

Code of Conduct

**FOR STAFF, MEMBERS OF COUNCIL
COMMITTEES, DELEGATES AND VOLUNTEERS**

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TABLE OF CONTENTS

IMPORTANT NOTE	4
PART 1: CONTEXT	5
1 INTRODUCTION.....	5
2 DEFINITIONS	6
3 PURPOSE OF THE CODE OF CONDUCT	7
4 KEY PRINCIPLES.....	7
5 GUIDE TO ETHICAL DECISION MAKING	9
PART 2: STANDARDS OF CONDUCT.....	10
6 GENERAL CONDUCT OBLIGATIONS	10
7 CONFLICT OF INTERESTS	12
8 PERSONAL BENEFIT.....	17
9 RELATIONSHIP BETWEEN COUNCIL OFFICIALS	19
10 ACCESS TO INFORMATION AND COUNCIL RESOURCES	21
11 REPORTING BREACHES	25
PART 3: PROCEDURES	26
12 COMPLAINT HANDLING PROCEDURES & SANCTIONS	26
13 COMPLAINT ASSESSMENT CRITERIA.....	30
14 CONDUCT REVIEW COMMITTEE/REVIEWER OPERATING GUIDELINES	31
15 USEFUL CASE STUDIES	35

IMPORTANT NOTE

This Code incorporates the requirements of the Department of Local Government's Model Code of Conduct for Councils in NSW (2008) that concern Council staff, members of Council committees, delegates and volunteers.

Wording from the Model Code that relates purely to Councillors has been removed from this Code because Council has a separate Code of Conduct for Councillors.

This Code replaces Council's previous Code of Conduct (2005) and associated Guidelines to the Code of Conduct (2005), and the Conflicts of Interest Policy (July 1997).

This Code must be reviewed within 12 months of a Council election.

PART 1 – CONTEXT

1 INTRODUCTION

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

Councillors, members of staff of Council, members of Council Committees, delegates of Council and volunteers must comply with the applicable provisions of the Code of Conduct. It is the personal responsibility of Council officials to comply with the standards in this Code and to regularly review their personal circumstances with this in mind.

The Code is made in three Parts:

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

You must comply with the applicable provisions of this Code of Conduct in carrying out your functions as a Council official. Council is committed to demonstrating the high standards of professional and ethical behaviour that the public expects. This Code reflects those standards and behaviours and, when put into practice in conjunction with relevant legislation and other Council policies, allows you to meet those expectations.

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

From time to time, Council will provide training on various matters associated with this Code.

If you have any questions about this Code you should direct your enquiry to the Manager, Administrative Services.

2 DEFINITIONS

In this Code the following definitions apply:

the Act	the <i>Local Government Act 1993</i>
act of disorder	see the definition in clause 256 of the <i>Local Government (General) Regulation 2005</i>
Conduct Review Committee	a committee of three or more persons independent of Council who are selected from those appointed by Council to review allegations of breaches of the Code of Conduct by Councillors or the General Manager in accordance with the procedures set out in Sections 12, 13 and 14
conduct reviewer	a person independent of Council who is solely selected from those appointed by Council to review allegations of breaches of the Code of Conduct by Councillors or the General Manager in accordance with the procedures set out in Sections 12, 13 and 14
conflict of interests	a conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty
Council official	includes Councillors, members of staff of Council, administrators appointed under section 256 of the Act, members of Council committees, conduct reviewers and delegates of Council
delegate of Council	a person or body, and the individual members of that body, to whom a function of Council is delegated
designated person	see the definition in section 441 of the Act
misbehaviour	see the definition in section 440F of the Act
personal information	information or an opinion about a person whose identity is apparent, or can be determined from the information or opinion
person independent of Council	a person who is not an employee of Council, has no current or ongoing contractual relationship with Council in the nature of a contract for services, retainer or contract for the provision of goods of any kind, or is not an employee of any entity with such a contractual relationship

The term “you” used in this Code refers to Council officials who are members of staff of Council, members of Council committees, conduct reviewers, delegates of Council or volunteers.

3 PURPOSE OF THE CODE OF CONDUCT

This Code sets the minimum requirements of conduct for Council officials in carrying out their functions. This Code is based on the *Model Code of Conduct* that is prescribed by regulation under the Act.

