



# City Performance Committee

Wednesday 9 July 2025  
at 6:30pm

**Venue:**

Committee Room, Botany Town Hall  
1423 Botany Road, Botany  
(Corner of Edward Street and Botany Road, Botany)

**Contact Us:**

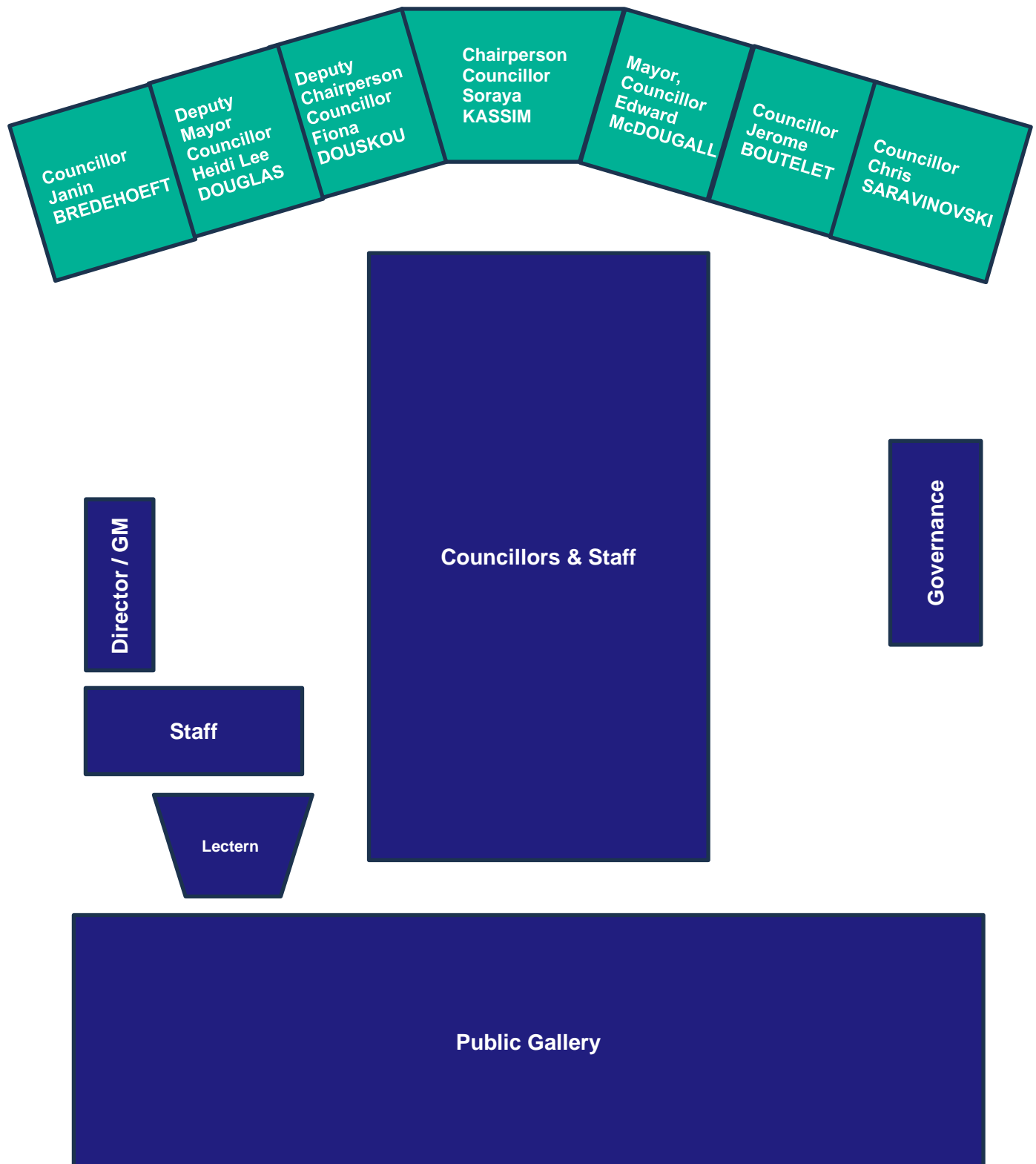
1300 581 299 or 9562 1666

[council@bayside.nsw.gov.au](mailto:council@bayside.nsw.gov.au)

PO Box 21, Rockdale NSW 2216

ABN: 80 690 785 443

## City Performance Committee Seating Plan



# Statement of Ethical Obligations

## Obligations

### Oath [Affirmation] of Office by Councillors

#### Oath

I swear that I will undertake the duties of the office of councillor in the best interests of the people of Bayside Local Government Area and the Bayside Council and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the *Local Government Act 1993* or any other Act to the best of my ability and judgment.

#### Affirmation

I solemnly and sincerely declare and affirm that I will undertake the duties of the office of councillor in the best interests of the people of Bayside Local Government Area and the Bayside Council and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the *Local Government Act 1993* or any other Act to the best of my ability and judgment.

## Code of Conduct conflict of interests

### Pecuniary interests

A Councillor who has a **pecuniary interest** in any matter with which the council is concerned, and who is present at a meeting of the council at which the matter is being considered, must disclose the nature of the interest to the meeting.

The Councillor must not be present at, or in sight of, the meeting:

- a) at any time during which the matter is being considered or discussed, or
- b) at any time during which the council is voting on any question in relation to the matter.

### Non-pecuniary conflicts of interests

A Councillor who has a **non-pecuniary conflict of interest** in a matter, must disclose the relevant private interest in relation to the matter fully and on each occasion on which the non-pecuniary conflict of interest arises in relation to the matter.

### Significant non-pecuniary interests

A Councillor who has a **significant** non-pecuniary conflict of interest in relation to a matter under consideration at a council meeting, must manage the conflict of interest as if they had a pecuniary interest in the matter.

### Non-significant non-pecuniary interests

A Councillor who determines that they have a non-pecuniary conflict of interest in a matter that is **not significant** and does not require further action, when disclosing the interest must also explain why conflict of interest is not significant and does not require further action in the circumstances.

## **MEETING NOTICE**

A meeting of the  
**City Performance Committee**  
will be held in the Committee Room, Botany Town Hall  
1423 Botany Road, Botany  
(Corner of Edward Street and Botany Road, Botany)  
on **Wednesday 9 July 2025 commences at 6:30pm**

## **AGENDA**

<b>1</b>	<b>ACKNOWLEDGEMENT OF COUNTRY.....</b>	<b>5</b>
<b>2</b>	<b>APOLOGIES, LEAVE OF ABSENCE &amp; ATTENDANCE VIA AUDIO-VISUAL LINK</b>	<b>5</b>
<b>3</b>	<b>DISCLOSURES OF INTEREST .....</b>	<b>5</b>
<b>4</b>	<b>MINUTES OF PREVIOUS MEETINGS .....</b>	<b>6</b>
	4.1 Minutes of the City Performance Committee Meeting - 11 June 2025.....	6
<b>5</b>	<b>ITEMS BY EXCEPTION .....</b>	<b>14</b>
<b>6</b>	<b>PUBLIC FORUM .....</b>	<b>14</b>
<b>7</b>	<b>REPORTS .....</b>	<b>15</b>
	CP25.031 Code of Conduct, Code of Conduct Procedures, Code of Conduct for Council Committee Members, Delegates of Council and Council Advisors .....	15
	CP25.032 Review of Organisational Structure .....	158

The meeting will be video recorded and live streamed to the community via Council's YouTube channel, in accordance with Council's Code of Meeting Practice.

Meredith Wallace  
**General Manager**



**1 ACKNOWLEDGEMENT OF COUNTRY**

Bayside Council acknowledges the Bidjigal Clan, the traditional owners of the land on which we meet and work and acknowledges the Gadigal people of the Eora Nation. Bayside Council pays respects to Elders past and present.

**2 APOLOGIES, LEAVE OF ABSENCE & ATTENDANCE VIA AUDIO-VISUAL LINK**

**3 DISCLOSURES OF INTEREST**

In accordance with Council's Code of Meeting Practice, Councillors are reminded of their Oath or Affirmation of Office made under Section 233A of the Local Government Act and their obligations under the Council's Code of Conduct to disclose and appropriately manage conflicts of interest.

## **4 MINUTES OF PREVIOUS MEETINGS**

### **City Performance Committee**

**9/07/2025**

Item No	4.1
Subject	<b>Minutes of the City Performance Committee Meeting - 11 June 2025</b>
Report by	Richard Sheridan, Director City Performance
File	SF24/8151

---

### **Officer Recommendation**

That the Minutes of the City Performance Committee meeting held on 11 June 2025 be noted

---

### **Present**

Councillor Edward McDougall, Mayor  
Councillor Soraya Kassim, Chairperson  
Councillor Fiona Douskou, Deputy Chairperson (via Audio-Visual Link)  
Councillor Heidi Lee Douglas  
Councillor Chris Saravinovski  
Councillor Janin Bredehoeft

### **Also present**

Councillor Christina Curry  
Councillor Liz Barlow (via Audio-Visual Link)  
Meredith Wallace, General Manager  
Richard Sheridan, Director City Performance  
Louise Farrell, Manager City Infrastructure (Acting)  
Lorraine Olmedo, Manager Communications & Engagement  
Helen Tola, Manager Governance & Risk (via Audio-Visual Link)  
Mariam Fares, Manager City Projects (Acting)  
Luke Phillips, Manager Finance  
Wendy Klopper, Manager Business Transformation  
Neville Naicker, Coordinator Asset Planning  
Joanne Butler, Corporate Planner  
Anne Suann, Governance Officer  
Linda Hackett, Governance Officer  
Nabin Bhattarai, IT Service Management Officer

---

The Chairperson opened the meeting in the Committee Room, Botany Town Hall at 7:55pm.

## **1 Acknowledgement of Country**

The Chairperson affirmed that Bayside Council acknowledges the Bidjigal Clan, the traditional owners of the land on which we meet and work and acknowledges the Gadigal people of the Eora Nation. Bayside Council pays respects to Elders past and present.

## **2 Apologies, Leave of Absence & Attendance Via Audio-Visual Link**

### **Apologies**

Moved by Councillor McDougall and Bredehoeft

That the apology from Council Jerome Boutelet be received and leave of absence granted.

### **Leave of Absence**

There were no applications for Leave of Absence received.

### **Attendance Via Audio-Visual Link**

Moved by Councillors McDougall and Bredehoeft

That Councillor Douskou's attendance at tonight's meeting via audio-visual link be granted.

## **3 Disclosures of Interest**

There were no disclosures of interest.

## **4 Minutes of Previous Meetings**

### **4.1 Minutes of the City Performance Committee Meeting - 14 May 2025**

#### **Committee Recommendation**

Moved by Councillors McDougall and Bredehoeft

That the Minutes of the City Performance Committee meeting held on 14 May 2025 be noted.

### **4.2 Business Arising**

The Committee notes that the Minutes of the City Performance Committee of Wednesday 14 May 2025 were received and the recommendations therein were adopted by the Council at its meeting of Wednesday 28 May 2025.

## **5 Items by Exception**

There were no Items by Exception

## **6 Public Forum**

There were no speakers for Public Forum.

## **7 Reports**

### **CP25.022 Tender Report - Botany Aquatic Centre Early Works**

Note: No presentation or verbal update for this report

#### **Committee Recommendation**

Moved by Councillors McDougall and Douglas

- 1 That the attachment/s to this report be withheld from the press and public as they are confidential for the following reason:

With reference to Section 10(A) (2) (c) of the Local Government Act 1993, the attachment relates to information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business. It is considered that if the matter were discussed in an open meeting it would, on balance, be contrary to the public interest due to the issue it deals with.

- 2 That the report be received and noted.
- 3 That in accordance with Regulation 178 (1) (a) of the Local Government (General) Regulation 2021, Council accepts the RFQ Submission from Ford Civil Contracting Pty Ltd for the Botany Aquatic Centre Early Works at a lump sum price of \$3,573,983.50 (exclusive of GST), subject to agreement by both parties to contract conditions.

### **CP25.023 Draft Delivery Program 2025-2029 - Post Public Exhibition**

Note: A presentation was given by Joanne Butler, Corporate Planner.

#### **Committee Recommendation**

Moved by Councillors Douglas and McDougall

That the Committee:

- 1 Recommends that Council, at its Ordinary Meeting of 25 June 2025, adopts the Draft Delivery Program 2025-2029 (Attachment 1).
- 2 Authorises the General Manager to approve any minor editorial and design changes prior to publication.

**CP25.024 Draft Asset Management Policy, Draft Asset Management Strategy 2025-2035 & Draft Asset Management Plans for Property, Transport, Stormwater and Open Space - Post Public Exhibition**

Note: A presentation was given by Joanne Butler, Corporate Planner.

**Committee Recommendation**

Moved by Councillors McDougall and Bredehoeft

That the Committee:

- 1 Recommends that Council, at its Ordinary Meeting of 25 June 2025, adopts the:
  - 1.1 Draft Asset Management Strategy 2025-2035 - Post Public Exhibition (Attachment 1);
  - 1.2 Draft Asset Management Plan - Transport 2025-2035 - Post Public Exhibition (Attachment 2);
  - 1.3 Draft Asset Management Plan - Stormwater 2025-2035 - Post Public Exhibition (Attachment 3);
  - 1.4 Draft Asset Management Plan - Property 2025-2035 - Post Public Exhibition (Attachment 4); and
  - 1.5 Draft Asset Management Plan - Open Space 2025-2035 - Post Public Exhibition (Attachment 5).
- 2 Authorises the General Manager to approve any minor editorial changes prior to publication.

**CP25.025 Draft Workforce Management Strategy 2025-2029 - Post Public Exhibition**

Note: A presentation was given by Joanne Butler, Corporate Planner.

**Committee Recommendation**

Moved by Councillors McDougall and Bredehoeft

That the Committee:

- 1 Recommends that Council, at its Ordinary Meeting of 25 June 2025, endorses the Draft Workforce Management Strategy 2025-2029 - Post Public Exhibition (Attachment 1).
- 2 Authorises the General Manager to approve any minor editorial and design changes prior to publication.

**CP25.026 Draft Long-Term Financial Plan 2025-2035 - Post Public Exhibition**

Note: A presentation was given by Joanne Butler, Corporate Planner.

**Committee Recommendation**

Moved by Councillors McDougall and Bredehoeft

That the Committee:

- 1 Recommends that Council, at its Ordinary Council Meeting on 25 June 2025, adopts the Draft Long-Term Financial Plan 2025-2035 - Post Public Exhibition.
- 2 Authorises the General Manager to approve any minor editorial and design changes prior to publication.

**CP25.027 Draft Operational Plan & Budget 2025-26 and Draft Fees & Charges 2025-26 - Post Public Exhibition**

Note: A presentation was given by Joanne Butler, Corporate Planner and Luke Phillips, Manager Finance.

**Committee Recommendation**

Moved by Councillors McDougall and Douglas

That the Committee:

- 1 Receives and notes the Community Submissions & Council Responses - Draft Operational Plan 2025-26 (Attachment 3).
- 2 Receives and notes the Internal Submissions - Draft Operational Plan 2025-26 (Attachment 4).
- 3 Receives and notes the Internal Submissions - 2025-26 Draft Fees & Charges (Attachment 5).
- 4 Recommends that Council, at its Ordinary Council Meeting of 25 June 2025, adopts the Draft Operational Plan & Budget 2025-26 - Post Public Exhibition

(Attachment 1) and the Draft Fees & Charges 2025-26 - Post Public Exhibition (Attachment 2) which includes the proposed changes.

- 5 That Council makes the rates and charges for the period 1 July 2025 to 30 June 2026. (Refer to Attachment 1 on pages 59 to 60 for rates and pages 66 to 70 for charges).
- 6 That Council authorises the General Manager to levy rates and charges notices pursuant to the *Local Government Act 1993* and the Regulations made thereunder.
- 7 Authorises the General Manager to approve any minor editorial and design changes prior to publication.

#### **CP25.028 Mayor and Councillor Fees 2025-26**

Note: A presentation was given by Helen Tola, Manager Governance & Risk.

#### **Committee Recommendation**

Moved by Councillors Douglas and Bredehoeft

That the Committee recommend to Council:

- 1 That the annual fee for Councillors for 2025-26 be set at the maximum for a Metropolitan Large council as determined by the NSW Local Government Remuneration Tribunal (i.e. Option 1).
- 2 That the additional annual fee for the Mayor for 2025-26 be set at the maximum for a Metropolitan Large council as determined by the NSW Local Government Remuneration Tribunal (i.e. Option 1).
- 3 That Council considers a Deputy Mayoral payment, in addition to the fee as a Councillor, an amount equal to 20% of the Mayoral Annual Fee for times where the Deputy Mayor acts in the role of the Mayor subject to the amount of the fee so paid to the Deputy Mayor being deducted from the Mayor's Annual Fee.

#### **CP25.029 Delegations to the General Manager**

Note: A presentation was given by Helen Tola, Manager Governance & Risk.

#### **Committee Recommendation**

Moved by Councillors McDougall and Douglas

- 1 That the General Manager be delegated all of the functions of the Council other than those specified in Section 377(1) of the Local Government Act 1993.

- 2 That Council, delegate to the General Manager, or to the person acting in the position of General Manager, all the powers and functions of the Council that it may under any Act of Parliament lawfully delegate, other than those specified below:
  - (i) those functions designated in Section 377(1) of the Local Government Act 1993 as functions which may not be delegated.
  - (ii) any function designated in any other Act of Parliament as a function which may not be delegated.
  - (iii) the writing off of debts over the amount of \$10,000 in accordance with clause 213(2) of the Local Government (General) Regulation 2005, in that the amount above which debts to the Council may be written off only by resolution of the Council is set at \$10,000.
  - (iv) the writing off of an individual rate or charge over the amount of \$5,000 in accordance with clause 131(1) of the Local Government (General) Regulation 2005, in that the amount above which any individual rate or charge may be written off only by resolution of the council is set at \$5,000.
  - (v) any adopted policy, decisions or directions of the Council.
- 3 That the General Manager be delegated the function relating to the granting of financial assistance subject to the limitations specified in section 377(1A) of the Local Government Act.
- 4 That under Section 377 (2) Council sub-delegate to the general manager any function delegated to the council by the Departmental Chief Executive except as provided by the instrument of delegation to the council.
- 5 That in accordance with section 381 of the Local Government Act 1993, the Council delegates to the General Manager of the Council, or to the person acting in the position of General Manager, the plan making functions under Section 3.36 of the Environmental Planning & Assessment Act 1979.

#### **CP25.030 Draft Code of Meeting Practice - Public Exhibition**

Note: A presentation was given by Helen Tola, Manager Governance & Risk.

