent with other policies that council develops. Councils should consider developing policies that provide specific guidance on matters contained in the code of conduct. For example:

1. Councils could develop a policy and procedures to guide and assist council officials in dealing with gifts or benefits. This policy could provide an explanation of what constitutes token value and information on gift registers and the procedure for registering a gift or benefit. An explanation of how to develop a policy is contained in:
 - Gifts, Benefits or Just Plain Bribes? – Guidelines for Public Sector Agencies and Officials, 1999, ICAC.
2. Councils could conduct regular reviews of gifts and benefits declarations to identify trends and any other issues. This should form part of the procedures developed by council.
3. A hypothetical case study on the acceptance of gifts is provided in Chapter 4 of the ICAC Practical Guide to Corruption Prevention Manual and is a useful exercise to consider using in conjunction with training programs.

Resources

ICAC, June 1999, *Gifts, Benefits or Just Plain Bribes? Guidelines for Public Sector Agencies and Officials*.

ICAC, *Practical Guide to Corruption Prevention*.

7.4 Relationship between council officials

There needs to be personal interaction between councillors and senior council officers, particularly regarding access to and provision of information, to effectively integrate policy-making and service delivery. Councils need to develop a policy to provide guidance on the interactions between council officials. Councillors should avoid any perceptions of improper influence when exercising their role as an elected representative and interacting with staff.

Key legislation

- *Local Government Act 1993*, Chapter 9 Part 2, Chapter 11, particularly section 352, and Chapter 12 Part 2 (*these sections of the Act relate to how councils are established, how councils are staffed and how councils operate.*)
- *Local Government (Meetings) Regulation 1999*, clause 22 and Part 4

Model code provisions

See Section 7 of the Model Code

Optional better practice

Council's code should function as an active guide to decision making. Codes of conduct will be more effective if they include additional relevant information that assists council officials to understand and manage more difficult situations as they arise. Councils may wish to consider including these specific provisions in their codes of conduct.

Contact between staff and councillors

Members of staff are not permitted to contact councillors outside of formal meetings to discuss council business unless authorised by the general manager and as provided in the procedures for governing the interaction of councillors and council staff.

Councils may wish to consider including in their codes and associated policies, the following information to assist council officials:

There are some questions council officials can ask to help decide whether or not contact between councillors and council staff is appropriate. A list of these questions can be found at:

- Councillors' access to information and their interaction with staff, page 23 Under Careful Consideration: Key Issues for Local Government, March 1997, ICAC/Department of Local Government.

Examples

Council's code should provide examples and/or case studies to illustrate the ethical problems that council officials might encounter and strategies for dealing with them. These guidelines include some examples to guide councils in developing their own examples relevant to their council's circumstances.

Example 1: Attempting to improperly direct/influence staff

A councillor is a friend of a local surveyor who has a number of clients with development applications that are dealt with by council through its Development Approval Committee. Councillors rarely make decisions on development application matters. The councillor and surveyor often discuss the development applications currently being managed by the surveyor's agency. On many occasions the councillor rings the council staff member dealing with his friend's application to express a view on how it should be assessed. The councillor is often quite insistent that matters be dealt with more quickly. The staff members feel intimidated and pressured to support the applications.

The councillor believes that this action is appropriate as the councillor does not direct staff as to the outcome of the application assessment process.

Council staff are obliged to assess development applications in accordance with the applicable legislation. For example, section 79C of the Environmental Planning and Assessment Act 1979 provides a list of matters for consideration in determining a development application.

If the staff member feels intimidated or there are concerns about the propriety of the actions of a councillor, the staff member should advise the general manager. The general manager should intervene to stop the councillor from contacting staff members directly where this is inappropriate. The general manager should encourage staff to report such approaches.

Suggested policy requirements

Council's code should be consistent with other policies that council develops. Councils should consider developing policies that provide specific guidance on matters contained in the code of conduct. For example:

Councils should develop more detailed policy and procedures to govern the interaction of staff and councillors. A model is provided in 'Under Careful Consideration: Key Issues for Local Government, 1997'.

Resources

ICAC/Department of Local Government, 1997, *Under Careful Consideration: Key Issues for Local Government*.

7.5 Access to information and council resources

Councils should encourage public access to information about their activities. Any information and services that are publicly available should also be available to councillors. In addition, the council should provide councillors with access to a range of material to enable them to perform their role effectively.

It is important that the community has confidence that information acquired by the council will only be used for council purposes. Confidential information must only be used for council purposes. The *Privacy and Personal Information Protection Act 1998* ensures that where a public agency such as a council collects information about a person it does so in a manner that is transparent.

Key legislation

- *Local Government Act 1993*, sections 11, 12, 13, 252, 664, 665 and 666 (these sections of the Act refer to access to information, what fees, expenses and facilities may be paid or provided to councillors and the disclosure and misuse of information.)
- *Freedom of Information Act 1989*
- *Privacy and Personal Information Protection Act 1998*

Model code provisions

See Section 8 of the Model Code

Optional better practice

Council's code should function as an active guide to decision making. Codes of conduct will be more effective if they include additional relevant information that assists council officials to understand and manage more difficult situations as they arise. Councils may wish to consider including these specific provisions in their codes of conduct.