This Code has been developed to assist you to:

- understand the standards of conduct that are expected of you
- enable you to fulfil your statutory duty to act honestly and exercise a reasonable degree of care and diligence (section 439)
- act in a way that enhances public confidence in the integrity of local government
- develop a practical way of identifying and resolving situations which involve conflict of interest or improper use of position.

4 KEY PRINCIPLES

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

Integrity

You must not place yourself under any financial or other obligation to any individual or organisation that might reasonably be thought to influence you in the performance of your duties.

Leadership

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

Selflessness

You have a duty to make decisions in the public interest. You must not act in order to gain financial or other benefits for yourself, your family, friends or business interests. This means making decisions because they benefit the public, not because they benefit the decision maker.

Impartiality

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

Accountability

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

Openness

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

Honesty

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

Respect

You must treat others with respect at all times. This means not using derogatory terms towards others, observing the rights of other people, treating people with courtesy and recognising the different roles others play in local government decision making.

Council has the following **values** which complement the Key Principles:

Strategic Thinking

This means contributing to Council's planning processes and managing issues effectively.

Innovation

This means adopting innovative approaches to improve program efficiency and providing value-for-money to citizens.

Communication

This means maintaining a positive internal communication climate and contributing to Council's public image.

Citizen Focus

This means establishing regular consultative processes and building partnerships with the community.

Performance

This means effectively managing resources to achieve performance targets and service standards.

Teamwork

This means facilitating teamwork within Council to provide a more productive work environment and better outcomes for citizens.

5 GUIDE TO ETHICAL DECISION MAKING

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

- Is the decision or conduct lawful?
- Is the decision or conduct consistent with Council's policies and with Council's objectives and this Code?
- What will the outcome be for the employee, work colleagues, the Council, persons with whom you are associated and any other parties?
- Do these outcomes raise a conflict of interest or lead to private gain or loss at public expense?
- Can the decision or conduct be justified in terms of the public interest and would it withstand public scrutiny?
- How would my personal integrity be affected by the action?
- How would I react if someone else carried out the same action?
- Would I feel comfortable if my actions became generally known?
- How would my work colleagues, friends and family react if they found out about my actions?

Conflict of interests

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

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

Seeking advice

5.3 If you are uncertain about an action or decision, you may need to seek advice from other people. This includes your supervisor, manager, union representatives, the Manager, Administrative Services, the Department of Local Government, the Ombudsman's Office and the Independent Commission Against Corruption.

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

PART 2 - STANDARDS OF CONDUCT

This Part of the Code sets out the conduct obligations required of you. These are the enforceable standards of conduct.

Failure by a member of staff to comply with this Code may give rise to disciplinary action.

6 GENERAL CONDUCT OBLIGATIONS

General conduct

6.1 You must not conduct yourself in carrying out your functions in a manner that is likely to bring Council into disrepute. Specifically, you must not act in a way that:

- contravenes the Act, associated regulations, Council's relevant administrative requirements and policies
- is detrimental to the pursuit of the charter of 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. (*Schedule 6A of the Act*)

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

6.3 You must treat others with respect at all times.

Fairness and equity

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

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

Harassment and discrimination

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

Development decisions

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

Staff political participation

- 6.10 You 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.

Appointments to other organisations

- 6.11 Council may nominate or appoint you as a member of another body or organisation. It so, you will be bound by the rules of conduct of both organisations.

Alcohol and other drugs

- 6.12 You must not be intoxicated or drug affected when performing your official duties.
- 6.13 Intoxication by alcohol or being affected by any other drug is a risk to the health and safety of yourself and others and affects the performance of official duties. A person, so affected, cannot provide the high standard of service required and is impaired in their ability to make decisions. It may also bring into question the validity of decisions made while under the influence of alcohol or other drugs.
- 6.14 Every member of staff has the authority and duty to report to their Supervisor if they believe that they or any other person may be affected by alcohol or any other drug, whether illicit or not.

Health, wellbeing and safety

- 6.15 You must ensure that Council's premises are adequate to ensure the health and safety of other Council officials and members of the public in accordance with your obligations under Council's SAFE System.

Public comment

- 6.16 You must not make public comment on behalf of Council unless you are authorised to do so under Council's Media Liaison Policy.

7 CONFLICT OF INTERESTS

- 7.1 A conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty.
- 7.2 You must avoid or appropriately manage any conflict of interests. The onus is on you to identify a conflict of interests and take the appropriate action to manage the conflict in favour of your public duty.
- 7.3 Any conflict of interests must be managed to uphold the probity of Council decision-making. When considering whether or not you have a conflict of interests, it is always important to think about how others would view your situation.
- 7.4 Private interests can be of two types: pecuniary or non-pecuniary.