#### **Committee Recommendation**

Moved by Councillors McDougall and Bredehoeft

That the Committee:

- 1 Recommends that Council, at its Ordinary Council Meeting of 25 June 2025, endorses the Draft Code of Meeting Practice (Attachment 1) for the purpose of public exhibition for a period of 28 days (open for public consultation/feedback for 42 days), subject to the following:



Public Forum

- i) That Council notes that the Model Code of Meeting Practice for NSW Councils describes Council and Committee Meetings as decision making meetings and advises that, where possible, public forums should not be held as part of those meetings.
- ii) That Bayside Council's Public Forums be held immediately prior to each Committee Meeting and Ordinary Council Meeting to hear submissions from members of the public on items of business to be considered at the meeting.
- iii) A Committee Chair or Council Meeting Chair may permit a member of the public to address a Committee or Ordinary Council Meeting as part of that meeting if required, and the community member has not previously spoken at the public forum on the agenda item.

Notices of Motion

- iv) That the maximum number of Notices of Motion per Ordinary Council Meeting be capped at 15 in total. Councillors are encouraged to submit no more than one NOM per meeting but may submit more. Those NOMS numbered 2 or greater per councillor will only be included on the business paper if less than 15 have been submitted by councillors collectively.
  - v) That point iv) be reviewed within 12 months.
- 2 Authorises the General Manager to approve any minor editorial changes prior to public exhibition.
  - 3 Notes that a further report will be presented to the City Performance Committee in following the public exhibition period, detailing submissions received, and amendments made, and recommending adoption of the Code.
  - 4 Requests that Councillors continue to receive ongoing training and induction on what Council is doing, the use of Notices of Motion (NOMs) and Questions with Notice (QWNs).

The next meeting will be held in the Committee Room, Botany Town Hall on Wednesday, 9 July 2025.

The Chairperson closed the meeting at 9:22pm.

**Attachments**

Nil

**5 ITEMS BY EXCEPTION**

These are items that have been identified to be confirmed in bulk in accordance with the Officer Recommendation and without debate. These items will not include items identified in the Public Forum, items in which councillors have declared a Significant Conflict of Interest and a Pecuniary Interest, items requiring a Division and any other item that a Councillor has identified as one they intend to speak on or vote against the recommendation

**6 PUBLIC FORUM**

Members of the public, who have applied to speak at the meeting, will be invited to address the meeting.

Any item the subject of the Public Forum will be brought forward and considered after the conclusion of the speakers for that item.

## 7 REPORTS

### City Performance Committee

9/07/2025

Item No	CP25.031
Subject	<b>Code of Conduct, Code of Conduct Procedures, Code of Conduct for Council Committee Members, Delegates of Council and Council Advisors</b>
Report by	Richard Sheridan, Director City Performance
File	F11/498.002

---

### Summary

Under the Local Government Act 1993, Councils are required to review and adopt their Code of Conduct which incorporates the provisions of the Office of Local Government (OLG) 'Model Code of Conduct for Local Councils in NSW' within 12 months of each new Council.

The purpose of this report is to meet this requirement and seek adoption of the Code and supporting documents.

The current Code of Conduct and Code of Conduct for Council committee members, delegates of Council and Council advisers are based on the Model Code of Conduct for Local Councils in NSW 2020 which is the current Model Code. The Code of Conduct Procedures is also based on the Model Code of Conduct Procedures 2020.

A review has been completed and no changes are proposed, noting that the suite of documents provide a robust framework in relation to conduct obligations for Council officials.

Council has a well-structured training and awareness regime including new employee induction sessions, annual refresher training including online, and regular notifications and alerts. Relevant training was also provided to the Mayor and Councillors as part of their induction and Councillor professional development program.

Attachment 1 presents the Code of Conduct.

Attachment 2 presents the Code of Conduct Procedures

Attachment 3 presents the Code of Conduct for Council Committee Members, Delegates of Council and Council Advisors.

Subject to the Committees consideration it is recommended that the Code of Conduct, Code of Conduct Procedures and Code of Conduct for Council Committee Members, Delegates of Council and Council Advisors and Gifts & Benefits Policy be reconfirmed and adopted.

---

## Officer Recommendation

That the Committee:

- 1 Recommends that Bayside Code of Conduct and Code of Conduct for Council Committee Members, Delegates of Council and Council advisors (Attachment 1 and Attachment 2) to this report be reconfirmed and adopted.
  - 2 That the Bayside's Code of Conduct Procedures (Attachment 3) to this report be reconfirmed and adopted.
  - 3 That the Bayside Gifts & Benefits Policy (Attachment 4) to this report be reconfirmed and adopted.
- 

## Background

Councils are required within 12 months of each ordinary election to review and adopt a Code of Conduct and Procedures that meets at least the minimum requirement of the Model Code of Conduct and Procedures prescribed by regulation.

Bayside Council's current Code of Conduct incorporates all of the mandatory provisions and was last adopted by Council on 28 September 2022 including:

- Code of Conduct
- Code of Conduct for Council Committee Members, Delegates of Council and Council Advisors
- Code of Conduct Procedures.

The above mentioned documents are based on the Office of Local Government (OLG) model Code of Conduct, as prescribed under the Local Government (General) Regulation 2021, noting that Councils must adopt the Code and Procedures based on these models.

The Model Code contains provisions that are designed to improve ethical standards, more effectively deter non-compliance and lead to improved transparency and accountability.

A review of the above mentioned document has been completed and no changes are proposed.

It is noted that Council Codes of Conduct and procedures include the more stringent requirements and provisions including those relating to gifts and benefits with its "A Thank You is Enough" approach to gifts benefits. Supporting this approach Council has an adopted a Gifts & Benefits Policy which has also been reviewed and no changes are proposed.

It is therefore recommended that Council adopts the Codes of Conduct including the Codes for Committee Members and Delegates of Council and Code of Conduct Procedures and Gifts & Benefits Policy noting that there is no requirement to publicly exhibit the Code, as this is purely an administrative process.

---

## Next Steps

Subject to consideration, it is proposed that the Code of Conduct, Code of Conduct for Council Committee Members, Delegates of Council and Council Advisors and the Code of Conduct Procedures and Gifts & Benefits Policy be updated with the Council adoption date and republished on Council's website.

## Financial Implications

Not applicable	<input checked="" type="checkbox"/>
Included in existing approved budget	<input type="checkbox"/>
Additional funds required	<input type="checkbox"/>

---

## Community Strategic Plan

Theme One – In 2035 Bayside will be a vibrant and liveable place	<input type="checkbox"/>
Theme Two – In 2035 our Bayside community will be connected and feel that they belong	<input type="checkbox"/>
Theme Three – In 2035 Bayside will be green, resilient and sustainable	<input type="checkbox"/>
Theme Four – In 2035 Bayside will be financially sustainable and support a dynamic local economy	<input checked="" type="checkbox"/>

---

## Risk Management – Risk Level Rating

No risk	<input type="checkbox"/>
Low risk	<input checked="" type="checkbox"/>
Medium risk	<input type="checkbox"/>
High risk	<input type="checkbox"/>
Very High risk	<input type="checkbox"/>
Extreme risk	<input type="checkbox"/>

---

## Community Engagement

Internal consultation has occurred between the General Manager, Director City Performance, Manager Mayoral & Councillor Support and Manager Governance & Risk in the preparation of this report.

## Attachments

- 1 [Code of Conduct](#)
- 2 [Code of Conduct Procedures](#)
- 3 [Code of Conduct for Committee Members, Delegates of Council and Council Advisors](#)
- 4 [Gifts & Benefits Policy](#)



# Code of Conduct

**TBC**



© Bayside Council

Code of Conduct

File: F11/498 Document: 16/110628[v6]

Policy Register: F16/951 Policy No.: PP16/2

Class of document: Council Policy

Enquiries: Manager Governance & Risk



Telephone Interpreter Services - 131 450 Τηλεφωνικές Υπηρεσίες Διερμηνέων خدمة الترجمة الهاتفية 電話傳譯服務處 Служба за преведување по телефон

Code of Conduct

2

## Contents

<b>1</b>	<b>Introduction .....</b>	<b>4</b>
<b>2</b>	<b>Definitions .....</b>	<b>5</b>
<b>3</b>	<b>General conduct obligations .....</b>	<b>7</b>
<b>4</b>	<b>Pecuniary interests .....</b>	<b>11</b>
<b>5</b>	<b>Non-pecuniary conflicts of interest .....</b>	<b>18</b>
<b>6</b>	<b>Personal benefit .....</b>	<b>23</b>
<b>7</b>	<b>Relationships between Council officials .....</b>	<b>26</b>
<b>8</b>	<b>Access to information and Council resources .....</b>	<b>28</b>
<b>9</b>	<b>Maintaining the integrity of this code .....</b>	<b>32</b>
<b>10</b>	<b>Document control.....</b>	<b>34</b>
	<b>Schedule 1: Disclosures of interests and other matters in written returns submitted under Clause 4.21.....</b>	<b>35</b>
	<b>Schedule 2: Form of Written Return of Interests Submitted Under Clause 4.21.....</b>	<b>42</b>
	<b>Schedule 3: Form of Special Disclosure of Pecuniary Interest Submitted Under Clause 4.37 .....</b>	<b>46</b>



## 1 Introduction

### Background

Bayside's Code of Conduct is based on the Model Code of Conduct for Local Councils in NSW ('the Model Code of Conduct') made under section 440 of the Local Government Act 1993 ('LGA') and the Local Government (General) Regulation 2021 ('the Regulation').

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

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

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

Bayside's Code of Conduct includes additional provisions in the areas of:

- extending its application to volunteers and members of all committees and working parties
- gifts and benefits
- political comment
- social media.

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

Council officials, volunteers and members of wholly advisory committees, 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 the Code and to regularly review their personal circumstances and conduct with this in mind.

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

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

## 2 Definitions

In this code the following terms have the following meanings:

**LGA**

The Local Government Act 1993

**Administrator**

An administrator of a council appointed under the LGA other than an administrator appointed under section 66

**Committee**

See the definition of 'council committee'

**Complaint**

A code of conduct complaint made for the purposes of clauses 4.1 and 4.2 of the Procedures

**Council**

Includes county councils and joint organisations

**Council Committee**

A committee established by a council comprising of councillors, staff or other persons that the council has delegated functions to

**Council Committee Member**

A person other than a councillor or member of staff of a council who is a member of a council committee other than a wholly advisory committee

**Council Official**

Includes councillors, council staff, volunteers of council, administrators, council committee and working party members, delegates of council and, for the purposes of clause 4.16, council advisers

**Councillor**

Any person elected or appointed to civic office, including the mayor and includes members and chairpersons of county councils and voting representatives of the boards of joint organisations and chairpersons of joint organisations

**Conduct**

Includes acts and omissions

**Delegate of Council**

A person (other than a councillor or member of staff of a council) or body, and the individual members of that body, to whom a function of the council is delegated

**Designated person**

A person referred to in clause 4.8

**Election campaign**

Includes council, state and federal election campaigns

***Environmental Planning Instrument***

Has the same meaning as it has in the *Environmental Planning and Assessment Act 1979*

***General Manager***

Includes the executive officer of a joint organisation

***Joint organisation***

A joint organisation established under section 400O of the LGA

***Local Planning Panel***

A local planning panel constituted under the *Environmental Planning and Assessment Act 1979*

***Mayor***

Includes the chairperson of a county council or a joint organisation

***Members of staff of a council***

Includes members of staff of county councils and joint organisations

***The Office***

Office of Local Government

***Personal information***

Information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion

***The Procedures***

The Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW prescribed under the Regulation

***The Regulation***

The Local Government (General) Regulation 2021

***Voting representative***

A voting representative of the board of a joint organisation

***Wholly Advisory Committee***

A council committee that the council has not delegated any functions to

### 3 General conduct obligations

#### General conduct

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

#### Fairness and equity

- 3.3 You must consider issues consistently, promptly and fairly. You must deal with matters in accordance with established procedures, in a non-discriminatory manner.
- 3.4 You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case. You must not take irrelevant matters or circumstances into consideration when making decisions.
- 3.5 An act or omission in good faith, whether or not it involves error, will not constitute a breach of clauses 3.3 or 3.4.

#### Harassment and discrimination

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

## **Bullying**

- 3.8 You must not engage in bullying behaviour towards others.
- 3.9 For the purposes of this code, 'bullying behaviour' is any behaviour in which:
- a a person or a group of people repeatedly behaves unreasonably towards another person or a group of persons and
  - b the behaviour creates a risk to health and safety.
- 3.10 Bullying behaviour may involve, but is not limited to, any of the following types of behaviour:
- a aggressive, threatening or intimidating conduct
  - b belittling or humiliating comments
  - c spreading malicious rumours
  - d teasing, practical jokes or 'initiation ceremonies'
  - e exclusion from work-related events
  - f unreasonable work expectations, including too much or too little work, or work below or beyond a worker's skill level
  - g displaying offensive material
  - h pressure to behave in an inappropriate manner.
- 3.11 Reasonable management action carried out in a reasonable manner does not constitute bullying behaviour for the purposes of this code. Examples of reasonable management action may include, but are not limited to:
- a performance management processes
  - b disciplinary action for misconduct
  - c informing a worker about unsatisfactory work performance or inappropriate work behaviour
  - d directing a worker to perform duties in keeping with their job
  - e maintaining reasonable workplace goals and standards
  - f legitimately exercising a regulatory function
  - g legitimately implementing a council policy or administrative processes.

## **Work health and safety**

- 3.12 All council officials, including councillors, owe statutory duties under the *Work Health and Safety Act 2011* (WH&S Act). You must comply with your duties under the WH&S Act and your responsibilities under any policies or procedures adopted by the council to ensure workplace health and safety. Specifically, you must:
- a take reasonable care for your own health and safety
  - b take reasonable care that your acts or omissions do not adversely affect the health and safety of other persons
  - c comply, so far as you are reasonably able, with any reasonable instruction that is given to ensure compliance with the WH&S Act and any policies or procedures adopted by the council to ensure workplace health and safety

- d cooperate with any reasonable policy or procedure of the council relating to workplace health or safety that has been notified to council staff
- e report accidents, incidents, near misses, to the general manager or such other staff member nominated by the general manager, and take part in any incident investigations
- f so far as is reasonably practicable, consult, co-operate and coordinate with all others who have a duty under the WH&S Act in relation to the same matter.

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

- 3.13 You must ensure that land use planning, development assessment and other regulatory decisions are properly made, and that all parties are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the exercise of land use planning, development assessment and other regulatory functions.
- 3.14 In exercising land use planning, development assessment and other regulatory functions, you must ensure that no action, statement or communication between yourself and others conveys any suggestion of willingness to improperly provide concessions or preferential or unduly unfavourable treatment.

### **Binding caucus votes**

- 3.15 You must not participate in binding caucus votes in relation to matters to be considered at a council or committee meeting.
- 3.16 For the purposes of clause 3.15, a binding caucus vote is a process whereby a group of councillors are compelled by a threat of disciplinary or other adverse action to comply with a predetermined position on a matter before the council or committee, irrespective of the personal views of individual members of the group on the merits of the matter before the council or committee.
- 3.17 Clause 3.15 does not prohibit councillors from discussing a matter before the council or committee prior to considering the matter in question at a council or committee meeting, or from voluntarily holding a shared view with other councillors on the merits of a matter.
- 3.18 Clause 3.15 does not apply to a decision to elect the mayor or deputy mayor, or to nominate a person to be a member of a council committee or a representative of the council on an external body.

### **Obligations in relation to meetings**

- 3.19 You must comply with rulings by the chair at council and committee meetings or other proceedings of the council unless a motion dissenting from the ruling is passed.
- 3.20 You must not engage in bullying behaviour (as defined under this Part) towards the chair, other council officials or any members of the public present during council or committee meetings or other proceedings of the council (such as, but not limited to, workshops and briefing sessions).

- 3.21 You must not engage in conduct that disrupts council or committee meetings or other proceedings of the council (such as, but not limited to, workshops and briefing sessions), or that would otherwise be inconsistent with the orderly conduct of meetings.
- 3.22 If you are a councillor, you must not engage in any acts of disorder or other conduct that is intended to prevent the proper or effective functioning of the council, or of a committee of the council. Without limiting this clause, you must not:
- a leave a meeting of the council or a committee for the purposes of depriving the meeting of a quorum, or
  - b submit a rescission motion with respect to a decision for the purposes of voting against it to prevent another councillor from submitting a rescission motion with respect to the same decision, or
  - c deliberately seek to impede the consideration of business at a meeting.

### **Political comment**

- 3.23 Council staff must not make statements or comment (whether by electronic communications [such as email, social media], letter, orally or by any other means) on the appropriateness or otherwise, of Council policies, procedures, programs or projects. Council staff must remain neutral and act fairly and equitably in accordance with section 3.3 Fairness and Equity.

## 4 Pecuniary interests

Refer also to Council's *Conflict of Interest Procedure*

### What is a pecuniary interest?

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



### What interests do not have to be disclosed?

4.6 You do not have to disclose the following interests for the purposes of this Part:

- a your interest as an elector
- b your interest as a ratepayer or person liable to pay a charge
- c an interest you have in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to the public generally, or to a section of the public that includes persons who are not subject to this code
- d an interest you have in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to your relative by the council in the same manner and subject to the same conditions as apply to persons who are not subject to this code
- e an interest you have as a member of a club or other organisation or association, unless the interest is as the holder of an office in the club or organisation (whether remunerated or not)
- f if you are a council committee member, an interest you have as a person chosen to represent the community, or as a member of a non-profit organisation or other community or special interest group, if you have been appointed to represent the organisation or group on the council committee
- g an interest you have relating to a contract, proposed contract or other matter, if the interest arises only because of a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company
- h an interest you have arising from the proposed making by the council of an agreement between the council and a corporation, association or partnership, being a corporation, association or partnership that has more than 25 members, if the interest arises because your relative is a shareholder (but not a director) of the corporation, or is a member (but not a member of the committee) of the association, or is a partner of the partnership
- i an interest you have arising from the making by the council of a contract or agreement with your relative for, or in relation to, any of the following, but only if the proposed contract or agreement is similar in terms and conditions to such contracts and agreements as have been made, or as are proposed to be made, by the council in respect of similar matters with other residents of the area:
  - i. the performance by the council at the expense of your relative of any work or service in connection with roads or sanitation
  - ii. security for damage to footpaths or roads
  - iii. any other service to be rendered, or act to be done, by the council by or under any Act conferring functions on the council, or by or under any contract.
- j an interest relating to the payment of fees to councillors (including the mayor and deputy mayor)
- k an interest relating to the payment of expenses and the provision of facilities to councillors (including the mayor and deputy mayor) in accordance with a policy under section 252 of the LGA,
- l an interest relating to an election to the office of mayor arising from the fact that a fee for the following 12 months has been determined for the office of mayor
- m an interest of a person arising from the passing for payment of a regular

Code of Conduct

12

account for the wages or salary of an employee who is a relative of the person

- n an interest arising from being covered by, or a proposal to be covered by, indemnity insurance as a councillor or a council committee member
- o an interest arising from the appointment of a councillor to a body as a representative or delegate of the council, whether or not a fee or other recompense is payable to the representative or delegate.