Contractors

Contracts with contractors, consultants, agents or advisers should specify that such persons are under an obligation not to use confidential information in ways which are an abuse of their role, function or position, or which put them in a position which is inconsistent with their legal and professional obligations to the council.

Business investments

Council officials must avoid investments or business activities in relation to which their potential access to confidential information might reasonably be perceived as giving them an unfair or improper advantage over other people.

Examples

Council's code should provide examples and/or case studies to illustrate the ethical problems that council officials might encounter and strategies for dealing with them. These guidelines include some examples to guide councils in developing their own examples relevant to their council's circumstances.

Example 1: Use of council equipment

A local resident approaches a councillor with information about his neighbour, who is a council employee. He reports that the previous weekend he saw council equipment being used to dig up his neighbour's driveway. The councillor reports the matter to the general manager. He discusses the matter with one of the council's internal auditors. The auditor decides to interview the employee, who has worked for council for 20 years and has an excellent work record. At the interview the employee admits that he used the equipment the previous weekend. He says he didn't realise it was wrong to do this as he was only 'borrowing' the equipment to do work on his own property. He did the work in his own time and not as a second job for which he got paid. The auditor reports back to the general manager and, as this was a one-off offence, recommends that no formal disciplinary action be taken. In this case it would be appropriate if the general manager counsels the employee on the use of council resources and gives him a copy of council's code of conduct and policy. The council could also run a series of awareness-raising sessions for staff.

Example 2: Use of council information for personal or business interests

Many councillors have business and professional interests in the local government area they represent. Conflicts can arise if their public positions allow them access to information and opportunities that could be used to advance their personal and business interests. For example, a councillor may be tempted to influence an application to set up a new business in the town if his own business could lose custom as a result. The councillor should be careful to manage their personal interest openly and ethically to avoid any conflict in this situation.



Example 3: Forms of misuse

Forms of misuse which appear to be relatively common include:

- Staff utilising mobile phones excessively for private purposes without reimbursement of costs
- Internet services being used extensively for non-work purposes
- unauthorised use of minor plant or equipment
- “left-over” materials and low value assets being claimed by staff without payment or other proper arrangement being in place.

Example 4: Information security

A staff member goes to lunch leaving sensitive papers about a proposed industrial development on her desk. Another staff member sees the papers as he is returning some folders to her desk. He discusses what he has seen with other staff. One of the other staff members has previously notified that he has a conflict of interest in the development as he may be an objector to the development. His supervisor has been particularly careful to ensure that he did not have access to any information in relation to the development.

The staff member who was assessing the information should have known that the matter she is dealing with is sensitive and should have taken the necessary steps to secure the information before leaving her desk.

The staff member who saw the information should have maintained the confidentiality of the information and not discussed this with other staff members.

Suggested policy requirements

Council’s code should be consistent with other policies that council develops. Councils should consider developing policies that provide specific guidance on matters contained in the code of conduct. For example:

1. Councils should consider developing more detailed guidelines and policies on:
 - the procedures councillors should use to access council information
 - the use of council resources by council officials
 - the use of plant by council staff
 - the disposal of surplus minor assets
 - the use of communication devices (see clause 5 below)

Model Code of Conduct & Guidelines

2. The Privacy and Personal Information Protection Act 1998 provides obligations on councils, including the development of a privacy management plan. In addition, a Privacy Code of Practice for Local Government took effect from 1 July 2000 and councils must comply with this. A copy of this is available on the department's website at www.dlg.nsw.gov.au
3. Councils should consider developing a policy, or modifying their Code of Meeting Practice, to provide procedures on the adequate and timely provision of information to councillors in relation to matters that they are dealing with. This policy should also provide procedures to keep council adequately informed of matters that may be the subject of negotiations and actions of committees of council under delegated authority.
4. Councils should consider developing a policy that deals with the issue of councillor access to and use of
 - confidential information
 - commercial in confidence information
 - information on business competitors.

Such a policy could be based on the information contained in the publications:

- Good Conduct and Administrative Practice: Guidelines for state and local government
 - Under Careful Consideration: Key Issues for Local Government.
5. Councils should require council officials to sign an agreement for the use of email and the internet. The ICAC publication '*No Excuse for Misuse*' provides a model policy for the use of communication and information devices in councils. Alternatively, councils can use the NSW Premier's Department 'Policy and Guidelines for use by Staff of Employer Communication Devices' as a guide. This document can be accessed on the Premier's Department website at www.premiers.nsw.gov.au
 6. Under section 252 of the Local Government Act 1993, council must adopt a policy concerning the payment of expenses incurred or to be incurred by, and the provision of facilities to, the mayor, the deputy mayor (if there is one) and the other councillors in relation to discharging the functions of civic office. Council's code of conduct and the section 252 policy should be consistent and referenced to each other.