What is a pecuniary interest?

- 7.5 A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. *(section 442)*
- 7.6 A person will also be taken to have a pecuniary interest in a matter if that person's spouse or de facto partner or a relative of the person or a partner or employer of the person, or a company or other body of which the person, or a nominee, partner or employer of the person is a member, has a pecuniary interest in the matter. *(section 443)*
- 7.7 Pecuniary interests are regulated by Chapter 14, Part 2 of the Act. The Act requires that:
- designated persons lodge an initial and an annual written disclosure of interests that could potentially be in conflict with their public or professional duties *(section 449)*
 - Councillors and members of Council committees disclose an interest and the nature of that interest at a meeting, leave the meeting and be out of sight of the meeting and not participate in discussions or voting on the matter *(section 451)*
 - designated persons immediately declare, in writing, any pecuniary interest. *(section 459)*
- 7.8 Designated persons are defined at section 441 of the Act, and include, but are not limited to, the General Manager and other Senior Staff of Council.
- 7.9 Where you are a member of staff of Council, other than a designated person (as defined in Section 441), you must disclose in writing to your Manager or the General Manager, the nature of any pecuniary interest you have in a matter you are dealing with as soon as practicable.

What is a non-pecuniary conflict of interests?

- 7.10 Non-pecuniary interests are private or personal interests you have that do not amount to a pecuniary interest as defined in the Act. These commonly arise out of family or personal relationships, or involvement in sporting, social or other cultural groups and associations and may include an interest of a financial nature.

- 7.11 When considering non pecuniary conflict of interests, it is useful to keep in mind that they “are not always restricted to family relationships but are often more broadly defined as anyone whose affairs are closely linked to yours where there may be some type of direct or indirect beneficial relationship.” (ICAC, ‘Managing Conflicts of Interest in the Public Sector’, November 2004, p46)
- 7.12 The matter of a report to Council from the Conduct Review Committee/Reviewer relates to the public duty of a Councillor or the General Manager. Therefore, there is no requirement for Councillors or the General Manager to disclose a conflict of interests in such a matter.
- 7.13 Some questions that may help you decide if you have a non pecuniary conflict of interest are as follows:
- do I, a relative, friend or associate stand to gain or lose my/our reputation because of Council’s decision or action?
 - have I contributed in a private capacity in any way to the matter before Council?
 - have I made promises or commitments in relation to the matter?
 - have I received a benefit or hospitality from someone who stands to gain or lose from Council’s decision or action?
 - could there be benefits for me in the future that could cast doubt on my objectivity?
 - if I do participate in decision making, would I be happy if my colleagues and the public became aware of my association or connection?
 - do I need to seek advice or discuss the matter with an objective party?
 - am I confident in my ability to act impartially and in the public interest?
- 7.14 The Manager, Administrative Services is available to assist you with information about the requirements of this Code.

Managing non-pecuniary conflict of interests

- 7.15 Where you have a non-pecuniary interest that conflicts with your public duty, you must disclose the interest fully and in writing, even if the conflict is not significant. You must do this as soon as practicable.
- 7.16 If a disclosure is made at a meeting, both the disclosure and the nature of the interest must be recorded in the minutes. This disclosure constitutes disclosure in writing for the purposes of clause 7.15.
- 7.17 How you manage a non-pecuniary conflict of interests will depend on whether or not it is significant.
- 7.18 As a general rule, a non-pecuniary conflict of interests will be significant where a matter does not raise a pecuniary interest but it involves:
- a relationship between you and another person that is particularly close, for example, parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or

adopted child of you or your spouse, current or former spouse or partner, de facto or other person living in the same household

- other relationships that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship
- an affiliation between you and an organisation, sporting body, club, corporation or association that is particularly strong.

7.19 Your manager will assist you in determining how to manage your non-pecuniary conflict of interest. Options include:

- a) removing the source of the conflict, by relinquishing or divesting the interest that creates the conflict, or reallocating the conflicting duties to another Council official;
- b) in the case of disclosures made at meetings, it may be appropriate to have no involvement in the discussions or decision-making processes;
- c) limiting your involvement in the matter; or
- d) including an independent person as part of the process or as an oversight.