4.7 For the purposes of clause 4.6, 'relative' has the same meaning as in clause 4.4, but includes your spouse or de facto partner.

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

4.8 Designated persons include:

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

4.9 A designated person:

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

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

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

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

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

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

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

### **What disclosures must be made by council advisers?**

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

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

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

### **What disclosures must be made by a councillor?**

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

### **Disclosure of interests in written returns**

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

disclosed in a return lodged under paragraphs (a) or (b).

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

### **Disclosure of pecuniary interests at meetings**

- 4.28 A councillor or a council committee member who has a pecuniary interest in any matter with which the council is concerned, and who is present at a meeting of the council or committee at which the matter is being considered, must disclose the nature of the interest to the meeting as soon as practicable.
- 4.29 The councillor or council committee member must not be present at, or in sight of, the meeting of the council or committee:
- a at any time during which the matter is being considered or discussed by the council or committee
  - b at any time during which the council or committee is voting on any question in relation to the matter.
- 4.30 In the case of a meeting of a board of a joint organisation, a voting representative is taken to be present at the meeting for the purposes of clauses 4.28 and 4.29 where they participate in the meeting by telephone or other electronic means.
- 4.31 A disclosure made at a meeting of a council or council committee must be recorded in the minutes of the meeting.
- 4.32 A general notice may be given to the general manager in writing by a councillor or a council committee member to the effect that the councillor or council committee member, or the councillor's or council committee member's spouse, de facto partner or relative, is:

- a a member of, or in the employment of, a specified company or other body, or
- b a partner of, or in the employment of, a specified person.

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

- 4.33 A councillor or a council committee member is not prevented from being present at and taking part in a meeting at which a matter is being considered, or from voting on the matter, merely because the councillor or council committee member has an interest in the matter of a kind referred to in clause 4.6.
- 4.34 A person does not breach clauses 4.28 or 4.29 if the person did not know, and could not reasonably be expected to have known, that the matter under consideration at the meeting was a matter in which they had a pecuniary interest.
- 4.35 Despite clause 4.29, a councillor who has a pecuniary interest in a matter may participate in a decision to delegate consideration of the matter in question to another body or person.
- 4.36 Clause 4.29 does not apply to a councillor who has a pecuniary interest in a matter that is being considered at a meeting if:
  - a the matter is a proposal relating to:
    - i. the making of a principal environmental planning instrument applying to the whole or a significant portion of the council's area, or
    - ii. the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant portion of the council's area, and
  - b the pecuniary interest arises only because of an interest of the councillor in the councillor's principal place of residence or an interest of another person (whose interests are relevant under clause 4.3) in that person's principal place of residence, and
  - c the councillor made a special disclosure under clause 4.37 in relation to the interest before the commencement of the meeting.
- 4.37 A special disclosure of a pecuniary interest made for the purposes of clause 4.36(c) must:
  - a be in the form set out in schedule 3 of this code and contain the information required by that form, and
  - b be laid on the table at a meeting of the council as soon as practicable after the disclosure is made, and the information contained in the special disclosure is to be recorded in the minutes of the meeting.
- 4.38 The Minister for Local Government may, conditionally or unconditionally, allow a councillor or a council committee member who has a pecuniary interest in a matter with which the council is concerned to be present at a meeting of the

council or committee, to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion:

- a that the number of councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business, or
  - b that it is in the interests of the electors for the area to do so.
- 4.39 A councillor or a council committee member with a pecuniary interest in a matter who is permitted to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter under clause 4.38, must still disclose the interest they have in the matter in accordance with clause 4.28.

## 5 Non-pecuniary conflicts of interest

Refer also to Council's *Conflicts of Interest Procedure*

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

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

### Managing non-pecuniary conflicts of interest

- 5.6 Where you have a non-pecuniary conflict of interest in a matter for the purposes of clause 5.2, you must disclose the relevant private interest you have in relation to the matter fully and in writing as soon as practicable after becoming aware of the non-pecuniary conflict of interest and on each occasion on which the non-pecuniary conflict of interest arises in relation to the matter. In the case of members of council staff other than the general manager, such a disclosure is to be made to the staff member's manager. In the case of the general manager, such a disclosure is to be made to the mayor.
- 5.7 If a disclosure is made at a council or committee meeting, both the disclosure and the nature of the interest must be recorded in the minutes on each occasion on which the non-pecuniary conflict of interest arises. This disclosure constitutes disclosure in writing for the purposes of clause 5.6.
- 5.8 How you manage a non-pecuniary conflict of interest will depend on whether or not it is significant.
- 5.9 As a general rule, a non-pecuniary conflict of interest will be significant where it does not involve a pecuniary interest for the purposes of clause 4.1, but it involves:
  - a a relationship between a council official and another person who is affected by a decision or a matter under consideration that is particularly

close, such as a current or former spouse or de facto partner, a relative for the purposes of clause 4.4 or another person from the council official's extended family that the council official has a close personal relationship with, or another person living in the same household

- b other relationships with persons who are affected by a decision or a matter under consideration that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship.
- c an affiliation between the council official and an organisation (such as a sporting body, club, religious, cultural or charitable organisation, corporation or association) that is affected by a decision or a matter under consideration that is particularly strong. The strength of a council official's affiliation with an organisation is to be determined by the extent to which they actively participate in the management, administration or other activities of the organisation.
- d membership, as the council's representative, of the board or management committee of an organisation that is affected by a decision or a matter under consideration, in circumstances where the interests of the council and the organisation are potentially in conflict in relation to the particular matter
- e a financial interest (other than an interest of a type referred to in clause 4.6) that is not a pecuniary interest for the purposes of clause 4.1
- f the conferral or loss of a personal benefit other than one conferred or lost as a member of the community or a broader class of people affected by a decision.

5.10 Significant non-pecuniary conflicts of interest must be managed in one of two ways:

- a by not participating in consideration of, or decision making in relation to, the matter in which you have the significant non-pecuniary conflict of interest and the matter being allocated to another person for consideration or determination, or
- b if the significant non-pecuniary conflict of interest arises in relation to a matter under consideration at a council or committee meeting, by managing the conflict of interest as if you had a pecuniary interest in the matter by complying with clauses 4.28 and 4.29.

5.11 If you determine that you have a non-pecuniary conflict of interest in a matter that is not significant and does not require further action, when disclosing the interest you must also explain in writing why you consider that the non-pecuniary conflict of interest is not significant and does not require further action in the circumstances.

5.12 If you are a member of staff of council other than the general manager, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with and at the direction of your manager. In the case of the general manager, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with and at the direction of the mayor.



- 5.13 Despite clause 5.10(b), a councillor who has a significant non-pecuniary conflict of interest in a matter, may participate in a decision to delegate consideration of the matter in question to another body or person.
- 5.14 Council committee members are not required to declare and manage a non-pecuniary conflict of interest in accordance with the requirements of this Part where it arises from an interest they have as a person chosen to represent the community, or as a member of a non-profit organisation or other community or special interest group, if they have been appointed to represent the organisation or group on the council committee.

### **Political donations**

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

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

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

- i. the making of a principal environmental planning instrument applying to the whole or a significant portion of the council's area, or
    - ii. the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant portion of the council's area, and
  - b the non-pecuniary conflict of interest arises only because of an interest that a person has in that person's principal place of residence, and
  - c the councillor discloses the interest they have in the matter that would otherwise have precluded their participation in consideration of the matter under this Part in accordance with clause 5.6.
- 5.21 The Minister for Local Government may, conditionally or unconditionally, allow a councillor or a council committee member who is precluded under this Part from participating in the consideration of a matter to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion:
- a that the number of councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business, or
  - b that it is in the interests of the electors for the area to do so.
- 5.22 Where the Minister exempts a councillor or committee member from complying with a requirement under this Part under clause 5.21, the councillor or committee member must still disclose any interests they have in the matter the exemption applies to, in accordance with clause 5.6.

### **Other business or employment**

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

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

### **Personal dealings with council**

- 5.28 You may have reason to deal with your council in your personal capacity (for example, as a ratepayer, recipient of a council service or applicant for a development consent granted by council). You must not expect or request preferential treatment in relation to any matter in which you have a private interest because of your position. You must avoid any action that could lead members of the public to believe that you are seeking preferential treatment.
- 5.29 You must undertake any personal dealings you have with the council in a manner that is consistent with the way other members of the community deal with the council. You must also ensure that you disclose and appropriately manage any conflict of interest you may have in any matter in accordance with the requirements of this code.

## 6 Personal benefit

Refer also to Council's *Gifts & Benefits Policy and associated Procedure*

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

### Gifts and benefits

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

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

- 6.5 Council's principle regarding gifts and benefit is that 'A Thank you is Enough'.

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 except in special circumstances as defined in Council's Gifts & Benefits Policy. Such special circumstances include:

situations that relate to protocol, cultural aspects, sister-city relationships, international delegations and the like; hospitality associated with events and functions hosted by community based (not-for-profit) organisations, attendance at which is consistent with the council official's role – in particular the statutory role of a councillor; insignificant gifts / benefits associated with hospitality, promotional materials and other situations described in this policy.

- e accept an offer of cash or a cash-like gift as defined by clause 6.13, regardless of the amount
  - f participate in competitions for prizes where eligibility is based on the council being in or entering into a customer–supplier relationship with the competition organiser
  - g personally benefit from reward points programs when purchasing on behalf of the council.
- 6.6 Where you receive a gift or benefit of any value other than one referred to in clause 6.2, you must disclose this promptly to the general manager or nominee in writing. The recipient, manager, or general manager must ensure that, at a minimum, the following details are recorded in the council's gift register:
- a the nature of the gift or benefit
  - b the estimated monetary value of the gift or benefit
  - c the name of the person who provided the gift or benefit, and
  - d the date on which the gift or benefit was received.
- 6.7 Where you receive a gift or benefit that cannot reasonably be refused or returned, the gift or benefit must be surrendered to the Manager Governance & Risk, who will determine its fate.

### **Gifts and benefits of token value**

- 6.8 The above 'no-gift' requirement extends to token gifts such as:
- a invitations to and attendance at local social, cultural or sporting events
  - b gifts of alcohol
  - c ties, scarves, coasters, tie pins, diaries, chocolates or flowers or the like
  - d prizes or awards.

### **Gifts and benefits of more than token value**

- 6.9 Substantial gifts or benefits must not be accepted. Apart from the abovementioned situations, there are no special circumstances in which a substantial gift can be accepted.
- 6.10 Substantial gifts and benefits include, but are not limited to, tickets to major sporting events (such as international matches or matches in national sporting codes), corporate hospitality at a corporate facility at major sporting events, free or discounted products or services for personal use provided on terms that are not available to the general public or a broad class of persons, the use of holiday homes, artworks, free or discounted travel.
- 6.11 Deleted.
- 6.12 Deleted.

**‘Cash-like gifts’**

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

**Improper and undue influence**

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

## 7 Relationships between Council officials

Refer also to Council's *Council Officials Relationships & Access Policy*

### Obligations of councillors and administrators

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

### Obligations of staff

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

- d give effect to the lawful decisions, policies and procedures of the council, whether or not the staff member agrees with or approves of them
- e ensure that any participation in political activities outside the service of the council does not interfere with the performance of their official duties.

### **Inappropriate interactions**

7.6 You must not engage in any of the following inappropriate interactions:

- a councillors and administrators approaching staff and staff organisations to discuss individual or operational staff matters (other than matters relating to broader workforce policy), grievances, workplace investigations and disciplinary matters
- b council staff approaching councillors and administrators to discuss individual or operational staff matters (other than matters relating to broader workforce policy), grievances, workplace investigations and disciplinary matters
- c subject to clause 8.6, council staff refusing to give information that is available to other councillors to a particular councillor
- d councillors and administrators who have lodged an application with the council, discussing the matter with council staff in staff-only areas of the council
- e councillors and administrators approaching members of local planning panels or discussing any application that is either before the panel or that will come before the panel at some future time, except during a panel meeting where the application forms part of the agenda and the councillor has a right to be heard by the panel at the meeting
- f councillors and administrators being overbearing or threatening to council staff
- g council staff being overbearing or threatening to councillors or administrators
- h councillors and administrators making personal attacks on council staff or engaging in conduct towards staff that would be contrary to the general conduct provisions in Part 3 of this code in public forums including social media
- i councillors and administrators directing or pressuring council staff in the performance of their work, or recommendations they should make
- j council staff providing ad hoc advice to councillors and administrators without recording or documenting the interaction as they would if the advice was provided to a member of the community
- k council staff meeting with applicants or objectors alone AND outside office hours to discuss planning applications or proposals
- l councillors attending on-site inspection meetings with lawyers and/or consultants engaged by the council associated with current or proposed legal proceedings unless permitted to do so by the council's general manager or, in the case of the mayor or administrator, unless they are exercising their functions under section 226 of the LGA.



## 8 Access to information and Council resources

### Refer also to Council's:

- [Council Officials Relationships & Access Policy](#)
- [Electronic Communications Policy](#)
- [Access to Information Policy](#)
- [Social Media Policy](#)

### Councillor and administrator access to information

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

### Councillors and administrators to properly examine and consider information

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

### Refusal of access to information

- 8.8 Where the general manager or public officer determine to refuse access to information requested by a councillor or administrator, they must act reasonably. In reaching this decision they must take into account whether or not the information requested is necessary for the councillor or administrator to

perform their official functions (see clause 8.2) and whether they have disclosed a conflict of interest in the matter the information relates to that would preclude their participation in consideration of the matter (see clause 8.6). The general manager or public officer must state the reasons for the decision if access is refused.

### **Use of certain council information**

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

### **Use and security of confidential information**

- 8.10 You must maintain the integrity and security of confidential information in your possession, or for which you are responsible.
- 8.11 In addition to your general obligations relating to the use of council information, you must:
- a only access confidential information that you have been authorised to access and only do so for the purposes of exercising your official functions
  - b protect confidential information
  - c only release confidential information if you have authority to do so
  - d only use confidential information for the purpose for which it is intended to be used
  - e not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person
  - f not use confidential information with the intention to cause harm or detriment to the council or any other person or body
  - g not disclose any confidential information discussed during a confidential session of a council or committee meeting or any other confidential forum (such as, but not limited to, workshops or briefing sessions).

### **Personal information**

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

### **Use of council resources**

- 8.13 You must use council resources ethically, effectively, efficiently and carefully in exercising your official functions, and must not use them for private purposes, except when supplied as part of a contract of employment (but not for private business purposes), unless this use is lawfully authorised and proper payment is made where appropriate.
- 8.14 Union delegates and consultative committee members may have reasonable access to council resources and information for the purposes of carrying out their industrial responsibilities, including but not limited to:
- a the representation of members with respect to disciplinary matters
  - b the representation of employees with respect to grievances and disputes
  - c functions associated with the role of the local consultative committee.
- 8.15 You must be scrupulous in your use of council property, including intellectual property, official services, facilities, technology and electronic devices and must not permit their misuse by any other person or body.
- 8.16 You must avoid any action or situation that could create the appearance that council property, official services or public facilities are being improperly used for your benefit or the benefit of any other person or body.
- 8.17 You must not use council resources (including council staff), property or facilities for the purpose of assisting your election campaign or the election campaigns of others unless the resources, property or facilities are otherwise available for use or hire by the public and any publicly advertised fee is paid for use of the resources, property or facility.
- 8.18 You must not use the council letterhead, council crests, council email or social media or other information that could give the appearance it is official council material:
- a for the purpose of assisting your election campaign or the election campaign of others, or
  - b for other non-official purposes.
- 8.19 You must not convert any property of the council to your own use unless properly authorised.

### **Electronic communications**

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

### **Social Media**

- 8.21 You must not use social media to post or share comments, photos, videos, electronic recordings or other information that:
- is offensive, humiliating, threatening, or intimidating to other Council officials or those that deal with the Council

- contains content about the Council that is misleading or deceptive
- divulges confidential Council information
- breaches the privacy of other Council officials or those that deal with Council
- contains allegations of suspected breaches of this code or information about the consideration of a matter under the Procedures, or
- could be perceived to be an official comment on behalf of the Council where you have not been authorised to make such comment.

### **Council record keeping**

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

### **Councillor access to council buildings**

- 8.26 Councillors and administrators are entitled to have access to the council chamber, committee room, mayor's office (subject to availability), councillors' rooms, and public areas of council's buildings during normal business hours and for meetings. Councillors and administrators needing access to these facilities at other times must obtain authority from the general manager.
- 8.27 Councillors and administrators must not enter staff-only areas of council buildings without the approval of the general manager (or their delegate) or as provided for in the procedures governing the interaction of councillors and council staff.
- 8.28 Councillors and administrators must ensure that when they are within a staff only area they refrain from conduct that could be perceived to improperly influence council staff decisions.

## 9 Maintaining the integrity of this code

### Complaints made for an improper purpose

- 9.1 You must not make or threaten to make a complaint or cause a complaint to be made alleging a breach of this code for an improper purpose.
- 9.2 For the purposes of clause 9.1, a complaint is made for an improper purpose where it is trivial, frivolous, vexatious or not made in good faith, or where it otherwise lacks merit and has been made substantially for one or more of the following purposes:
- a to bully, intimidate or harass another council official
  - b to damage another council official's reputation
  - c to obtain a political advantage
  - d to influence a council official in the exercise of their official functions or to prevent or disrupt the exercise of those functions
  - e to influence the council in the exercise of its functions or to prevent or disrupt the exercise of those functions
  - f to avoid disciplinary action under the Procedures
  - g to take reprisal action against a person for making a complaint alleging a breach of this code
  - h to take reprisal action against a person for exercising a function prescribed under the Procedures
  - i to prevent or disrupt the effective administration of this code under the Procedures.

### Detrimental action

- 9.3 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for a complaint they have made alleging a breach of this code.
- 9.4 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for any function they have exercised under the Procedures.
- 9.5 For the purposes of clauses 9.3 and 9.4, a detrimental action is an action causing, comprising or involving any of the following:
- a injury, damage or loss
  - b intimidation or harassment
  - c discrimination, disadvantage or adverse treatment in relation to employment
  - d dismissal from, or prejudice in, employment
  - e disciplinary proceedings.

### Compliance with requirements under the Procedures

- 9.6 You must not engage in conduct that is calculated to impede or disrupt the consideration of a matter under the Procedures.

- 9.7 You must comply with a reasonable and lawful request made by a person exercising a function under the Procedures. A failure to make a written or oral submission invited under the Procedures will not constitute a breach of this clause.
- 9.8 You must comply with a practice ruling made by the Office under the Procedures.
- 9.9 Where you are a councillor or the general manager, you must comply with any council resolution requiring you to take action as a result of a breach of this code.

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

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

#### **Complaints alleging a breach of this Part**

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

## 10 Document control

### Review

Council must, within 12 months after each ordinary election, review the code and make such adjustments as it considers appropriate and as are consistent with the LGA and Regulation.