Resources

Daly, M, Liverpool City Council Public Inquiry: Volume 3, July 2004.

ICAC/Department of Local Government, 1997, *Under Careful Consideration: Key Issues for Local Government*.

ICAC, 2002, *No Excuse for Misuse: preventing the misuse of council resources*.

NSW Ombudsman, 2003, *Good Conduct and Administrative Practice: Guidelines for state and local government*.

7.6 Reporting breaches, investigation procedures and sanctions

Council officials are individually accountable for their acts and omissions in relation to their council duties. It is important that council officials clearly understand all of the requirements of their code of conduct as they may affect their work or civic responsibilities.

For a code of conduct to be effective and meaningful it must be supported with appropriate reporting of breaches and appropriate sanctions for breaches. Council officials need to have confidence that the code will be complied with and breaches will be dealt with appropriately. Breaches of a code of conduct by council officials may result in disciplinary action, legal action or in other sanctions being imposed, depending on the nature of the breach.

Key legislation

- *Local Government Act 1993*
- *Protected Disclosures Act 1994*
- *Independent Commission Against Corruption Act 1988*
- *Ombudsman Act 1974*

Model code provisions

See Section 9 of the Model Code

Suggested policy requirements

Council's code should be consistent with other policies that council develops. Councils should consider developing policies that provide specific guidance on matters contained in the code of conduct. For example:

1. Councils should develop internal reporting procedures for dealing with allegations of breaches of the code. This information could be either included in the code of conduct or provided in a separate policy.
2. Where council staff agreements do not provide for sanctions for breaches of the code of conduct, then council may consider including the following list of possible sanctions in its code of conduct:
 - Counselling the staff member
 - Documentation on the personnel file for a period of time depending on the nature of the breach of the code
 - Disciplinary action such as demotion, foregoing the capacity to seek promotion, or to act in a higher duty capacity
 - Dismissal from employment
 - Reference to an appropriate investigative body
 - Prosecution for any breach of law which could lead to dismissal and recovery of costs/damages suffered by council and/or imprisonment

Model Code of Conduct & Guidelines

3. Councils should develop a policy and procedures on the reporting of corruption, maladministration and serious and substantial waste. A model policy can be found at:
- Appendix 1/Annexure 1, Protected Disclosures Guidelines, 2002, NSW Ombudsman.

Resources

NSW Ombudsman, 5th edn, 2004, *Protected Disclosures Guidelines*.

ICAC/Department of Local Government, 1997, *Under Careful Consideration: Key Issues for Local Government*.

NSW Ombudsman, 2nd edn, 2004, *The Complaint Handler's Toolkit*.

NSW Ombudsman, 2003, *Good Conduct and Administrative Practice: Guidelines for state and local government*.

ICAC, 2003, Fact-Finder, *A 20-step guide to conducting an inquiry in your organisation*.

8 USEFUL RESOURCES

NSW Ombudsman publications:

Good Conduct and Administrative Practice: Guidelines for state and local government, August 2003

Conflict of Interests: Public Sector Agencies fact sheet No 3, July 2003

Protected Disclosures Guidelines, 5th Edition, 2004.

The Complaint Handler's Toolkit, 2nd Edition, 2004.

Website: www.ombo.nsw.gov.au

Independent Commission Against Corruption publications:

Taking the Devil Out of Development: recommendations for statutory reform, position paper, December 2002

Practical Guide to Corruption Prevention

Codes of Conduct: The next stage, March 2002

Gifts, Benefits or Just Plain Bribes? Guidelines for Public Sector Agencies and Officials, June 1999.

Fact-Finder, A 20-step guide to conducting an inquiry in your organisation, 2003.

No Excuse for Misuse: preventing the misuse of council resources, 2002.

Website: www.icac.nsw.gov.au

Independent Commission Against Corruption & Department of Local Government publication:

Under Careful Consideration: Key Issues for Local Government, March 1997

Other Publications:

Daly, M, 2004, Liverpool City Council Public Inquiry: Volume 3. www.dlg.nsw.gov.au

Premier's Department NSW, 1997, Code of Conduct for NSW public agencies: policy and guidelines, Sydney.

Premier's Department NSW, 1999, Policy and Guidelines for the use by Staff of EMPLOYER COMMUNICATION DEVICES, Sydney.

NSW Department of Health, 1998, Principles and Minimum Standards for Development of Health Service Codes of Conduct.

Standards Australia, 2003, Australian Standard Organizational codes of conduct AS 8002-2003, Standards Australia, Sydney.

The Standards Commission for Scotland, 2002, Code of Conduct for Councillors.

9 GLOSSARY

Council official	includes council staff, councillors and council delegates
Council delegate	includes council's contractors, consultants, volunteers, members of advisory and section 355 committees and community representatives
Designated person	see the definition in section 441 of the Local Government Act 1993
Act of disorder	see the definition in clause 29 of the Local Government (Meeting) Regulation 1999