7.20 If you determine that a non-pecuniary conflict of interest is less than significant and does not require further action, you must provide an explanation of why you consider that the conflict does not require further action in the circumstances.

Other business or employment

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

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

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

Personal dealings with Council

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

Club/organisation membership

- 7.24 If you are a member of a club or other organisation, for example, a sporting, religious or community group, you should consider whether your membership creates a conflict of interest in Council matters that may affect the club or organisation.
- 7.25 The more you are involved with the club or organisation, the greater the risk of a real or perceived conflict of interest.

Personal relationships

- 7.26 If you have a personal relationship with someone who is doing business with Council, you should consider the depth of your personal relationship.
- 7.27 It is more likely to create of conflict of interest if you have any involvement in that person's dealings with Council.

Sponsorships

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

Lobbying

- 7.30 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. However, particular considerations apply when you are dealing with statutory powers, such as planning.
- 7.31 You must consider evidence and arguments put by a wide range of organisations and individuals in order to perform your duties effectively.

Former Council officials

- 7.32 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.
- 7.33 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.
- 7.34 At the end of your involvement with Council, you must:
- return all Council property, documents or items
 - not make public or otherwise use any confidential information gained as a consequence of your involvement with Council.

Community representatives on Council committees

- 7.35 Council often invites interested members of the community to join Council committees. Usually the reason for their involvement is due to specific knowledge, experience and expertise in the business of the committee. Questions can arise as to whether this knowledge, experience and expertise gives rise to a pecuniary or non-pecuniary conflict of interests. This personal interest in the broad issues is generally well understood and would not need to be disclosed.

- 7.36 If the committee is not wholly advisory, that is, it exercises some functions of Council, then delegates' pecuniary interests would need to be dealt with in accordance with section 451 of the Act. If the committee is a wholly advisory committee, then in the case of pecuniary interests, delegates are exempt from the pecuniary interest provisions of the Act. (section 446)
- 7.37 If a non-pecuniary conflict of interests arises because a community member has a private interest in a specific item of committee business, community representatives will be expected to comply with the conflict of interest provisions in this Code.

8 PERSONAL BENEFIT

Token gifts and benefits

8.1 Generally speaking, token gifts and benefits include:

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

Gifts and benefits of value

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

Gifts and benefits

8.3 You must not:

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

8.4 If you are offered a bribe or other improper inducement, or a gift or benefit that is intended to influence you, you should refuse it, terminate contact with the person who offered it, and immediately report the circumstances to the General Manager. Where necessary, ICAC and the Police should be notified.

8.5 A gift or benefit is not to be accepted from an organisation or person involved in a grant, quotation or tender process (other than basic hospitality such as a morning tea given to a group during a presentation relating to the product/service), or during any approval, regulatory or Local Environment Plan or Development Control Plan preparation process.

- 8.6 All gifts and benefits (irrespective of value) must be declared to the Manager, Administrative Services. 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 Council, unless the nature of the gift or benefit makes this impractical.
- 8.7 You must avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to secure favourable treatment from you or from Council.
- 8.8 You must take all reasonable steps to ensure that your immediate family members do not receive gifts or benefits that give rise to the appearance of being an attempt to secure favourable treatment. Immediate family members ordinarily include parents, spouses, children and siblings.

Improper and undue influence

- 8.9 You must not use your position to influence other Council officials in the performance of their public or professional duties to obtain a private benefit for yourself or for somebody else.
- 8.10 You must not take advantage (or seek to take advantage) of your status or position with or of functions you perform for Council in order to obtain a private benefit for yourself or for any other person or body.

9 RELATIONSHIP BETWEEN COUNCIL OFFICIALS

Obligations of Councillors and administrators

9.1 Councillors or administrators must not:

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

Obligations of staff

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

9.3 Members of staff of Council must:

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

Obligations during meetings

9.4 You must show respect to the Chair, other Council officials and any members of the public present during Council and Committee meetings or other formal proceedings of Council.

Appropriate interactions between Councillors and other Council officials

- 9.5 Council expects you to be courteous to Councillors at all times.
- 9.6 Councillors and staff may often mix in the same social circles, or have associations through sporting, business or family interests. General social interaction and conversation in these situations is perfectly acceptable.
- 9.7 However, Councillors are restricted in who they can contact about Council business.
- 9.8 The General Manager determines the staff members whom Councillors can contact. The Authorised Staff List is maintained by the Manager, Administrative Services and is amended and circulated to Councillors from time to time.
- 9.9 In their dealings with you and the Council organisation, Councillors must respect:
- the functions, responsibilities and workload of individual staff members; and
 - and comply with Council policies and procedures governing these dealings.
- 9.10 Councillors must recognise that it is your role to serve the public and that you have a responsibility to give your professional views in the public interest.