The General Manager may approve minor editorial amendments that do not change the policy substance.

### Related documents

- Local Government Act 1993
- Local Government (General) Regulation 2021
- The Model Code of Conduct for Local Councils in NSW
- Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW
- Council's Code of Conduct Procedures
- Council's Conflict of Interest Procedures (for staff)
- Council's Gifts & Benefits Policy
- Council's Council Officials Relationship & Access Policy
- Council's Electronic Communications Policy
- Council's Access to Information Policy

### Version history

Version	Release Date	Author	Reason for Change
1.0	14/09/2016	Bruce Cooke	New document
2.0	08/08/2018	Coordinator Governance	Review of document
3.0	08/05/2019	Coordinator Governance	New Model Code
4.0	13/10/2021	Coordinator Governance	New Model Code
5.0	28/09/2022	Coordinator Governance	Review of document
6.0	TBC	Manager Governance & Risk	Review within 12 months of Local Government Elections undertaken, no changes recommended

## Schedule 1: Disclosures of interests and other matters in written returns submitted under Clause 4.21

### Part 1: Preliminary

#### Definitions

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

*address* means:

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

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

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

- a the allotment of shares in a company
- b the creation of a trust in respect of property
- c the grant or creation of a lease, mortgage, charge, easement, licence, power, partnership or interest in respect of property
- d the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of a debt, contract or chose in action, or of an interest in respect of property
- e the exercise by a person of a general power of appointment over property in favour of another person
- f a transaction entered into by a person who intends by the transaction to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of another person.

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

*interest* means:

- a in relation to property, an estate, interest, right or power, at law or in equity, in or over the property, or



- b in relation to a corporation, a relevant interest (within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth) in securities issued or made available by the corporation.

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

*occupation* includes trade, profession and vocation.

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

*property* includes money.

*return date* means:

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

*relative* includes any of the following:

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

*travel* includes accommodation incidental to a journey.

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

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

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

### **Real property**

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

### **Gifts**

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

### **Contributions to travel**

- 12 A person making a return under clause 4.21 of this code must disclose:

- a the name and address of each person who made any financial or other contribution to the expenses of any travel undertaken by the person in the period since 30 June of the previous financial year, and
  - b the dates on which the travel was undertaken, and
  - c the names of the states and territories, and of the overseas countries, in which the travel was undertaken.
- 13 A financial or other contribution to any travel need not be disclosed under this clause if it:
- a was made from public funds (including a contribution arising from travel on free passes issued under an Act or from travel in government or council vehicles), or
  - b was made by a relative of the traveller, or
  - c was made in the ordinary course of an occupation of the traveller that is not related to their functions as the holder of a position requiring the making of a return, or
  - d did not exceed \$250, unless it was among gifts totalling more than \$250 made by the same person during a 12-month period or less, or
  - e was a political donation disclosed, or required to be disclosed, under Part 3 of the *Electoral Funding Act 2018*, or
  - f was made by a political party of which the traveller was a member and the travel was undertaken for the purpose of political activity of the party in New South Wales, or to enable the traveller to represent the party within Australia, or
  - g subject to paragraph (d) it was received prior to the person becoming a councillor or designated person.
- 14 For the purposes of clause 13 of this schedule, the amount of a contribution (other than a financial contribution) is an amount equal to the value of the contribution.

#### **Interests and positions in corporations**

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

- 17 An interest in a corporation need not be disclosed if the interest is a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company.
- 18 An interest or a position in a corporation need not be disclosed if the person ceased to hold the interest or position prior to becoming a councillor or designated person.

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

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

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

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

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

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

**Dispositions of real property**

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

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

**Sources of income**

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

**Debts**

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

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

**Discretionary disclosures**

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

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

### **‘Disclosures by councillors and designated persons’ return**

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

### **Important information**

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

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

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

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

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

**Declaration of return**

The correctness and completeness of the information can be declared:

- 1 By signing a hard copy of the completed document with a black or blue pen. The completed document may be lodged with the General Manager or nominee by hand delivery or sent by post, or you may email a pdf copy of this document.
- 2 By inserting your electronic signature into the completed document. The completed document may be lodged with the general manager or nominee by emailing the document along with a statement in the covering email confirming that the attached written return/special disclosure contains your electronic signature that has been added to the completed document by you or on your instruction.



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

as at [return date]

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

[councillor's or designated person's signature]

[date]

**A. Real Property**

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

**B. Sources of income**

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

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

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

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

Sources of income I received from a trust since 30 June

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

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

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

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

**C. Gifts**

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

**D. Contributions to travel**

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

**E. Interests and positions in corporations**

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

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

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

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

**H. Debts**

Code of Conduct

44

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

---

I. Dispositions of property

---

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

---

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

---

J. Discretionary disclosures

---

Code of Conduct

45

### **Schedule 3:**

## **Form of Special Disclosure of Pecuniary Interest Submitted Under Clause 4.37**

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

#### **Important information**

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

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

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

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

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

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

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

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

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

to be held on the                      day of                      20                      .

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

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

Councillor's signature

Date

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

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

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



# Code of Conduct Procedures

**TBC**



© Bayside Council

Code of Conduct Procedures

File: F11/498 Document: 16/138890[v6]

Policy Register: F16/951 Policy No.: PP16/8

Class of document: Corporate Procedure

Enquiries: Manager Governance & Risk



Telephone Interpreter Services - 131 450 Τηλεφωνικές Υπηρεσίες Διερμηνέων بخدمۃ الترجمة الهاتفية 電話傳譯服務處 Служба за преведување по телефон

Code of Conduct Procedures

2

## Contents

1	Introduction .....	4
2	Definitions .....	5
3	Administrative Framework.....	7
4	How may Code of Conduct Complaints be Made? .....	10
5	How are Code of Conduct Complaints to be Managed? .....	12
6	Preliminary Assessment of Code of Conduct Complaints about Councillors or the General Manager by Conduct Reviewers .....	20
7	Investigations of Code of Conduct Complaints About Councillors or the General Manager .....	25
8	Oversight and Rights of Review .....	34
9	Procedural Irregularities .....	36
10	Practice Directions .....	36
11	Reporting Statistics on Code of Conduct Complaints About Councillors and the General Manager .....	36
12	Confidentiality.....	37
13	Additional Information .....	38

## 1 Introduction

These procedures (“the Model Code Procedures”) are prescribed for the administration of the *Model Code of Conduct for Local Councils in NSW* (“the Model Code of Conduct”).

The Model Code of Conduct is made under section 440 of the *Local Government Act 1993* (“the LGA”) and the *Local Government (General) Regulation 2021* (“the Regulation”). Section 440 of the LGA requires every council (including county councils) and joint organisation to adopt a code of conduct that incorporates the provisions of the Model Code of Conduct.

The Model Code Procedures are made under section 440AA of the LGA and the Regulation. Section 440AA of the LGA requires every council (including county councils) and joint organisation to adopt procedures for the administration of their code of conduct that incorporate the provisions of the Model Code Procedures.

In adopting procedures for the administration of their adopted codes of conduct, councils and joint organisations may supplement the Model Code Procedures. However, provisions that are not consistent with those prescribed under the Model Code Procedures will have no effect.

**Note:** References in these procedures to councils are also to be taken as references to county councils and joint organisations.

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

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

**Note:** Parts 6, 7, 8 and 11 of these procedures apply only to the management of code of conduct complaints about councillors (including the mayor) or the general manager.



## 2 Definitions

In these procedures the following terms have the following meanings:

Administrator	an administrator of a council appointed under the LGA other than an administrator appointed under section 66
code of conduct	a code of conduct adopted under section 440 of the LGA
code of conduct complaint	a complaint that is a code of conduct complaint for the purposes of clauses 4.1 and 4.2 of these procedures
complainant	a person who makes a code of conduct complaint
complainant councillor	a councillor who makes a code of conduct complaint
complaints coordinator	a person appointed by the general manager under these procedures as a complaints coordinator
conduct reviewer	a person appointed under these procedures to review allegations of breaches of the code of conduct by councillors or the general manager
council	includes county councils and joint organisations
council committee	a committee established by a council comprising of councillors, staff or other persons that the council has delegated functions to and the council's audit, risk and improvement committee
council committee member	a person other than a councillor or member of staff of a council who is a member of a council committee other than a wholly advisory committee, and a person other than a councillor who is a member of the council's audit, risk and improvement committee
councillor	any person elected or appointed to civic office, including the mayor, and includes members and chairpersons of county councils and voting representatives of the boards of joint organisations and chairpersons of joint organisations
council official	any councillor, member of staff of council, administrator, council committee member, delegate

	of council and, for the purposes of clause 4.16 of the Model Code of Conduct, council adviser delegate of council a person (other than a councillor or member of staff of a council) or body, and the individual members of that body, to whom a function of the council is delegated
external agency	a state government agency such as, but not limited to, the Office, the ICAC, the NSW Ombudsman or the police
general manager	includes the executive officer of a joint organisation
ICAC	the Independent Commission Against Corruption
joint organisation	a joint organisation established under section 400O of the LGA
LGA	the <i>Local Government Act 1993</i>
mayor	includes the chairperson of a county council or a joint organisation
members of staff of a council	includes members of staff of county councils and joint organisations
the Office	the Office of Local Government
investigator	a conduct reviewer
the Regulation	the <i>Local Government (General) Regulation 2021</i>
respondent	a person whose conduct is the subject of investigation by a conduct reviewer under these procedures
wholly advisory committee	a council committee that the council has not delegated any functions to

### 3 Administrative Framework

#### The establishment of a panel of conduct reviewers

- 3.1 The council must by resolution establish a panel of conduct reviewers.
- 3.2 The council may by resolution enter into an arrangement with one or more other councils to share a panel of conduct reviewers including through a joint organisation or another regional body associated with the councils.
- 3.3 The panel of conduct reviewers is to be established following a public expression of interest process.
- 3.4 An expression of interest for members of the council's panel of conduct reviewers must, at a minimum, be advertised locally and in the Sydney metropolitan area.
- 3.5 To be eligible to be a conduct reviewer, a person must, at a minimum, meet the following requirements:
  - a an understanding of local government, and
  - b knowledge of investigative processes including but not limited to procedural fairness requirements and the requirements of the *Public Interest Disclosures Act 1994*, and
  - c knowledge and experience of one or more of the following:
    - i. investigations
    - ii. law
    - iii. public administration
    - iv. public sector ethics
    - v. alternative dispute resolution, and
  - d meet the eligibility requirements for membership of a panel of conduct reviewers under clause 3.6.
- 3.6 A person is not eligible to be a conduct reviewer if they are:
  - a a councillor, or
  - b a nominee for election as a councillor, or
  - c an administrator, or
  - d an employee of a council, or
  - e a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or
  - f a nominee for election as a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or
  - g a person who has a conviction for an indictable offence that is not an expired conviction.
- 3.7 A person is not precluded from being a member of the council's panel of conduct reviewers if they are a member of another council's panel of conduct reviewers.
- 3.8 An incorporated or other entity may be appointed to a council's panel of conduct reviewers where the council is satisfied that all the persons who will

be undertaking the functions of a conduct reviewer on behalf of the entity meet the selection and eligibility criteria prescribed under this Part.

- 3.9 A panel of conduct reviewers established under this Part is to have a term of up to four years.
- 3.10 The council may terminate the panel of conduct reviewers at any time by resolution. Where a panel of conduct reviewers has been terminated, conduct reviewers who were members of the panel may continue to deal with any matter referred to them under these procedures prior to the termination of the panel until they have finalised their consideration of the matter.
- 3.11 When the term of the panel of conduct reviewers concludes or is terminated, the council must establish a new panel of conduct reviewers in accordance with the requirements of this Part.
- 3.12 A person who was a member of a previous panel of conduct reviewers established by the council may be a member of subsequent panels of conduct reviewers established by the council if they continue to meet the selection and eligibility criteria for membership of the panel.

### **The appointment of an internal ombudsman to a panel of conduct reviewers**

- 3.13 Despite clause 3.6(d), an employee of a council who is the nominated internal ombudsman of one or more councils may be appointed to a council's panel of conduct reviewers with the Office's consent.
- 3.14 To be appointed to a council's panel of conduct reviewers, an internal ombudsman must meet the qualification requirements for conduct reviewers prescribed under clause 3.5 as modified by the operation of clause 3.13.
- 3.15 An internal ombudsman appointed to a council's panel of conduct reviewers may also exercise the functions of the council's complaints coordinator. For the purposes of clause 6.1, an internal ombudsman who is a council's complaints coordinator and has been appointed to the council's panel of conduct reviewers, may either undertake a preliminary assessment and investigation of a matter referred to them under clauses 5.26 or 5.33 or refer the matter to another conduct reviewer in accordance with clause 6.2.
- 3.16 Clause 6.4(c) does not apply to an internal ombudsman appointed to a council's panel of conduct reviewers.

### **The appointment of complaints coordinators**

- 3.17 The general manager must appoint a member of staff of the council or another person (such as, but not limited to, a member of staff of another council or a member of staff of a joint organisation or other regional body associated with the council), to act as a complaints coordinator. Where the complaints coordinator is a member of staff of the council, the complaints coordinator should be a senior and suitably qualified member of staff.

- 3.18 The general manager may appoint other members of staff of the council or other persons (such as, but not limited to, members of staff of another council or members of staff of a joint organisation or other regional body associated with the council), to act as alternates to the complaints coordinator.
- 3.19 The general manager must not undertake the role of complaints coordinator.
- 3.20 The person appointed as complaints coordinator or alternate complaints coordinator must also be a nominated disclosures coordinator appointed for the purpose of receiving and managing reports of wrongdoing under the *Public Interest Disclosures Act 1994*.
- 3.21 The role of the complaints coordinator is to:
  - a coordinate the management of complaints made under the council's code of conduct
  - b liaise with and provide administrative support to a conduct reviewer
  - c liaise with the Office and
  - d arrange the annual reporting of code of conduct complaints statistics.

## **4 How may Code of Conduct Complaints be Made?**

### **What is a code of conduct complaint?**

- 4.1 For the purpose of these procedures, a code of conduct complaint is a complaint that shows or tends to show conduct on the part of a council official in connection with their role as a council official or the exercise of their functions as a council official that would constitute a breach of the standards of conduct prescribed under the council's code of conduct if proven.
- 4.2 The following are not "code of conduct complaints" for the purposes of these procedures:
- a complaints about the standard or level of service provided by the council or a council official
  - b complaints that relate solely to the merits of a decision made by the council or a council official or the exercise of a discretion by the council or a council official
  - c complaints about the policies or procedures of the council
  - d complaints about the conduct of a council official arising from the exercise of their functions in good faith, whether or not involving error, that would not otherwise constitute a breach of the standards of conduct prescribed under the council's code of conduct.
- 4.3 Only code of conduct complaints are to be dealt with under these procedures. Complaints that do not satisfy the definition of a code of conduct complaint are to be dealt with under the council's routine complaints management processes.

### **When must a code of conduct complaint be made?**

- 4.4 A code of conduct complaint must be made within three months of the alleged conduct occurring or within three months of the complainant becoming aware of the alleged conduct.
- 4.5 A complaint made after 3 months may only be accepted if the general manager or their delegate, or, in the case of a complaint about the general manager, the mayor or their delegate, is satisfied that the allegations are serious and compelling grounds exist for the matter to be dealt with under the code of conduct.

### **How may a code of conduct complaint about a council official other than the general manager be made?**

- 4.6 All code of conduct complaints other than those relating to the general manager are to be made to the general manager in writing. This clause does not operate to prevent a person from making a complaint to an external agency.
- 4.7 Where a code of conduct complaint about a council official other than the general manager cannot be made in writing, the complaint must be

confirmed with the complainant in writing as soon as possible after the receipt of the complaint.

- 4.8 In making a code of conduct complaint about a council official other than the general manager, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.
- 4.9 The general manager or their delegate, or, where the complaint is referred to a conduct reviewer, the conduct reviewer, must consider the complainant's preferences in deciding how to deal with the complaint.
- 4.10 Notwithstanding clauses 4.6 and 4.7, where the general manager becomes aware of a possible breach of the council's code of conduct, they may initiate the process for the consideration of the matter under these procedures without a written complaint.

#### **How may a code of conduct complaint about the general manager be made?**

- 4.11 Code of conduct complaints about the general manager are to be made to the mayor in writing. This clause does not operate to prevent a person from making a complaint about the general manager to an external agency.
- 4.12 Where a code of conduct complaint about the general manager cannot be made in writing, the complaint must be confirmed with the complainant in writing as soon as possible after the receipt of the complaint.
- 4.13 In making a code of conduct complaint about the general manager, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.
- 4.14 The mayor or their delegate, or, where the complaint is referred to a conduct reviewer, the conduct reviewer, must consider the complainant's preferences in deciding how to deal with the complaint.
- 4.15 Notwithstanding clauses 4.11 and 4.12, where the mayor becomes aware of a possible breach of the council's code of conduct by the general manager, they may initiate the process for the consideration of the matter under these procedures without a written complaint.

## **5 How are Code of Conduct Complaints to be Managed?**

### **Delegation by general managers and mayors of their functions under this Part**

- 5.1 A general manager or mayor may delegate their functions under this Part to a member of staff of the council or to a person or persons external to the council other than an external agency. References in this Part to the general manager or mayor are also to be taken to be references to their delegates.

### **Consideration of complaints by general managers and mayors**

- 5.2 In exercising their functions under this Part, general managers and mayors may consider the complaint assessment criteria prescribed under clause 6.31.

### **What complaints may be declined at the outset?**

- 5.3 Without limiting any other provision in these procedures, the general manager or, in the case of a complaint about the general manager, the mayor, may decline to deal with a complaint under these procedures where they are satisfied that the complaint:
- a is not a code of conduct complaint, or
  - b subject to clause 4.5, is not made within 3 months of the alleged conduct occurring or the complainant becoming aware of the alleged conduct, or
  - c is trivial, frivolous, vexatious or not made in good faith, or
  - d relates to a matter the substance of which has previously been considered and addressed by the council and does not warrant further action, or
  - e is not made in a way that would allow the alleged conduct and any alleged breaches of the council's code of conduct to be readily identified.

### **How are code of conduct complaints about staff (other than the general manager) to be dealt with?**

- 5.4 The general manager is responsible for the management of code of conduct complaints about members of staff of council (other than complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct) and for determining the outcome of such complaints.
- 5.5 The general manager must refer code of conduct complaints about members of staff of council alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct to the Office.
- 5.6 The general manager may decide to take no action in relation to a code of conduct complaint about a member of staff of council other than one



requiring referral to the Office under clause 5.5 where they consider that no action is warranted in relation to the complaint.