Inappropriate interactions

- 9.11 You must not engage in any of the following inappropriate interactions:
- a) Councillors and administrators approaching staff and staff organisations to discuss individual staff matters and not broader industrial policy issues.
 - b) Council staff approaching Councillors and administrators to discuss individual staff matters and not broader industrial policy issues.
 - c) Council staff refusing to give information that is available to other Councillors to a particular Councillor.
 - d) Councillors and administrators who have lodged a development application with Council, discussing the matter with Council staff in staff-only areas of Council.
 - e) Councillors and administrators being overbearing or threatening to Council staff.
 - f) Councillors and administrators making personal attacks on Council staff in a public forum.
 - g) Councillors and administrators directing or pressuring Council staff in the performance of their work, or recommendations they should make.
 - h) Council staff providing ad hoc advice to Councillors and administrators without recording or documenting the interaction as they would if the advice was provided to a member of the community.
- 9.12 It is appropriate that staff and staff organisations have discussions with Councillors in relation to matters of industrial policy.

10 ACCESS TO INFORMATION AND COUNCIL RESOURCES

Councillor and administrator access to information

- 10.1 The General Manager and Public Officer (Manager, Administrative Services) are responsible for ensuring that members of the public, Councillors and administrators can gain access to the documents available under section 12 of the *Local Government Act 1993*.
- 10.2 Councillors are only to request information if it is publicly available or is necessary for the performance of the Councillor's civic duty. Requests must be made in accordance with the Councillors' Access to Information Policy.
- 10.3 The General Manager must provide Councillors and administrators with information sufficient to enable them to carry out their civic office functions.
- 10.4 Members of staff of Council must provide full and timely information to Councillors and administrators sufficient to enable them to carry out their civic office functions and in accordance with Council procedures.
- 10.5 Members of staff of Council who provide any information to a particular Councillor in the performance of their civic duties must also make it available to any other Councillor who requests it and in accordance with Council procedures.
- 10.6 Councillors and administrators who have a private (as distinct from civic) interest in a document of Council have the same rights of access as any member of the public.

Refusal of access to documents

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

Use of certain Council information

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

Use and security of confidential information

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

10.11 In addition to your general obligations relating to the use of Council information, you must:

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

10.12 The Ombudsman's *Good Conduct and Administrative Practice Guidelines for State and Local Government* (2nd Edition) May 2006 (page A14-15) provides guidance in relation to the use of confidential information to gain advantage as follows:

"Public officials are obliged to protect the integrity and maintain the security of official information for which they are responsible. In this regard they must only use official information in the legitimate exercise of their official functions and not for personal purposes.

The use of official information for personal advantage, the release of official information at the whim of particular public officials, or the selective leaking of official information for an improper purpose, undermines the integrity of government and can cause unnecessary harm to individuals. Such conduct is conduct which could be investigated pursuant to the Ombudsman Act and may constitute corrupt conduct or criminality (e.g. a breach of s.62–63, PPIP Act).

Public officials should not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for themselves or any other person or body from any information to which they had access in the exercise of their official functions or duties or by virtue of their office or position. This includes:

- circumstances where the advantage is prospective (i.e. likely or expected in the future even if remote or contingent on some other event occurring), or small in value;
- the communication of such information to any other person with a view to providing an advantage to that or any other person or body (unless such a disclosure is lawful), and
- the improper or unauthorised use or disclosure of such information after resignation or retirement.

It can be a criminal offence for public officials to use information acquired in connection with the exercise of their official functions to obtain financial or other personal benefit. Further, corrupt conduct is defined in the Independent Commission Against Corruption Act to include:

...any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person. (s. 8(1))”

Personal information

10.13 When dealing with personal information you must comply with:

- a) the *Privacy and Personal Information Protection Act 1998*
- b) the *Health Records and Information Privacy Act 2002*
- c) the Information Protection Principles and Health Privacy Principles
- d) Council’s Privacy Management Plan
- e) the Privacy Code of Practice for Local Government

Use of Council resources

10.14 You must use Council resources ethically, effectively, efficiently and carefully in the course of your official duties, and must not use them for private purposes unless this use is lawfully authorised and proper payment is made where appropriate.

10.15 Council resources include:

- staff time
- materials and supplies (including scrap or waste materials/supplies)
- facilities
- motor vehicles, fuel, spare parts and accessories
- general plant and equipment
- office equipment such as photocopiers and printers
- attendance at training, conferences or similar
- communication and information facilities such as phones, computer equipment, facsimile machines, modems, internet and email.

10.16 Private use may be made of telephones (provided the calls are local), fax machines, photocopiers, internet and email facilities provided the use is infrequent and minimal and official work is not disrupted.

10.17 Union delegates and Consultative Committee members may have reasonable access to Council resources for the purposes of carrying out their industrial responsibilities, including but not limited to:

- the representation of members with respect to disciplinary matters
- the representation of employees with respect to grievances and disputes
- functions associated with the role of the Consultative Committee.

- 10.18 You must be scrupulous in your use of Council property, including intellectual property, official services and facilities, and must not permit their misuse by any other person or body.
- 10.19 You must avoid any action or situation that could create the appearance that Council property, official services or public facilities are being improperly used for your benefit or the benefit of any other person or body.
- 10.20 You must not convert any property of Council to your own use unless properly authorised.
- 10.21 Any use of email or internet services must be in accordance with Council's Guidelines on the Use of Email and the Internet.
- 10.22 You must not use Council's computer resources to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature.

Councillor access to Council buildings

- 10.23 Councillors and administrators must not enter staff-only areas of Council buildings without the approval of the General Manager (or delegate) or as provided in the procedures governing the interaction of Councillors and Council staff.
- 10.24 Councillors and administrators must ensure that when they are within a staff area they are aware 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.

11 REPORTING BREACHES

- 11.1 Any person, whether or not a Council official, may make a complaint alleging a breach of this Code.

Protected disclosures

- 11.2 The *Protected Disclosures Act 1994* aims to encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration and serious and substantial waste in the public sector.
- 11.3 The purpose of that Act is to ensure that public officials who wish to make disclosures under the legislation receive protection from reprisals, and that matters raised in the disclosures are properly investigated.¹
- 11.4 If a complaint under this Code is or could be a protected disclosure, you must ensure that in dealing with the complaint, you comply with the confidentiality provisions of the Protected Disclosures Act set out in section 22:

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

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

Reporting breaches of the Code

- 11.6 You should report suspected breaches of this Code to the General Manager in writing.
- 11.7 Where you believe that the General Manager has breached the Code, you should report the matter to the Mayor in writing.
- 11.8 Where you believe that an administrator has breached this Code, you should report the matter to the Minister for Local Government in writing.

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

PART 3 - PROCEDURES

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

12 COMPLAINT HANDLING PROCEDURES & SANCTIONS

12.1 Complaints about the conduct of Councillors, members of staff of Council, members of Council committees and delegates of Council should be addressed in writing to the General Manager.

12.2 Complaints about the conduct of the General Manager should be addressed in writing to the Mayor.

Complaint handling procedures – staff, delegate, Council committee member or volunteer conduct (excluding the General Manager)

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

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

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

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

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

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

Complaint handling procedures – General Manager conduct

12.8 The Mayor is responsible for assessing complaints, made under clause 11.1, alleging breaches of the Code by the General Manager, in accordance with the assessment criteria provided at Section 13 of the Code, in order to determine whether to refer the matter to the Conduct Review Committee/Reviewer.

12.9 The Mayor must determine either to:

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

Conduct Review Committee/Reviewer

12.10 Council must resolve to appoint persons independent of Council to comprise the members of a Conduct Review Committee and/or to act as sole conduct reviewers.

12.11 The members of the Conduct Review Committee and/or the persons acting as sole conduct reviewers should be appropriately qualified persons of high standing in the community. These persons do not need to be residents of the Marrickville local government area.

12.12 The Conduct Review Committee, members of such committee and sole conduct reviewers may act in that role for more than one Council.

12.13 The Mayor, will undertake the following functions in relation to the Conduct Review Committee/reviewer:

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

12.14 Where a matter concerning the General Manager is to be considered by the Conduct Review Committee/reviewer, the Mayor acting in the capacity as advisor, will either convene a Conduct Review Committee and select its members from those appointed by Council or alternatively select a sole conduct reviewer from those appointed by Council.