- 5.7 Where the general manager decides to take no action in relation to a code of conduct complaint about a member of staff of council, the general manager must give the complainant reasons in writing for their decision and this shall finalise the consideration of the matter under these procedures.
- 5.8 Code of conduct complaints about members of staff of council must be managed in accordance with the relevant industrial instrument or employment contract and make provision for procedural fairness including the right of an employee to be represented by their union.
- 5.9 Sanctions for breaches of the code of conduct by staff depend on the severity, scale and importance of the breach and must be determined in accordance with any relevant industrial instruments or contracts.

**How are code of conduct complaints about delegates of council, council advisers and council committee members to be dealt with?**

- 5.10 The general manager is responsible for the management of code of conduct complaints about delegates of council and council committee members (other than complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct) and for determining the outcome of such complaints.
- 5.11 The general manager must refer code of conduct complaints about council advisers, delegates of council and council committee members alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct to the Office.
- 5.12 The general manager may decide to take no action in relation to a code of conduct complaint about a delegate of council or a council committee member other than one requiring referral to the Office under clause 5.11 where they consider that no action is warranted in relation to the complaint.
- 5.13 Where the general manager decides to take no action in relation to a code of conduct complaint about a delegate of council or a council committee member, the general manager must give the complainant reasons in writing for their decision and this shall finalise the consideration of the matter under these procedures.
- 5.14 Where the general manager considers it to be practicable and appropriate to do so, the general manager may seek to resolve code of conduct complaints about delegates of council or council committee members, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour. The resolution of a code of conduct complaint under this clause is not to be taken as a determination that there has been a breach of the council's code of conduct.
- 5.15 Where the general manager resolves a code of conduct complaint under clause 5.14 to the general manager's satisfaction, the general manager

must notify the complainant in writing of the steps taken to resolve the complaint and this shall finalise the consideration of the matter under these procedures.

- 5.16 Sanctions for breaches of the code of conduct by delegates of council and/or council committee members depend on the severity, scale and importance of the breach and may include one or more of the following:
- a censure
  - b requiring the person to apologise to any person or organisation adversely affected by the breach in such a time and form specified by the general manager
  - c prosecution for any breach of the law
  - d removing or restricting the person's delegation
  - e removing the person from membership of the relevant council committee.
- 5.17 Prior to imposing a sanction against a delegate of council or a council committee member under clause 5.16, the general manager or any person making enquiries on behalf of the general manager must comply with the requirements of procedural fairness. In particular:
- a the substance of the allegation (including the relevant provision/s of the council's code of conduct that the alleged conduct is in breach of) must be put to the person who is the subject of the allegation, and
  - b the person must be given an opportunity to respond to the allegation, and
  - c the general manager must consider the person's response in deciding whether to impose a sanction under clause 5.16.

#### **How are code of conduct complaints about administrators to be dealt with?**

- 5.18 The general manager must refer all code of conduct complaints about administrators to the Office for its consideration.
- 5.19 The general manager must notify the complainant of the referral of their complaint in writing.

#### **How are code of conduct complaints about councillors to be dealt with?**

- 5.20 The general manager must refer the following code of conduct complaints about councillors to the Office:
- a complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct
  - b complaints alleging a failure to comply with a requirement under the code of conduct to disclose and appropriately manage conflicts of interest arising from political donations (see section 328B of the LGA)
  - c complaints alleging a breach of the provisions relating to the maintenance of the integrity of the code of conduct contained in Part 9 of the code of conduct

- d complaints that are the subject of a special complaints management arrangement with the Office under clause 5.49.
- 5.21 Where the general manager refers a complaint to the Office under clause 5.20, the general manager must notify the complainant of the referral in writing.
- 5.22 The general manager may decide to take no action in relation to a code of conduct complaint about a councillor, other than one requiring referral to the Office under clause 5.20, where they consider that no action is warranted in relation to the complaint.
- 5.23 Where the general manager decides to take no action in relation to a code of conduct complaint about a councillor, the general manager must give the complainant reasons in writing for their decision within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.24 Where the general manager considers it to be practicable and appropriate to do so, the general manager may seek to resolve code of conduct complaints about councillors, other than those requiring referral to the Office under clause 5.20, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour. The resolution of a code of conduct complaint under this clause is not to be taken as a determination that there has been a breach of the council's code of conduct.
- 5.25 Where the general manager resolves a code of conduct complaint under clause 5.24 to the general manager's satisfaction, the general manager must notify the complainant in writing of the steps taken to resolve the complaint within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.26 The general manager must refer all code of conduct complaints about councillors, other than those referred to the Office under clause 5.20 or finalised under clause 5.23 or resolved under clause 5.24, to the complaints coordinator.

### **How are code of conduct complaints about the general manager to be dealt with?**

- 5.27 The mayor must refer the following code of conduct complaints about the general manager to the Office:
  - a complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct
  - b complaints alleging a breach of the provisions relating to the maintenance of the integrity of the code of conduct contained in Part 9 of the code of conduct
  - c complaints that are the subject of a special complaints management arrangement with the Office under clause 5.49.
- 5.28 Where the mayor refers a complaint to the Office under clause 5.27, the mayor must notify the complainant of the referral in writing.

- 5.29 The mayor may decide to take no action in relation to a code of conduct complaint about the general manager, other than one requiring referral to the Office under clause 5.27, where they consider that no action is warranted in relation to the complaint.
- 5.30 Where the mayor decides to take no action in relation to a code of conduct complaint about the general manager, the mayor must give the complainant reasons in writing for their decision within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.31 Where the mayor considers it to be practicable and appropriate to do so, the mayor may seek to resolve code of conduct complaints about the general manager, other than those requiring referral to the Office under clause 5.27, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour. The resolution of a code of conduct complaint under this clause is not to be taken as a determination that there has been a breach of the council's code of conduct.
- 5.32 Where the mayor resolves a code of conduct complaint under clause 5.31 to the mayor's satisfaction, the mayor must notify the complainant in writing of the steps taken to resolve the complaint within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.33 The mayor must refer all code of conduct complaints about the general manager, other than those referred to the Office under clause 5.27 or finalised under clause 5.30 or resolved under clause 5.31, to the complaints coordinator.

### **How are complaints about both the general manager and the mayor to be dealt with?**

- 5.34 Where the general manager or mayor receives a code of conduct complaint that alleges a breach of the code of conduct by both the general manager and the mayor, the general manager or mayor must either:
- a delegate their functions under this part with respect to the complaint to a member of staff of the council other than the general manager where the allegation is not serious, or to a person external to the council, or
  - b refer the matter to the complaints coordinator under clause 5.26 and clause 5.33.

### **Referral of code of conduct complaints to external agencies**

- 5.35 The general manager, mayor or a conduct reviewer may, at any time, refer a code of conduct complaint to an external agency for its consideration, where they consider such a referral is warranted.
- 5.36 The general manager, mayor or a conduct reviewer must report to the ICAC any matter that they suspect on reasonable grounds concerns or may concern corrupt conduct.

- 5.37 Where the general manager, mayor or conduct reviewer refers a complaint to an external agency under clause 5.35, they must notify the complainant of the referral in writing unless they form the view, on the advice of the relevant agency, that it would not be appropriate for them to do so.
- 5.38 Referral of a matter to an external agency shall finalise consideration of the matter under these procedures unless the council is subsequently advised otherwise by the referral agency.

### **Disclosure of the identity of complainants**

- 5.39 In dealing with matters under these procedures, information that identifies or tends to identify complainants is not to be disclosed unless:
- a the complainant consents in writing to the disclosure, or
  - b it is generally known that the complainant has made the complaint as a result of the complainant having voluntarily identified themselves as the person who made the complaint, or
  - c it is essential, having regard to procedural fairness requirements, that the identifying information be disclosed, or
  - d a conduct reviewer is of the opinion that disclosure of the information is necessary to investigate the matter effectively, or
  - e it is otherwise in the public interest to do so.
- 5.40 Clause 5.39 does not apply to code of conduct complaints made by councillors about other councillors or the general manager.
- 5.41 Where a councillor makes a code of conduct complaint about another councillor or the general manager, and the complainant councillor considers that compelling grounds exist that would warrant information that identifies or tends to identify them as the complainant not to be disclosed, they may request in writing that such information not be disclosed.
- 5.42 A request made by a complainant councillor under clause 5.41 must be made at the time they make a code of conduct complaint and must state the grounds upon which the request is made.
- 5.43 The general manager or mayor, and where the matter is referred to a conduct reviewer, the conduct reviewer, must consider a request made under clause 5.41 before disclosing information that identifies or tends to identify the complainant councillor, but they are not obliged to comply with the request.
- 5.44 Where a complainant councillor makes a request under clause 5.41, the general manager or mayor or, where the matter is referred to a conduct reviewer, the conduct reviewer, shall notify the councillor in writing of their intention to disclose information that identifies or tends to identify them prior to disclosing the information.

### **Code of conduct complaints made as public interest disclosures**

- 5.45 These procedures do not override the provisions of the *Public Interest Disclosures Act 1994*. Code of conduct complaints that are made as public

interest disclosures under that Act are to be managed in accordance with the requirements of that Act, the council's internal reporting policy, and any guidelines issued by the NSW Ombudsman that relate to the management of public interest disclosures.

- 5.46 Where a councillor makes a code of conduct complaint about another councillor or the general manager as a public interest disclosure, before the matter may be dealt with under these procedures, the complainant councillor must consent in writing to the disclosure of their identity as the complainant.
- 5.47 Where a complainant councillor declines to consent to the disclosure of their identity as the complainant under clause 5.46, the general manager or the mayor must refer the complaint to the Office for consideration. Such a referral must be made under section 26 of the *Public Interest Disclosures Act 1994*.

### **Special complaints management arrangements**

- 5.48 The general manager may request in writing that the Office enter into a special complaints management arrangement with the council in relation to code of conduct complaints made by or about a person or persons.
- 5.49 Where the Office receives a request under clause 5.48, it may agree to enter into a special complaints management arrangement if it is satisfied that the number or nature of code of conduct complaints made by or about a person or persons has:
- a imposed an undue and disproportionate cost burden on the council's administration of its code of conduct, or
  - b impeded or disrupted the effective administration by the council of its code of conduct, or
  - c impeded or disrupted the effective functioning of the council.
- 5.50 A special complaints management arrangement must be in writing and must specify the following:
- a the code of conduct complaints the arrangement relates to, and
  - b the period that the arrangement will be in force.
- 5.51 The Office may, by notice in writing, amend or terminate a special complaints management arrangement at any time.
- 5.52 While a special complaints management arrangement is in force, an officer of the Office (the assessing OLG officer) must undertake the preliminary assessment of the code of conduct complaints specified in the arrangement in accordance with the requirements of Part 6 of these procedures.
- 5.53 Where, following a preliminary assessment, the assessing OLG officer determines that a code of conduct complaint warrants investigation by a conduct reviewer, the assessing OLG officer shall notify the complaints coordinator in writing of their determination and the reasons for their determination. The complaints coordinator must comply with the recommendation of the assessing OLG officer.

- 5.54 Prior to the expiry of a special complaints management arrangement, the Office may, at the request of the general manager, review the arrangement to determine whether it should be renewed or amended.
- 5.55 A special complaints management arrangement shall expire on the date specified in the arrangement unless renewed under clause 5.54.

## **6 Preliminary Assessment of Code of Conduct Complaints about Councillors or the General Manager by Conduct Reviewers**

### **Referral of code of conduct complaints about councillors or the general manager to conduct reviewers**

- 6.1 The complaints coordinator must refer all code of conduct complaints about councillors or the general manager that have not been referred to an external agency or declined or resolved by the general manager, mayor or their delegate and that have been referred to them under clauses 5.26 or 5.33, to a conduct reviewer within 21 days of receipt of the complaint by the general manager or the mayor.
- 6.2 For the purposes of clause 6.1, the complaints coordinator will refer a complaint to a conduct reviewer selected from:
  - a a panel of conduct reviewers established by the council, or
  - b a panel of conduct reviewers established by an organisation approved by the Chief Executive of the Office.
- 6.3 In selecting a suitable conduct reviewer, the complaints coordinator may have regard to the qualifications and experience of members of the panel of conduct reviewers. Where the conduct reviewer is an incorporated or other entity, the complaints coordinator must also ensure that the person assigned to receive the referral on behalf of the entity meets the selection and eligibility criteria for conduct reviewers prescribed under Part 3 of these procedures.
- 6.4 A conduct reviewer must not accept the referral of a code of conduct complaint where:
  - a they have a conflict of interest in relation to the matter referred to them, or
  - b a reasonable apprehension of bias arises in relation to their consideration of the matter, or
  - c they or their employer has entered into one or more contracts with the council (other than contracts relating to the exercise of their functions as a conduct reviewer) in the 2 years preceding the referral, and they or their employer have received or expect to receive payments under the contract or contracts of a value that, when aggregated, exceeds \$100,000, or
  - d at the time of the referral, they or their employer are the council's legal service provider or are a member of a panel of legal service providers appointed by the council.
- 6.5 For the purposes of clause 6.4(a), a conduct reviewer will have a conflict of interest in a matter where a reasonable and informed person would perceive that they could be influenced by a private interest when carrying out their public duty (see clause 5.2 of the Model Code of Conduct).
- 6.6 For the purposes of clause 6.4(b), a reasonable apprehension of bias arises where a fair-minded observer might reasonably apprehend that the conduct



reviewer might not bring an impartial and unprejudiced mind to the matter referred to the conduct reviewer.

- 6.7 Where the complaints coordinator refers a matter to a conduct reviewer, they will provide the conduct reviewer with a copy of the code of conduct complaint and any other information relevant to the matter held by the council, including any information about previous proven breaches and any information that would indicate that the alleged conduct forms part of an ongoing pattern of behaviour.
- 6.8 The complaints coordinator must notify the complainant in writing that the matter has been referred to a conduct reviewer, and advise which conduct reviewer the matter has been referred to.
- 6.9 Conduct reviewers must comply with these procedures in their consideration of matters that have been referred to them and exercise their functions in a diligent and timely manner.
- 6.10 The complaints coordinator may at any time terminate the referral of a matter to a conduct reviewer and refer the matter to another conduct reviewer where the complaints coordinator is satisfied that the conduct reviewer has failed to:
  - a comply with these procedures in their consideration of the matter, or
  - b comply with a lawful and reasonable request by the complaints coordinator, or
  - c exercise their functions in a timely or satisfactory manner.
- 6.11 Where the complaints coordinator terminates a referral to a conduct reviewer under clause 6.10, they must notify the complainant and any other affected person in writing of their decision and the reasons for it and advise them which conduct reviewer the matter has been referred to instead.

#### **Preliminary assessment of code of conduct complaints about councillors or the general manager by a conduct reviewer**

- 6.12 The conduct reviewer is to undertake a preliminary assessment of a complaint referred to them by the complaints coordinator for the purposes of determining how the complaint is to be managed.
- 6.13 The conduct reviewer may determine to do one or more of the following in relation to a complaint referred to them by the complaints coordinator:
  - a to take no action
  - b to resolve the complaint by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour
  - c to refer the matter back to the general manager or, in the case of a complaint about the general manager, the mayor, for resolution by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour
  - d to refer the matter to an external agency

- e to investigate the matter.
- 6.14 In determining how to deal with a matter under clause 6.13, the conduct reviewer must have regard to the complaint assessment criteria prescribed under clause 6.31.
- 6.15 The conduct reviewer may make such enquiries the conduct reviewer considers to be reasonably necessary to determine what options to exercise under clause 6.13.
- 6.16 The conduct reviewer may request the complaints coordinator to provide such additional information the conduct reviewer considers to be reasonably necessary to determine what options to exercise in relation to the matter under clause 6.13. The complaints coordinator will, as far as is reasonably practicable, supply any information requested by the conduct reviewer.
- 6.17 The conduct reviewer must refer to the Office any complaints referred to them that should have been referred to the Office under clauses 5.20 and 5.27.
- 6.18 The conduct reviewer must determine to take no action on a complaint that is not a code of conduct complaint for the purposes of these procedures.
- 6.19 The resolution of a code of conduct complaint under clause 6.13, paragraphs (b) or (c) is not to be taken as a determination that there has been a breach of the council's code of conduct.
- 6.20 Where the conduct reviewer completes their preliminary assessment of a complaint by determining to exercise an option under clause 6.13, paragraphs (a), (b) or (c), they must provide the complainant with written notice of their determination and provide reasons for it, and this will finalise consideration of the matter under these procedures.
- 6.21 Where the conduct reviewer refers a complaint to an external agency, they must notify the complainant of the referral in writing unless they form the view, on the advice of the relevant agency, that it would not be appropriate for them to do so.
- 6.22 The conduct reviewer may only determine to investigate a matter where they are satisfied as to the following:
  - a that the complaint is a code of conduct complaint for the purposes of these procedures, and
  - b that the alleged conduct is sufficiently serious to warrant investigation, and
  - c that the matter is one that could not or should not be resolved by alternative means.
- 6.23 In determining whether a matter is sufficiently serious to warrant investigation, the conduct reviewer is to consider the following:
  - a the harm or cost that the alleged conduct has caused to any affected individuals and/or the council
  - b the likely impact of the alleged conduct on the reputation of the council and public confidence in it

- c whether the alleged conduct was deliberate or undertaken with reckless intent or negligence
  - d any previous proven breaches by the person whose alleged conduct is the subject of the complaint and/or whether the alleged conduct forms part of an ongoing pattern of behaviour.
- 6.24 The conduct reviewer must complete their preliminary assessment of the complaint within 28 days of referral of the matter to them by the complaints coordinator and notify the complaints coordinator in writing of the outcome of their assessment.
- 6.25 The conduct reviewer is not obliged to give prior notice to or to consult with any person before making a determination in relation to their preliminary assessment of a complaint, except as may be specifically required under these procedures.

### **Referral back to the general manager or mayor for resolution**

- 6.26 Where the conduct reviewer determines to refer a matter back to the general manager or to the mayor to be resolved by alternative and appropriate means, they must write to the general manager or, in the case of a complaint about the general manager, to the mayor, recommending the means by which the complaint may be resolved.
- 6.27 The conduct reviewer must consult with the general manager or mayor prior to referring a matter back to them under clause 6.13(c).
- 6.28 The general manager or mayor may decline to accept the conduct reviewer's recommendation. In such cases, the conduct reviewer may determine to deal with the complaint by other means under clause 6.13.
- 6.29 Where the conduct reviewer refers a matter back to the general manager or mayor under clause 6.13(c), the general manager or, in the case of a complaint about the general manager, the mayor, is responsible for implementing or overseeing the implementation of the conduct reviewer's recommendation.
- 6.30 Where the conduct reviewer refers a matter back to the general manager or mayor under clause 6.13(c), the general manager, or, in the case of a complaint about the general manager, the mayor, must advise the complainant in writing of the steps taken to implement the conduct reviewer's recommendation once these steps have been completed.

### **Complaints assessment criteria**

- 6.31 In undertaking the preliminary assessment of a complaint, the conduct reviewer must have regard to the following considerations:
  - a whether the complaint is a code of conduct complaint for the purpose of these procedures
  - b whether the complaint has been made in a timely manner in accordance with clause 4.4, and if not, whether the allegations are sufficiently serious for compelling grounds to exist for the matter to be dealt with under the council's code of conduct

- c whether the complaint is trivial, frivolous, vexatious or not made in good faith
- d whether the complaint discloses prima facie evidence of conduct that, if proven, would constitute a breach of the code of conduct
- e whether the complaint raises issues that would be more appropriately dealt with by an external agency
- f whether there is or was an alternative and satisfactory means of redress available in relation to the conduct complained of
- g whether the complaint is one that can be resolved by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour
- h whether the issue/s giving rise to the complaint have previously been addressed or resolved
- i any previous proven breaches of the council's code of conduct
- j whether the conduct complained of forms part of an ongoing pattern of behaviour
- k whether there were mitigating circumstances giving rise to the conduct complained of
- l the seriousness of the alleged conduct (having regard to the criteria specified in clause 6.23)
- m the significance of the conduct or the impact of the conduct for the council
- n how much time has passed since the alleged conduct occurred
- o such other considerations that the conduct reviewer considers may be relevant to the assessment of the complaint.

## **7 Investigations of Code of Conduct Complaints About Councillors or the General Manager**

### **What matters may a conduct reviewer investigate?**

- 7.1 A conduct reviewer (hereafter referred to as an “investigator”) may investigate a code of conduct complaint that has been referred to them by the complaints coordinator and any matters related to or arising from that complaint.
- 7.2 Where an investigator identifies further separate possible breaches of the code of conduct that are not related to or arise from the code of conduct complaint that has been referred to them, they are to report the matters separately in writing to the general manager, or, in the case of alleged conduct on the part of the general manager, to the mayor.
- 7.3 The general manager or the mayor or their delegate is to deal with a matter reported to them by an investigator under clause 7.2 as if it were a new code of conduct complaint in accordance with these procedures.

### **How are investigations to be commenced?**

- 7.4 The investigator must at the outset of their investigation provide a written notice of investigation to the respondent. The notice of investigation must:
  - a disclose the substance of the allegations against the respondent, and
  - b advise of the relevant provisions of the code of conduct that apply to the alleged conduct, and
  - c advise of the process to be followed in investigating the matter, and
  - d advise the respondent of the requirement to maintain confidentiality, and
  - e invite the respondent to make a written submission in relation to the matter within at least 14 days or such other period specified by the investigator in the notice, and
  - f provide the respondent the opportunity to address the investigator on the matter within such reasonable time specified in the notice.
- 7.5 The respondent may, within 7 days of receipt of the notice of investigation, request in writing that the investigator provide them with such further information they consider necessary to assist them to identify the substance of the allegation against them. An investigator will only be obliged to provide such information that the investigator considers reasonably necessary for the respondent to identify the substance of the allegation against them.
- 7.6 An investigator may at any time prior to issuing a draft report, issue an amended notice of investigation to the respondent in relation to the matter referred to them.
- 7.7 Where an investigator issues an amended notice of investigation, they must provide the respondent with a further opportunity to make a written submission in response to the amended notice of investigation within at least 14 days or such other period specified by the investigator in the amended notice.

- 7.8 The investigator must also, at the outset of their investigation, provide written notice of the investigation to the complainant, the complaints coordinator and the general manager, or in the case of a complaint about the general manager, to the complainant, the complaints coordinator and the mayor. The notice must:
- a advise them of the matter the investigator is investigating, and
  - b in the case of the notice to the complainant, advise them of the requirement to maintain confidentiality, and
  - c invite the complainant to make a written submission in relation to the matter within at least 14 days or such other period specified by the investigator in the notice.

### **Written and oral submissions**

- 7.9 Where the respondent or the complainant fails to make a written submission in relation to the matter within the period specified by the investigator in their notice of investigation or amended notice of investigation, the investigator may proceed to prepare their draft report without receiving such submissions.
- 7.10 The investigator may accept written submissions received outside the period specified in the notice of investigation or amended notice of investigation.
- 7.11 Prior to preparing a draft report, the investigator must give the respondent an opportunity to address the investigator on the matter being investigated. The respondent may do so in person or by telephone or other electronic means.
- 7.12 Where the respondent fails to accept the opportunity to address the investigator within the period specified by the investigator in the notice of investigation, the investigator may proceed to prepare a draft report without hearing from the respondent.
- 7.13 Where the respondent accepts the opportunity to address the investigator in person, they may have a support person or legal adviser in attendance. The support person or legal adviser will act in an advisory or support role to the respondent only. They must not speak on behalf of the respondent or otherwise interfere with or disrupt proceedings.
- 7.14 The investigator must consider all written and oral submissions made to them in relation to the matter.

### **How are investigations to be conducted?**

- 7.15 Investigations are to be undertaken without undue delay.
- 7.16 Investigations are to be undertaken in the absence of the public and in confidence.
- 7.17 Investigators must make any such enquiries that may be reasonably necessary to establish the facts of the matter.

- 7.18 Investigators may seek such advice or expert guidance that may be reasonably necessary to assist them with their investigation or the conduct of their investigation.
- 7.19 An investigator may request that the complaints coordinator provide such further information that the investigator considers may be reasonably necessary for them to establish the facts of the matter. The complaints coordinator will, as far as is reasonably practicable, provide the information requested by the investigator.

### **Referral or resolution of a matter after the commencement of an investigation**

- 7.20 At any time after an investigator has issued a notice of investigation and before they have issued a draft report, an investigator may determine to:
- a resolve the matter by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour, or
  - b refer the matter to the general manager, or, in the case of a complaint about the general manager, to the mayor, for resolution by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour, or
  - c refer the matter to an external agency.
- 7.21 Where an investigator determines to exercise any of the options under clause 7.20 after the commencement of an investigation, they must do so in accordance with the requirements of Part 6 of these procedures relating to the exercise of these options at the preliminary assessment stage.
- 7.22 The resolution of a code of conduct complaint under clause 7.20, paragraphs (a) or (b) is not to be taken as a determination that there has been a breach of the council's code of conduct.
- 7.23 Where an investigator determines to exercise any of the options under clause 7.20 after the commencement of an investigation, they may by written notice to the respondent, the complainant, the complaints coordinator and the general manager, or in the case of a complaint about the general manager, to the respondent, the complainant, the complaints coordinator and the mayor, discontinue their investigation of the matter.
- 7.24 Where the investigator discontinues their investigation of a matter under clause 7.23, this shall finalise the consideration of the matter under these procedures.
- 7.25 An investigator is not obliged to give prior notice to or to consult with any person before making a determination to exercise any of the options under clause 7.20 or to discontinue their investigation except as may be specifically required under these procedures.

### **Draft investigation reports**

- 7.26 When an investigator has completed their enquiries and considered any written or oral submissions made to them in relation to a matter, they must prepare a draft of their proposed report.
- 7.27 The investigator must provide their draft report to the respondent and invite them to make a written submission in relation to it within at least 14 days or such other period specified by the investigator.
- 7.28 Where the investigator proposes to make adverse comment about any other person (an affected person) in their report, they must also provide the affected person with relevant extracts of their draft report containing such comment and invite the affected person to make a written submission in relation to it within at least 14 days or such other period specified by the investigator.
- 7.29 The investigator must consider written submissions received in relation to the draft report prior to finalising their report in relation to the matter.
- 7.30 The investigator may, after consideration of all written submissions received in relation to their draft report, make further enquiries into the matter. If, as a result of making further enquiries, the investigator makes any material change to their proposed report that makes new adverse comment about the respondent or an affected person, they must provide the respondent or affected person as the case may be with a further opportunity to make a written submission in relation to the new adverse comment.
- 7.31 Where the respondent or an affected person fails to make a written submission in relation to the draft report within the period specified by the investigator, the investigator may proceed to prepare and issue their final report without receiving such submissions.
- 7.32 The investigator may accept written submissions in relation to the draft report received outside the period specified by the investigator at any time prior to issuing their final report.

### **Final investigation reports**

- 7.33 Where an investigator issues a notice of investigation they must prepare a final report in relation to the matter unless the investigation is discontinued under clause 7.23.
- 7.34 An investigator must not prepare a final report in relation to the matter at any time before they have finalised their consideration of the matter in accordance with the requirements of these procedures.
- 7.35 The investigator's final report must:
  - a make findings of fact in relation to the matter investigated, and,
  - b make a determination that the conduct investigated either,
    - i. constitutes a breach of the code of conduct, or
    - ii. does not constitute a breach of the code of conduct, and
  - c provide reasons for the determination.



- 7.36 Where the investigator determines that the conduct investigated constitutes a breach of the code of conduct, the investigator may make one or more of the following recommendations:
- a that the council revise any of its policies, practices or procedures
  - b that the respondent undertake any training or other education relevant to the conduct giving rise to the breach
  - c that the respondent be counselled for their conduct
  - d that the respondent be removed from membership of a committee of the council or any other body or organisation that the respondent serves on as the council's representative
  - e that the respondent gives an undertaking not to repeat the offending behaviour in such time and form specified by the recommendation
  - f that the respondent apologise to any person or organisation affected by the breach in such a time and form specified by the recommendation
  - g that findings of inappropriate conduct be made public by publishing the investigator's findings and determination in the minutes of the council meeting at which the matter is considered
  - h in the case of a breach by the general manager, that action be taken under the general manager's contract
  - i in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the LGA
  - j in the case of a breach by a councillor, that the council resolves as follows:
    - i. that the councillor be formally censured for the breach under section 440G of the LGA, and
    - ii. that the matter be referred to the Office for further action under the misconduct provisions of the LGA.
- 7.37 Where the investigator determines that the conduct investigated does not constitute a breach of the code of conduct, the investigator may make one or more of the following recommendations:
- a that the council revise any of its policies, practices or procedures
  - b that a person or persons undertake any training or other education.
- 7.38 In making a recommendation under clause 7.36, the investigator may have regard to the following:
- a the seriousness of the breach
  - b whether the breach can be easily remedied or rectified
  - c whether the respondent has remedied or rectified their conduct
  - d whether the respondent has expressed contrition
  - e whether there were any mitigating circumstances
  - f the age, physical or mental health or special infirmity of the respondent
  - g whether the breach is technical or trivial only
  - h any previous proven breaches
  - i whether the breach forms part of an ongoing pattern of behaviour
  - j the degree of reckless intention or negligence of the respondent
  - k the extent to which the breach has affected other parties or the council as a whole

- l the harm or potential harm to the reputation of the council or local government in general arising from the conduct
  - m whether the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny
  - n whether an educative approach would be more appropriate than a punitive one
  - o the relative costs and benefits of taking formal disciplinary action as opposed to taking no action or taking informal action
  - p what action or remedy would be in the public interest.
- 7.39 Where the investigator proposes to make a recommendation under clause 7.36(j), the investigator must first consult with the Office on their proposed findings, determination and recommendation prior to finalising their report, and must take any comments by the Office into consideration when finalising their report.
- 7.40 At a minimum, the investigator's final report must contain the following information:
  - a a description of the allegations against the respondent
  - b the relevant provisions of the code of conduct that apply to the alleged conduct investigated
  - c a statement of reasons as to why the matter warranted investigation (having regard to the criteria specified in clause 6.23)
  - d a statement of reasons as to why the matter was one that could not or should not be resolved by alternative means
  - e a description of any attempts made to resolve the matter by use of alternative means
  - f the steps taken to investigate the matter
  - g the facts of the matter
  - h the investigator's findings in relation to the facts of the matter and the reasons for those findings
  - i the investigator's determination and the reasons for that determination
  - j any recommendations.
- 7.41 The investigator must provide a copy of their report to the complaints coordinator and the respondent.
- 7.42 At the time the investigator provides a copy of their report to the complaints coordinator and the respondent, the investigator must provide the complainant with a written statement containing the following information:
  - a the investigator's findings in relation to the facts of the matter and the reasons for those findings
  - b the investigator's determination and the reasons for that determination
  - c any recommendations, and
  - d such other additional information that the investigator considers may be relevant.
- 7.43 Where the investigator has determined that there has not been a breach of the code of conduct, the complaints coordinator must provide a copy of the investigator's report to the general manager or, where the report relates to

the general manager's conduct, to the mayor, and this will finalise consideration of the matter under these procedures.

- 7.44 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 7.36, paragraph (a) only, the complaints coordinator must provide a copy of the investigator's report to the general manager. Where the general manager agrees with the recommendation/s, the general manager is responsible for implementing the recommendation/s.
- 7.45 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 7.36, paragraphs (b) or (c) only, the complaints coordinator must provide a copy of the investigator's report to the general manager or, where the report relates to the general manager's conduct, to the mayor. The general manager is responsible for arranging the implementation of the recommendation/s where the report relates to a councillor's conduct. The mayor is responsible for arranging the implementation of the recommendation/s where the report relates to the general manager's conduct.
- 7.46 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 7.36, paragraphs (d) to (j) (whether or not in conjunction with recommendations made under clause 7.36, paragraphs (a) to (c)), the complaints coordinator must, where practicable, arrange for the investigator's report to be reported to the next ordinary council meeting for the council's consideration, unless the meeting is to be held within the 4 weeks prior to an ordinary local government election, in which case the report must be reported to the first ordinary council meeting following the election.

### **Consideration of the final investigation report by Council**

- 7.47 The role of the council in relation to a final investigation report is to impose a sanction if the investigator has determined that there has been a breach of the code of conduct and has made a recommendation in their final report under clause 7.36, paragraphs (d) to (j) (whether or not in conjunction with recommendations made under clause 7.36, paragraphs (a) to (c)).
- 7.48 The council is to close its meeting to the public to consider the final investigation report in cases where it is permitted to do so under section 10A of the LGA.
- 7.49 Where the complainant is a councillor, they must absent themselves from the meeting and take no part in any discussion or voting on the matter. The complainant councillor may absent themselves without making any disclosure of interest in relation to the matter unless otherwise required to do so under the code of conduct.
- 7.50 Prior to imposing a sanction, the council must provide the respondent with an opportunity to make a submission to the council. A submission may be made orally or in writing. The respondent is to confine their submission to addressing the investigator's recommendation/s.

- 7.51 Once the respondent has made their submission they must absent themselves from the meeting and, where they are a councillor, take no part in any discussion or voting on the matter.
- 7.52 The council must not invite submissions from other persons for the purpose of seeking to rehear evidence previously considered by the investigator.
- 7.53 Prior to imposing a sanction, the council may by resolution:
  - a request that the investigator make additional enquiries and/or provide additional information to it in a supplementary report, or
  - b seek an opinion from the Office in relation to the report.
- 7.54 The council may, by resolution, defer further consideration of the matter pending the receipt of a supplementary report from the investigator or an opinion from the Office.
- 7.55 The investigator may make additional enquiries for the purpose of preparing a supplementary report.
- 7.56 Where the investigator prepares a supplementary report, they must provide copies to the complaints coordinator who shall provide a copy each to the council and the respondent.
- 7.57 The investigator is not obliged to notify or consult with any person prior to submitting the supplementary report to the complaints coordinator.
- 7.58 The council is only required to provide the respondent a further opportunity to make an oral or written submission on a supplementary report if the supplementary report contains new information that is adverse to them.
- 7.59 A council may by resolution impose one or more of the following sanctions on a respondent:
  - a that the respondent undertake any training or other education relevant to the conduct giving rise to the breach
  - b that the respondent be counselled for their conduct
  - c that the respondent be removed from membership of a committee of the council or any other body or organisation that the respondent serves on as the council's representative
  - d that the respondent gives an undertaking not to repeat the offending behaviour in such time and form specified by the resolution
  - e that the respondent apologise to any person or organisation affected by the breach in such a time and form specified by the resolution
  - f that findings of inappropriate conduct be made public by publishing the investigator's findings and determination in the minutes of the meeting
  - g in the case of a breach by the general manager, that action be taken under the general manager's contract for the breach
  - h in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the LGA
  - i in the case of a breach by a councillor:
    - i. that the councillor be formally censured for the breach under section 440G of the LGA, and

- ii. that the matter be referred to the Office for further action under the misconduct provisions of the LGA.
- 7.60 The council is not obliged to adopt the investigator's recommendation/s. Where the council proposes not to adopt one or more of the investigator's recommendation/s, the council must resolve not to adopt the recommendation/s and state in its resolution the reasons for its decision.
- 7.61 Where the council proposes to impose a sanction on the respondent under clause 7.59 that is different to the sanction recommended by the investigator in their final report, the council must state in its resolution the reasons for its decision.
- 7.62 Where the council resolves not to adopt the investigator's recommendation/s or imposes a sanction on the respondent under clause 7.59 that is different to the sanction recommended by the investigator, the complaints coordinator must notify the Office of the council's decision and the reasons for it.

## **8 Oversight and Rights of Review**

### **The Office's powers of review**

- 8.1 The Office may, at any time, whether or not in response to a request, review the consideration of a matter under a council's code of conduct where it is concerned that a person has failed to comply with a requirement prescribed under these procedures or has misinterpreted or misapplied the standards of conduct prescribed under the code of conduct in their consideration of a matter.
- 8.2 The Office may direct any person, including the council, to defer taking further action in relation to a matter under consideration under the council's code of conduct pending the completion of its review. Any person the subject of a direction must comply with the direction.
- 8.3 Where the Office undertakes a review of a matter under clause 8.1, it will notify the complaints coordinator and any other affected persons, of the outcome of the review.

### **Complaints about conduct reviewers**

- 8.4 The general manager or their delegate must refer code of conduct complaints about conduct reviewers to the Office for its consideration.
- 8.5 The general manager must notify the complainant of the referral of their complaint about the conduct reviewer in writing.
- 8.6 The general manager must implement any recommendation made by the Office as a result of its consideration of a complaint about a conduct reviewer.

### **Practice rulings**

- 8.7 Where a respondent and an investigator are in dispute over a requirement under these procedures, either person may make a request in writing to the Office to make a ruling on a question of procedure (a practice ruling).
- 8.8 Where the Office receives a request in writing for a practice ruling, the Office may provide notice in writing of its ruling and the reasons for it to the person who requested it and to the investigator, where that person is different.
- 8.9 Where the Office makes a practice ruling, all parties must comply with it.
- 8.10 The Office may decline to make a practice ruling. Where the Office declines to make a practice ruling, it will provide notice in writing of its decision and the reasons for it to the person who requested it and to the investigator, where that person is different.

### **Review of decisions to impose sanctions**

- 8.11 A person who is the subject of a sanction imposed under Part 7 of these procedures other than one imposed under clause 7.59, paragraph (i), may,

within 28 days of the sanction being imposed, seek a review of the investigator's determination and recommendation by the Office.