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

- 12.16 The Conduct Review Committee/reviewer operating guidelines (Section 14) are the minimum requirements for the operation of Conduct Review Committees/reviewers. Council may supplement the guidelines, but any additional provisions should not be inconsistent with the guidelines.
- 12.17 The Conduct Review Committee/reviewer is responsible for making enquiries into complaints made under clause 11.1 alleging breaches of this Code by the General Manager and must determine either to:
- a) not make enquiries into the complaint and give the complainant the reason/s in writing as provided in clause 13.1 of this Code, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith, or
 - b) resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, making recommendations to the General Manager, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing, or
 - c) make enquiries into the complaint, or
 - d) engage another appropriately qualified person to make enquiries into the complaint, or
 - e) not make enquiries or discontinue making enquiries where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing. Despite any other provision of this Code, this will constitute finalisation of such matters and no further action is required.
- 12.18 Where the Conduct Review Committee/reviewer conducts enquiries or causes enquiries to be conducted, the Conduct Review Committee/reviewer must make findings on whether, in its view, the conduct referred to it comprises a breach of this Code.
- 12.19 Where the Conduct Review Committee/reviewer makes findings, the Conduct Review Committee/reviewer may recommend that Council take any actions provided for in this Code that it considers reasonable in the circumstances.
- 12.20 Where the Conduct Review Committee/reviewer makes findings, the Conduct Review Committee/reviewer will report its findings, and the reasons for those findings, in writing to the Council, the complainant and the person subject of the complaint.
- 12.21 The Conduct Review Committee/reviewer will report its findings and any recommendations to Council only when it has completed its deliberations.

Sanctions

- 12.22 Before a Council can impose a sanction it must make a determination that the General Manager has breached this Code.
- 12.23 Where the Council finds that the General Manager has breached this Code, it may decide by resolution to:
- a) require the General Manager to apologise to any person adversely affected by the breach

- b) counsel the General Manager
- c) make public findings of inappropriate conduct
- d) prosecute for any breach of law.

Reporting on complaints

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

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

13 COMPLAINT ASSESSMENT CRITERIA (complaints concerning the General Manager)

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

14 CONDUCT REVIEW COMMITTEE/REVIEWER OPERATING GUIDELINES²

14.1 Jurisdiction of the Conduct Review Committee/reviewer

The complaint handling function of the Conduct Review Committee/reviewer is limited to consideration of, making enquiries into, and reporting on complaints made under clause 11.1, about the General Manager.

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

Sole reviewers and members of the Conduct Review Committee are subject to the provisions of this Code.

14.2 Role of the Mayor

The Mayor will undertake the following functions in relation to the Conduct Review Committee/reviewer:

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

Where the Mayor is unable to act as advisor to the Conduct Review Committee/reviewer due to a conflict of interests in relation to a complaint, they are to nominate a Councillor to perform this role.

14.3 Composition of the Conduct Review Committee

Where Council has a Conduct Review Committee it will comprise three or more appropriately qualified persons of high standing in the community who are independent of Council, convened and selected as provided in clause 12.16.

In the circumstances where a member of the Conduct Review Committee cannot participate in a matter, the Mayor should select another person as provided in clause 12.16.

The chairperson is to be elected by the members of the Conduct Review Committee.

The Mayor will act in an advisory capacity to the Committee when requested.

14.4 Quorum of the Conduct Review Committee

² The operating guidelines have been adapted from the Ku-ring-gai Council Conduct Committee Guidelines – 25 October 2006

A quorum for a meeting of the Conduct Review Committee is the majority of the members of the Conduct Review Committee.

If a quorum is not present at a meeting of the Conduct Review Committee it must be adjourned to a time and date that is specified.

Business is not to be conducted at any meeting of the Conduct Review Committee unless a quorum is present.

Business may be conducted by video-conference or teleconference.

14.5 Voting of the Conduct Review Committee

Each member of the Conduct Review Committee shall be entitled to one vote in respect of any matter. In the event of equality of votes being cast, the chairperson shall have the casting vote.

If the vote on a matter is not unanimous, then this should be noted in any report to Council on its findings.

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

14.6 Procedures of the Conduct Review Committee/reviewer

The Mayor will be responsible for convening the initial meeting of the Conduct Review Committee when there is a complaint to be referred to it.

The Conduct Review Committee/reviewer will conduct business in the absence of the public.

The Conduct Review Committee/reviewer will keep proper records of deliberations.