- 8.12 A review under clause 8.11 may be sought on the following grounds:
- a that the investigator has failed to comply with a requirement under these procedures, or
  - b that the investigator has misinterpreted or misapplied the standards of conduct prescribed under the code of conduct, or
  - c that in imposing its sanction, the council has failed to comply with a requirement under these procedures.
- 8.13 A request for a review made under clause 8.11 must be made in writing and must specify the grounds upon which the person believes the investigator or the council has erred.
- 8.14 The Office may decline to conduct a review, in cases where the grounds upon which the review is sought are not sufficiently specified.
- 8.15 The Office may undertake a review of a matter without receiving a request under clause 8.11.
- 8.16 The Office will undertake a review of the matter on the papers. However, the Office may request that the complaints coordinator provide such further information that the Office considers reasonably necessary for it to review the matter. The complaints coordinator must, as far as is reasonably practicable, provide the information requested by the Office.
- 8.17 Where a person requests a review under clause 8.11, the Office may direct the council to defer any action to implement a sanction. The council must comply with a direction to defer action by the Office.
- 8.18 The Office must notify the person who requested the review and the complaints coordinator of the outcome of the Office's review in writing and the reasons for its decision. In doing so, the Office may comment on any other matters the Office considers to be relevant.
- 8.19 Where the Office considers that the investigator or the council has erred, the Office may recommend that a decision to impose a sanction under these procedures be reviewed;
- a) the complaints coordinator must, where practicable, arrange for the Office's determination to be tabled at the next ordinary council meeting unless the meeting is to be held within the 4 weeks prior to an ordinary local government election, in which case it must be tabled at the first ordinary council meeting following the election, and
  - b) the council must:
    - i. review its decision to impose the sanction, and
    - ii. consider the Office's recommendation in doing so, and
    - iii. resolve to either rescind or reaffirm its previous resolution in relation to the matter.
- 8.20 Where, having reviewed its previous decision in relation to a matter under clause 8.19(b), the council resolves to reaffirm its previous decision, the council must state in its resolution its reasons for doing so.

## 9 Procedural Irregularities

- 9.1 A failure to comply with these procedures does not, on its own, constitute a breach of the code of conduct, except as may be otherwise specifically provided under the code of conduct.
- 9.2 A failure to comply with these procedures will not render a decision made in relation to a matter invalid where:
- a the non-compliance is isolated and/or minor in nature, or
  - b reasonable steps are taken to correct the non-compliance, or
  - c reasonable steps are taken to address the consequences of the non-compliance.

## 10 Practice Directions

- 10.1 The Office may at any time issue a practice direction in relation to the application of these procedures.
- 10.2 The Office will issue practice directions in writing, by circular to all councils.
- 10.3 All persons performing a function prescribed under these procedures must consider the Office's practice directions when performing the function.

## 11 Reporting Statistics on Code of Conduct Complaints About Councillors and the General Manager

- 11.1 The complaints coordinator must arrange for the following statistics to be reported to the council within 3 months of the end of September of each year:
- a the total number of code of conduct complaints made about councillors and the general manager under the code of conduct in the year to September (the reporting period)
  - b the number of code of conduct complaints referred to a conduct reviewer during the reporting period
  - c the number of code of conduct complaints finalised by a conduct reviewer at the preliminary assessment stage during the reporting period and the outcome of those complaints
  - d the number of code of conduct complaints investigated by a conduct reviewer during the reporting period
  - e without identifying particular matters, the outcome of investigations completed under these procedures during the reporting period
  - f the number of matters reviewed by the Office during the reporting period and, without identifying particular matters, the outcome of the reviews, and
  - g the total cost of dealing with code of conduct complaints made about councillors and the general manager during the reporting period, including staff costs.
- 11.2 The council is to provide the Office with a report containing the statistics referred to in clause 11.1 within 3 months of the end of September of each year.



## 12 Confidentiality

- 12.1 Information about code of conduct complaints and the management and investigation of code of conduct complaints is to be treated as confidential and is not to be publicly disclosed except as may be otherwise specifically required or permitted under these procedures.
- 12.2 Where a complainant publicly discloses information on one or more occasions about a code of conduct complaint they have made or purported to make, the general manager or their delegate may, with the consent of the Office, determine that the complainant is to receive no further information about their complaint and any future code of conduct complaint they make or purport to make.
- 12.3 Prior to seeking the Office's consent under clause 12.2, the general manager or their delegate must give the complainant written notice of their intention to seek the Office's consent, invite them to make a written submission within at least 14 days or such other period specified by the general manager or their delegate, and consider any submission made by them.
- 12.4 In giving its consent under clause 12.2, the Office must consider any submission made by the complainant to the general manager or their delegate.
- 12.5 The general manager or their delegate must give written notice of a determination made under clause 12.2 to:
  - a the complainant
  - b the complaints coordinator
  - c the Office, and
  - d any other person the general manager or their delegate considers should be notified of the determination.
- 12.6 Any requirement under these procedures that a complainant is to be provided with information about a code of conduct complaint that they have made or purported to make, will not apply to a complainant the subject of a determination made by the general manager or their delegate under clause 12.2.
- 12.7 Clause 12.6 does not override any entitlement a person may have to access to council information under the *Government Information (Public Access) Act 2009* or to receive information under the *Public Interest Disclosures Act 1994* in relation to a complaint they have made.

## 13 Additional Information

### Policy responsibilities

In addition to the responsibilities outlined elsewhere in this Code:

- The General Manager is responsible for ensuring these Procedures are in place, is promoted and are applied.
- The Manager Governance & Risk is responsible for the maintenance of these Procedures and their promulgation to Council officials.

### Review

Council is committed to continuous improvement, including achieving higher levels of 'good governance'. These Procedures will be reviewed at least each elected term of Council, and each time *The Model Code of Conduct* and associated *Model Code of Conduct Procedures* are amended.

### Related documents

These procedures relate to:

- *Local Government Act 1993*
- *The Model Code of Conduct – 2020*
- *The Model Code of Conduct Procedures – 2020*
- Council's *Code of Conduct*.

### Version history

Version	Release Date	Author	Reason for Change
1.0	07/12/2016	Coordinator Governance	Harmonised document from former Councils
2.0	18/08/2018	Coordinator Governance	Review of document
3.0	08/05/2019	Coordinator Governance	Review of document
4.0	13/10/2021	Coordinator Governance	Review of document
5.0	28/09/2022	Coordinator Governance	Review of document
6.0	TBC	Manager Governance & Risk	Review within 12 months of election completed, no changes recommended

p



## **Code of Conduct for Council Committee Members, Delegates of Council and Council Advisors**

**TBC**



© Bayside Council

Code of Conduct for Council Committee Members, Delegates of Council and  
Council Advisors

File: F11/498 Document: 16/115135[v5]

Policy Register: F16/951 Policy No.: PP16/3

Class of document: Council Policy

Enquiries: Manager Governance & Risk



Telephone Interpreter Services - 131 450 Τηλεφωνικές Υπηρεσίες Διερμηνέων بخدمة الترجمة الهاتفية 電話傳譯服務處 Служба за превеждане по телефон

Code of Conduct for Council Committee Members, Delegates of Council and  
Council Advisors

2

## Contents

<b>1</b>	<b>Introduction .....</b>	<b>4</b>
<b>2</b>	<b>Definitions .....</b>	<b>5</b>
<b>3</b>	<b>General conduct obligations .....</b>	<b>7</b>
<b>4</b>	<b>Pecuniary interests .....</b>	<b>10</b>
<b>5</b>	<b>Non-pecuniary conflicts of interest .....</b>	<b>15</b>
<b>6</b>	<b>Personal benefit .....</b>	<b>18</b>
<b>7</b>	<b>Access to information and Council resources .....</b>	<b>21</b>
<b>8</b>	<b>Maintaining the integrity of this code .....</b>	<b>24</b>
<b>9</b>	<b>Document control.....</b>	<b>26</b>
<b>Schedule 1:</b>	<b>Disclosures of interests and other matters in written returns submitted under Clause 4.15.....</b>	<b>27</b>
<b>Schedule 2:</b>	<b>Form of Written Return of Interests Submitted Under Clause 4.15</b>	<b>34</b>

Code of Conduct for Council Committee Members, Delegates of Council and Council Advisors	3
---	---

## 1 Part 1 Introduction

### Background

This code of conduct applies to council committee members and delegates of council who are not councillors or staff of the council. It also applies to advisers of council for the purposes of clause 4.12. It is based on the Model Code of Conduct for Local Councils in NSW ('the Model Code of Conduct') made under section 440 of the Local Government Act 1993 ('LGA') and the Local Government (General) Regulation 2021 ('the Regulation').

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

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

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

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

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

Failure by a council committee member or delegate of the council to comply with a council's code of conduct may give rise to disciplinary action.

## 2 Part 2 Definitions

In this code the following terms have the following meanings:

**Committee**

See the definition of 'council committee'

**Complaint**

A code of conduct complaint made for the purposes of clauses 4.1 and 4.2 of the Procedures

**Conduct**

Includes acts and omissions

**Council**

Includes county councils and joint organisations

**Council Committee**

A committee established by a council comprising of councillors, staff or other persons that the council has delegated functions to and the council's audit, risk and improvement committee.

**Council Committee Member**

A person other than a councillor or member of staff of a council who is a member of a council committee other than a wholly advisory committee, and a person other than a councillor who is a member of the council's audit, risk and improvement committee.

**Council Official**

Includes councillors, members of staff of a council, administrators, council committee members, delegates of council and, for the purposes of clause 4.12, council advisers

**Councillor**

Any person elected or appointed to civic office, including the mayor and includes members and chairpersons of county councils and voting representatives of the boards of joint organisations and chairpersons of joint organisations

**Delegate of Council**

A person (other than a councillor or member of staff of a council) or body, and the individual members of that body, to whom a function of the council is delegated

**Designated person**

A person referred to in clause 4.8

**Election campaign**

Includes council, state and federal election campaigns

**General Manager**

Includes the executive officer of a joint organisation

**Joint organisation**

A joint organisation established under section 400O of the LGA

**LGA**

The Local Government Act 1993

Code of Conduct for Council Committee Members, Delegates of Council and Council Advisors

5

**Mayor**

Includes the chairperson of a county council or a joint organisation

**Members of staff of a council**

Includes members of staff of county councils and joint organisations

**The Office**

Office of Local Government

**Personal information**

Information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion

**The Procedures**

The Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW prescribed under the Regulation

**The Regulation**

The Local Government (General) Regulation 2021

**Wholly Advisory Committee**

A council committee that the council has not delegated any functions to



### 3 Part 3 General conduct obligations

#### General conduct

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

#### Fairness and equity

- 3.3 You must consider issues consistently, promptly and fairly. You must deal with matters in accordance with established procedures, in a non-discriminatory manner.
- 3.4 You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case. You must not take irrelevant matters or circumstances into consideration when making decisions.
- 3.5 An act or omission in good faith, whether or not it involves error, will not constitute a breach of clauses 3.3 or 3.4.

#### Harassment and discrimination

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

## **Bullying**

- 3.8 You must not engage in bullying behaviour towards others.
- 3.9 For the purposes of this code, 'bullying behaviour' is any behaviour in which:
- a) a person or a group of people repeatedly behaves unreasonably towards another person or a group of persons and
  - b) the behaviour creates a risk to health and safety.
- 3.10 Bullying behaviour may involve, but is not limited to, any of the following types of behaviour:
- a) aggressive, threatening or intimidating conduct
  - b) belittling or humiliating comments
  - c) spreading malicious rumours
  - d) teasing, practical jokes or 'initiation ceremonies'
  - e) exclusion from work-related events
  - f) unreasonable work expectations, including too much or too little work, or work below or beyond a worker's skill level
  - g) displaying offensive material
  - h) pressure to behave in an inappropriate manner.
- 3.11 Reasonable management action carried out in a reasonable manner does not constitute bullying behaviour for the purposes of this code. Examples of reasonable management action may include, but are not limited to:
- a performance management processes
  - b disciplinary action for misconduct
  - c informing a worker about unsatisfactory work performance or inappropriate work behaviour
  - d directing a worker to perform duties in keeping with their job
  - e maintaining reasonable workplace goals and standards
  - f legitimately exercising a regulatory function
  - g legitimately implementing a council policy or administrative processes.

## **Work health and safety**

- 3.12 All council officials, including councillors, owe statutory duties under the *Work Health and Safety Act 2011* (WH&S Act). You must comply with your duties under the WH&S Act and your responsibilities under any policies or procedures adopted by the council to ensure workplace health and safety. Specifically, you must:
- a take reasonable care for your own health and safety
  - b take reasonable care that your acts or omissions do not adversely affect the health and safety of other persons

- c comply, so far as you are reasonably able, with any reasonable instruction that is given to ensure compliance with the WH&S Act and any policies or procedures adopted by the council to ensure workplace health and safety.
- d cooperate with any reasonable policy or procedure of the council relating to workplace health or safety that has been notified to council staff
- e report accidents, incidents, near misses, to the general manager or such other staff member nominated by the general manager, and take part in any incident investigations
- f so far as is reasonably practicable, consult, co-operate and coordinate with all others who have a duty under the WH&S Act in relation to the same matter.

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

- 3.13 You must ensure that land use planning, development assessment and other regulatory decisions are properly made, and that all parties are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the exercise of land use planning, development assessment and other regulatory functions.
- 3.14 In exercising land use planning, development assessment and other regulatory functions, you must ensure that no action, statement or communication between yourself and others conveys any suggestion of willingness to improperly provide concessions or preferential or unduly unfavourable treatment.

### **Obligations in relation to meetings**

- 3.15 You must comply with rulings by the chair at council and committee meetings or other proceedings of the council unless a motion dissenting from the ruling is passed.
- 3.16 You must not engage in bullying behaviour (as defined under this Part) towards the chair, other council officials or any members of the public present during council or committee meetings or other proceedings of the council (such as, but not limited to, workshops and briefing sessions).
- 3.17 You must not engage in conduct that disrupts council or committee meetings or other proceedings of the council (such as, but not limited to, workshops and briefing sessions), or that would otherwise be inconsistent with the orderly conduct of meetings.

## 4 Pecuniary interests

### What is a pecuniary interest?

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

### What interests do not have to be disclosed?

- 4.6 You do not have to disclose the following interests for the purposes of this Part:
- a your interest as an elector
  - b your interest as a ratepayer or person liable to pay a charge
  - c an interest you have in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to the public generally, or to a section of the public that includes persons who are not subject to this code
  - d an interest you have in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to your relative by the council in the same manner and subject to the same conditions as apply to persons who are not subject to this code
  - e an interest you have as a member of a club or other organisation or association, unless the interest is as the holder of an office in the club or organisation (whether remunerated or not)
  - f if you are a council committee member, an interest you have as a person chosen to represent the community, or as a member of a non-profit organisation or other community or special interest group, if you have been appointed to represent the organisation or group on the council committee
  - g an interest you have relating to a contract, proposed contract or other matter, if the interest arises only because of a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company
  - h an interest you have arising from the proposed making by the council of an agreement between the council and a corporation, association or partnership, being a corporation, association or partnership that has more than 25 members, if the interest arises because your relative is a shareholder (but not a director) of the corporation, or is a member (but not a member of the committee) of the association, or is a partner of the partnership
  - i an interest you have arising from the making by the council of a contract or agreement with your relative for, or in relation to, any of the following, but only if the proposed contract or agreement is similar in terms and conditions to such contracts and agreements as have been made, or as are proposed to be made, by the council in respect of similar matters with other residents of the area:
    - i. the performance by the council at the expense of your relative of any work or service in connection with roads or sanitation
    - ii. security for damage to footpaths or roads
    - iii. any other service to be rendered, or act to be done, by the council by or under any Act conferring functions on the council, or by or under any contract.
  - j an interest of a person arising from the passing for payment of a regular account for the wages or salary of an employee who is a relative of the person
  - k an interest arising from being covered by, or a proposal to be covered by, indemnity insurance as a council committee member

- 4.7 For the purposes of clause 4.6, 'relative' has the same meaning as in clause 4.4, but includes your spouse or de facto partner.

Code of Conduct for Council Committee Members, Delegates of Council and Council Advisors

11

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

- 4.8 Designated persons include:
- a a person who is a delegate of the council and who holds a position identified by the council as the position of a designated person because it involves the exercise of functions (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the person's duty as a member of staff or delegate and the person's private interest
  - b a person (other than a member of the senior staff of the council) who is a member of a committee of the council identified by the council as a committee whose members are designated persons because the functions of the committee involve the exercise of the council's functions (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the member's duty as a member of the committee and the member's private interest.
- 4.9 A designated person:
- a must prepare and submit written returns of interests in accordance with clause 4.15
  - b must disclose pecuniary interests in accordance with clause 4.10.
- 4.10 A designated person must disclose in writing to the general manager the nature of any pecuniary interest the person has in any council matter with which the person is dealing as soon as practicable after becoming aware of the interest.
- 4.11 The general manager must, on receiving a disclosure from a designated person, deal with the matter to which the disclosure relates or refer it to another person to deal with.

### **What disclosures must be made by council advisers?**

- 4.12 A person who, at the request or with the consent of the council or a council committee, gives advice on any matter at any meeting of the council or committee, must disclose the nature of any pecuniary interest the person has in the matter to the meeting at the time the advice is given. The person is not required to disclose the person's interest as an adviser.
- 4.13 A person does not breach clause 4.12 if the person did not know, and could not reasonably be expected to have known, that the matter under consideration at the meeting was a matter in which they had a pecuniary interest.

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

- 4.14 A council committee member must disclose pecuniary interests in accordance with clause 4.22 and comply with clause 4.23.

**Note: A council committee member identified by council as a “designated person” for the purposes of clause 4.8(d) must also prepare and submit written returns of interests in accordance with clause 4.15.**

### **Disclosure of interests in written returns**

- 4.15 A designated person must make and lodge with the general manager a return in the form set out in schedule 2 to this code, disclosing the designated person’s interests as specified in schedule 1 to this code within 3 months after:
- a becoming a designated person, and
  - b 30 June of each year, and
  - c the designated person becoming aware of an interest they are required to disclose under schedule 1 that has not been previously disclosed in a return lodged under paragraphs (a) or (b).
- 4.16 A person need not make and lodge a return under clause 4.15, paragraphs (a) and (b) if:
- a they made and lodged a return under that clause in the preceding 3 months, or
  - b they have ceased to be a designated person in the preceding 3 months.
- 4.17 A person must not make and lodge a return that the person knows or ought reasonably to know is false or misleading in a material particular.
- 4.18 The general manager must keep a register of returns required to be made and lodged with the general manager.
- 4.19 Returns required to be lodged with the general manager under clause 4.15(a) and (b) must be tabled at the first meeting of the council after the last day the return is required to be lodged.
- 4.20 Returns required to be lodged with the general manager under clause 4.15(c) must be tabled at the next council meeting after the return is lodged.
- 4.21 Information contained in returns made and lodged under clause 4.15 is to be made publicly available in accordance with the requirements of the *Government Information (Public Access) Act 2009*, the *Government Information (Public Access) Regulation 2009* and any guidelines issued by the Information Commissioner.