The Conduct Review Committee shall determine the procedures governing the conduct of its meetings provided such procedures are consistent with these operating guidelines.

14.7 Procedural fairness

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

- a) provide the General Manager with a reasonable opportunity to respond to the substance of the allegation
- b) provide the General Manager with an opportunity to place before the Conduct Review Committee/reviewer or person undertaking the enquiry any information the person considers relevant to the enquiry
- c) provide the General Manager with an opportunity to address the Conduct Review Committee/reviewer in person
- d) hear all parties to a matter and consider submissions before deciding the substance of any complaint
- e) make reasonable enquiries before making any recommendations

- f) act fairly and without prejudice or bias
- g) ensure that no person decides a case in which they have a conflict of interests
- h) conduct the enquiries without undue delay.³

Where the General Manager declines or fails to take the opportunity provided to respond to the substance of the allegation against them, the Conduct Review Committee/reviewer should proceed to finalise the matter.

14.8 Complaint handling procedures

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

If the General Manager is the subject of a complaint that is referred to the Conduct Review Committee/reviewer, he or she will receive written information about the process being undertaken to deal with the matter.

The Conduct Review Committee/reviewer will only deal with matters that are referred to it by the Mayor.

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

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

14.9 Findings and recommendations of the Conduct Review Committee/reviewer

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

- a) require the General Manager to apologise to any person adversely affected by the breach
- b) counsel the General Manager
- c) make public findings of inappropriate conduct
- d) prosecute for any breach of the law
- e) revise any of Council's policies, procedures and/or this Code.

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

- a) the seriousness of the breach

³ NSW Ombudsman, Investigating complaints, A manual for investigators, June 2004.

- b) whether the breach can be easily remedied or rectified
- c) whether the General Manager has remedied or rectified their conduct
- d) whether the General Manager has expressed contrition
- e) whether the breach is technical or trivial only
- f) whether the breach represents repeated conduct
- g) the age, physical or mental health or special infirmity of the General Manager
- h) the degree of reckless intention or negligence of the General Manager
- i) the extent to which the breach has affected other parties or Council as a whole
- j) the harm or potential harm to the reputation of local government and of Council arising from the conduct
- k) whether the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny
- l) whether an educative approach would be more appropriate than a punitive approach
- m) the relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action
- n) what action or remedy would be in the public interest

14.10 Amendment of the operating guidelines

The Conduct Review Committee/reviewer guidelines may be added to and any additional requirements may be further amended or repealed by resolution of the Council.

15 USEFUL CASE STUDIES

Council officials may find the following case studies helpful in interpreting and applying this Code.

The case studies are taken from Department of Local Government guidelines.

Secondary employment

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. In addition, he has not disclosed that personal interest. Secondary employment, with or without permission, can lead to a conflict of interests.

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 the mismanagement of conflicts.

Development applications

From time to time Council staff 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.*

Selection/approval processes

Examples of appropriate action to resolve or avoid conflicts arising in selection/approval 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 in writing 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 in writing 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 in writing 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.*

Gifts, benefits and hospitality

A regular supplier offers 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. Even if this officer personally feels that s/he would not be influenced by the gift, s/he would be in breach of the code of conduct if the offer were accepted.

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 and breaches the code of conduct.

In this situation staff should, in the first instance, refuse any gift offered. If staff cannot reasonably refuse or return the gift, then they should identify whether or not the gift has more than a token value as defined within Section 8 of the code. If so, it must be disclosed promptly to the supervisor or the general manager. The recipient, supervisor, or general manager must then ensure that any gifts or benefits of more than token value that are received are recorded in a Gifts Register. Council may then determine how these gifts are dealt with and could, for example, donate specific items to charity.

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 they could be readily be interpreted as having more than a token value. The developer is able to manipulate the situation to allege the employee has accepted bribes.

The employee's acceptance of the gifts without disclosing them to the supervisor, or the general manager 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.

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.

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.

The actions of the councillor are inappropriate. Section 352 of the Local Government Act provides that councillors must not direct or influence or attempt to direct or influence staff in the performance of their duties. The fact that the councillor rings the staff member who is dealing with his friend's applications to discuss the progress on these applications is also inappropriate. Contact with staff on day to day matters must be in accordance with the policy and procedures that are established by council to govern these interactions.

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.

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.

It is important to take appropriate steps to secure confidential or sensitive information. 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.

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