### **Disclosure of pecuniary interests at meetings**

- 4.22 A council committee member who has a pecuniary interest in any matter with which the council is concerned, and who is present at a meeting of the committee at which the matter is being considered, must disclose the nature of the interest to the meeting as soon as practicable.
- 4.23 The council committee member must not be present at, or in sight of, the meeting of the committee:
- a at any time during which the matter is being considered or discussed by the committee, or
  - b at any time during which the committee is voting on any question in relation to the matter.
- 4.24 A disclosure made at a meeting of a council committee must be recorded in the minutes of the meeting.
- 4.25 A general notice may be given to the general manager in writing by a council committee member to the effect that the council committee member, or the council committee member's spouse, de facto partner or relative, is:
- a a member of, or in the employment of, a specified company or other body, or
  - b a partner of, or in the employment of, a specified person.
- Such a notice is, unless and until the notice is withdrawn or until the end of the term of the council in which it is given (whichever is the sooner), sufficient disclosure of the council committee member's interest in a matter relating to the specified company, body or person that may be the subject of consideration by the council or council committee after the date of the notice.
- 4.26 A council committee member is not prevented from being present at and taking part in a meeting at which a matter is being considered, or from voting on the matter, merely because the council committee member has an interest in the matter of a kind referred to in clause 4.6.
- 4.27 A person does not breach clauses 4.22 or 4.23 if the person did not know, and could not reasonably be expected to have known, that the matter under consideration at the meeting was a matter in which they had a pecuniary interest.
- 4.28 The Minister for Local Government may, conditionally or unconditionally, allow a council committee member who has a pecuniary interest in a matter with which the council is concerned to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion that it is in the interests of the electors for the area to do so.
- 4.29 A council committee member with a pecuniary interest in a matter who is permitted to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter under clause 4.28, must still disclose the interest they have in the matter in accordance with clause 4.22.



## 5 Non-pecuniary conflicts of interest

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

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

### Managing non-pecuniary conflicts of interest

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

- b other relationships with persons who are affected by a decision or a matter under consideration that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship.
  - c an affiliation between the council official and an organisation (such as a sporting body, club, religious, cultural or charitable organisation, corporation or association) that is affected by a decision or a matter under consideration that is particularly strong. The strength of a council official's affiliation with an organisation is to be determined by the extent to which they actively participate in the management, administration or other activities of the organisation.
  - d membership, as the council's representative, of the board or management committee of an organisation that is affected by a decision or a matter under consideration, in circumstances where the interests of the council and the organisation are potentially in conflict in relation to the particular matter
  - e a financial interest (other than an interest of a type referred to in clause 4.6) that is not a pecuniary interest for the purposes of clause 4.1
  - f the conferral or loss of a personal benefit other than one conferred or lost as a member of the community or a broader class of people affected by a decision.
- 5.10 Significant non-pecuniary conflicts of interest must be managed in one of two ways:
  - a by not participating in consideration of, or decision making in relation to, the matter in which you have the significant non-pecuniary conflict of interest and the matter being allocated to another person for consideration or determination, or
  - b if the significant non-pecuniary conflict of interest arises in relation to a matter under consideration at a council or committee meeting, by managing the conflict of interest as if you had a pecuniary interest in the matter by complying with clauses 4.22 and 4.23.
- 5.11 If you determine that you have a non-pecuniary conflict of interest in a matter that is not significant and does not require further action, when disclosing the interest you must also explain in writing why you consider that the non-pecuniary conflict of interest is not significant and does not require further action in the circumstances.
- 5.12 Council committee members are not required to declare and manage a non-pecuniary conflict of interest in accordance with the requirements of this Part where it arises from an interest they have as a person chosen to represent the community, or as a member of a non-profit organisation or other community or special interest group, if they have been appointed to represent the organisation or group on the council committee.

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

- 5.13 The Minister for Local Government may, conditionally or unconditionally, allow a council committee member who is precluded under this Part from participating in the consideration of a matter to be present at a meeting of the committee, to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion that it is in the interests of the electors for the area to do so.
- 5.14 Where the Minister exempts a committee member from complying with a requirement under this Part under clause 5.13, the committee member must still disclose any interests they have in the matter the exemption applies to, in accordance with clause 5.6

### **Personal dealings with council**

- 5.15 You may have reason to deal with your council in your personal capacity (for example, as a ratepayer, recipient of a council service or applicant for a development consent granted by council). You must not expect or request preferential treatment in relation to any matter in which you have a private interest because of your position. You must avoid any action that could lead members of the public to believe that you are seeking preferential treatment.
- 5.16 You must undertake any personal dealings you have with the council in a manner that is consistent with the way other members of the community deal with the council. You must also ensure that you disclose and appropriately manage any conflict of interest you may have in any matter in accordance with the requirements of this code.

## 6 Personal benefit

Refer also to Council's *Gifts & Benefits Policy*

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

### Gifts and benefits

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

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

Council's principle regarding gifts and benefit is that  
'A Thank you is Enough'.

- 6.5 You must not:
- a seek or accept a bribe or other improper inducement
  - b seek gifts or benefits of any kind
  - c accept any gift or benefit that may create a sense of obligation on your part, or may be perceived to be intended or likely to influence you in carrying out your public duty
  - d accept any gift or benefit except in special circumstances as defined in

Code of Conduct for Council Committee Members, Delegates of Council and  
Council Advisors

18

Council's Gifts & Benefits Policy. Such special circumstances include:

- situations that relate to protocol, cultural aspects, sister-city relationships, international delegations and the like; hospitality associated with events and functions hosted by community based (not-for-profit) organisations, attendance at which is consistent with the council official's role – in particular the statutory role of a councillor; insignificant gifts / benefits associated with hospitality, promotional materials and other situations described in this policy.
- e accept an offer of cash or a cash-like gift as defined by clause 6.11, regardless of the amount
- f participate in competitions for prizes where eligibility is based on the council being in or entering into a customer–supplier relationship with the competition organiser
- g personally benefit from reward points programs when purchasing on behalf of the council.
- 6.6 Where you receive a gift or benefit of any value other than one referred to in clause 6.2, you must disclose this promptly to the general manager in writing. The general manager must ensure that, at a minimum, the following details are recorded in the council's gift register:
- a) the nature of the gift or benefit
  - b) the estimated monetary value of the gift or benefit
  - c) the name of the person who provided the gift or benefit, and
  - d) the date on which the gift or benefit was received.
- 6.7 Where you receive a gift or benefit that cannot reasonably be refused or returned, the gift or benefit must be surrendered to the Manager Governance & Risk, who will determine its fate.

**Gifts and benefits of token value**

- 6.8 The above 'no-gift' requirement extends to token gifts such as:
- a) invitations to and attendance at local social, cultural or sporting events
  - b) gifts of alcohol
  - c) ties, scarves, coasters, tie pins, diaries, chocolates or flowers or the like
  - d) prizes or awards.

**Gifts and benefits of more than token value**

- 6.9 Substantial gifts or benefits must never be accepted. Apart from the above-mentioned situations, there are no special circumstances in which a substantial gift can be accepted.

- 6.10 Substantial gifts and benefits include, but are not limited to, tickets to major sporting events (such as international matches or matches in national sporting codes), corporate hospitality at a corporate facility at major sporting events, free or discounted products or services for personal use provided on terms that are not available to the general public or a broad class of persons, the use of holiday homes, artworks, free or discounted travel.

**‘Cash-like gifts’**

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

**Improper and undue influence**

- 6.12 You must not use your position to influence other council officials in the performance of their official functions to obtain a private benefit for yourself or for somebody else.
- 6.13 You must not take advantage (or seek to take advantage) of your status or position with council, or of functions you perform for council, in order to obtain a private benefit for yourself or for any other person or body.

## 7 Access to Information and Council Resources

### Refer also to Council's:

- Council Officials Relationships & Access Policy
- Electronic Communications Policy
- Access to Information Policy

### Use of certain council information

- 7.1 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 access by virtue of your office or position with council
  - d only release council information in accordance with established council policies and procedures and in compliance with relevant legislation.

### Use and security of confidential information

- 7.2 You must maintain the integrity and security of confidential information in your possession, or for which you are responsible.
- 7.3 In addition to your general obligations relating to the use of council information, you must:
- a only access confidential information that you have been authorised to access and only do so for the purposes of exercising your official functions
  - b protect confidential information
  - c only release confidential information if you have authority to do so
  - d only use confidential information for the purpose for which it is intended to be used
  - e not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person
  - f not use confidential information with the intention to cause harm or detriment to the council or any other person or body
  - g not disclose any confidential information discussed during a confidential session of a council or committee meeting or any other confidential forum (such as, but not limited to, workshops or briefing sessions).

### Personal information

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

### **Use of council resources**

- 7.5 You must use council resources ethically, effectively, efficiently and carefully in exercising your official functions, and must not use them for private purposes, except when supplied as part of a contract of employment (but not for private business purposes), unless this use is lawfully authorised and proper payment is made where appropriate.
- 7.6 You must be scrupulous in your use of council property, including intellectual property, official services, facilities, technology and electronic devices and must not permit their misuse by any other person or body.
- 7.7 You must avoid any action or situation that could create the appearance that council property, official services or public facilities are being improperly used for your benefit or the benefit of any other person or body.
- 7.8 You must not use council resources (including council staff), property or facilities for the purpose of assisting your election campaign or the election campaigns of others unless the resources, property or facilities are otherwise available for use or hire by the public and any publicly advertised fee is paid for use of the resources, property or facility.
- 7.9 You must not use the council letterhead, council crests, council email or social media or other information that could give the appearance it is official council material:
- a for the purpose of assisting your election campaign or the election campaign of others, or
  - b for other non-official purposes.
- 7.10 You must not convert any property of the council to your own use unless properly authorised.

### **Internet access**

- 7.11 You must not use council's computer resources or mobile or other devices to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature, or that could otherwise lead to criminal penalty or civil liability and/or damage the council's reputation.
- 7.12 You must not use social media to post or share comments, photos, videos, electronic recordings or other information that:
- is offensive, humiliating, threatening, or intimidating to other Council officials or those that deal with the Council
  - contains content about the Council that is misleading or deceptive
  - divulges confidential Council information
  - breaches the privacy of other Council officials or those that deal with Council
  - contains allegations of suspected breaches of this code or information about the consideration of a matter under the Procedures, or
  - could be perceived to be an official comment on behalf of the Council where you have not been authorised to make such comment."



### **Council record keeping**

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

## **8 Maintaining the integrity of this code**

### **Complaints made for an improper purpose**

- 8.1 You must not make or threaten to make a complaint or cause a complaint to be made alleging a breach of this code for an improper purpose.
- 8.2 For the purposes of clause 8.1, a complaint is made for an improper purpose where it is trivial, frivolous, vexatious or not made in good faith, or where it otherwise lacks merit and has been made substantially for one or more of the following purposes:
- a to bully, intimidate or harass another council official
  - b to damage another council official's reputation
  - c to obtain a political advantage
  - d to influence a council official in the exercise of their official functions or to prevent or disrupt the exercise of those functions
  - e to influence the council in the exercise of its functions or to prevent or disrupt the exercise of those functions
  - f to avoid disciplinary action under the Procedures
  - g to take reprisal action against a person for making a complaint alleging a breach of this code
  - h to take reprisal action against a person for exercising a function prescribed under the Procedures
  - i to prevent or disrupt the effective administration of this code under the Procedures.

### **Detrimental action**

- 8.3 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for a complaint they have made alleging a breach of this code.
- 8.4 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for any function they have exercised under the Procedures.
- 8.5 For the purposes of clauses 8.3 and 8.4, a detrimental action is an action causing, comprising or involving any of the following:
- a injury, damage or loss
  - b intimidation or harassment
  - c discrimination, disadvantage or adverse treatment in relation to employment
  - d dismissal from, or prejudice in, employment
  - e disciplinary proceedings.

### **Compliance with requirements under the Procedures**

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

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

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

### **Complaints alleging a breach of this Part**

- 8.14 Complaints alleging a breach of this Part by a council committee member or delegate of council are to be managed by the general manager in accordance with the Procedures.

## 9 Document control

### Review

Council must, within 12 months after each ordinary election, review the code and make such adjustments as it considers appropriate and as are consistent with the LGA and Regulation.

The General Manager may approve minor editorial amendments that do not change the policy substance.

### Related documents

- Local Government Act 1993
- Local Government (General) Regulation 2021
- The Model Code of Conduct for Local Councils in NSW
- Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW
- Council's Code of Conduct Procedures
- Council's Conflict of Interest Policy (for staff)
- Council's Gifts & Benefits Policy
- Council's Council Officials Relationship & Access Policy
- Council's Electronic Communications Policy
- Council's Access to Information Policy

### Version history

Version	Release Date	Author	Reason for Change
1.0	14/09/2016	Bruce Cooke	Extract of original adopted 14/09/2016
2.0	08/05/2019	Coordinator Governance	Extract of original adopted 08/05/2019
3.0	13/10/2021	Coordinator Governance	Updated due to release of updated Model Code of Conduct
4.0	28/09/2022	Coordinator Governance	Review
5.0	TBC	Manager Governance & Risk	Review undertaken, no change recommended

## Schedule 1: Disclosures of interests and other matters in written returns submitted under Clause 4.15

### Part 1: Preliminary

#### Definitions

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

*address* means:

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

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

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

- a the allotment of shares in a company
- b the creation of a trust in respect of property
- c the grant or creation of a lease, mortgage, charge, easement, licence, power, partnership or interest in respect of property
- d the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of a debt, contract or chose in action, or of an interest in respect of property
- e the exercise by a person of a general power of appointment over property in favour of another person
- f a transaction entered into by a person who intends by the transaction to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of another person.

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

*interest* means:

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

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

*occupation* includes trade, profession and vocation.

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

*property* includes money.

*return date* means:

- a in the case of a return made under clause 4.15(a), the date on which a person became a councillor or designated person
- b in the case of a return made under clause 4.15(b), 30 June of the year in which the return is made
- c in the case of a return made under clause 4.15(c), the date on which the councillor or designated person became aware of the interest to be disclosed.

*relative* includes any of the following:

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

*travel* includes accommodation incidental to a journey.

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

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

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

### **Real property**

- 5 A person making a return under clause 4.15 of this code must disclose:
  - a the street address of each parcel of real property in which they had an interest on the return date, and
  - b the street address of each parcel of real property in which they had an interest in the period since 30 June of the previous financial year, and
  - c the nature of the interest.
- 6 An interest in a parcel of real property need not be disclosed in a return if the person making the return had the interest only:
  - a as executor of the will, or administrator of the estate, of a deceased person and not as a beneficiary under the will or intestacy, or
  - b as a trustee, if the interest was acquired in the ordinary course of an occupation not related to their duties as the holder of a position required to make a return.
- 7 An interest in a parcel of real property need not be disclosed in a return if the person ceased to hold the interest prior to becoming a councillor or designated person.
- 8 For the purposes of clause 5 of this schedule, 'interest' includes an option to purchase.

### **Gifts**

- 9 A person making a return under clause 4.15 of this code must disclose:
  - a a description of each gift received in the period since 30 June of the previous financial year, and
  - b the name and address of the donor of each of the gifts.
- 10 A gift need not be included in a return if:
  - a it did not exceed \$500, unless it was among gifts totalling more than \$500 made by the same person during a period of 12 months or less, or
  - b it was a political donation disclosed, or required to be disclosed, under Part 3 of the *Electoral Funding Act 2018*, or
  - c the donor was a relative of the donee, or
  - d subject to paragraph (a), it was received prior to the person becoming a councillor or designated person.
- 11 For the purposes of clause 10 of this schedule, the amount of a gift other than money is an amount equal to the value of the property given.

### **Contributions to travel**

- 12 A person making a return under clause 4.15 of this code must disclose:
  - a the name and address of each person who made any financial or other contribution to the expenses of any travel undertaken by the person in the period since 30 June of the previous financial year, and

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

**Interests and positions in corporations**

- 15 A person making a return under clause 4.15 of this code must disclose:
- a the name and address of each corporation in which they had an interest or held a position (whether remunerated or not) on the return date, and
  - b the name and address of each corporation in which they had an interest or held a position in the period since 30 June of the previous financial year, and
  - c the nature of the interest, or the position held, in each of the corporations, and
  - d a description of the principal objects (if any) of each of the corporations, except in the case of a listed company.
- 16 An interest in, or a position held in, a corporation need not be disclosed if the corporation is:
- a formed for the purpose of providing recreation or amusement, or for promoting commerce, industry, art, science, religion or charity, or for any other community purpose, and
  - b required to apply its profits or other income in promoting its objects, and
  - c prohibited from paying any dividend to its members.



- 17 An interest in a corporation need not be disclosed if the interest is a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company.
- 18 An interest or a position in a corporation need not be disclosed if the person ceased to hold the interest or position prior to becoming a councillor or designated person.

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

- 19 A person making a return under clause 4.15 of this code must disclose whether they were a property developer, or a close associate of a corporation that, or an individual who, is a property developer, on the return date.
- 20 For the purposes of clause 19 of this schedule:
- close associate*, in relation to a corporation or an individual, has the same meaning as it has in section 53 of the *Electoral Funding Act 2018*.
- property developer* has the same meaning as it has in Division 7 of Part 3 of the *Electoral Funding Act 2018*.

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

- 21 A person making a return under clause 4.15 of the code must disclose:
- a the name of each trade union, and of each professional or business association, in which they held any position (whether remunerated or not) on the return date, and
  - b the name of each trade union, and of each professional or business association, in which they have held any position (whether remunerated or not) in the period since 30 June of the previous financial year, and
  - c a description of the position held in each of the unions and associations.
- 22 A position held in a trade union or a professional or business association need not be disclosed if the person ceased to hold the position prior to becoming a councillor or designated person.

**Dispositions of real property**

- 23 A person making a return under clause 4.15 of this code must disclose particulars of each disposition of real property by the person (including the street address of the affected property) in the period since 30 June of the previous financial year, under which they wholly or partly retained the use and benefit of the property or the right to re-acquire the property.
- 24 A person making a return under clause 4.15 of this code must disclose particulars of each disposition of real property to another person (including the street address of the affected property) in the period since 30 June of the previous financial year, that is made under arrangements with, but is not made by, the person making the return, being a disposition under which the person making the return obtained wholly or partly the use of the property.
- 25 A disposition of real property need not be disclosed if it was made prior to a person becoming a designated person.

### Sources of income

- 26 A person making a return under clause 4.15 of this code must disclose:
- a each source of income that the person reasonably expects to receive in the period commencing on the first day after the return date and ending on the following 30 June, and
  - b each source of income received by the person in the period since 30 June of the previous financial year.
- 27 A reference in clause 26 of this schedule to each source of income received, or reasonably expected to be received, by a person is a reference to:
- a in relation to income from an occupation of the person:
    - i. a description of the occupation, and
    - ii. if the person is employed or the holder of an office, the name and address of their employer, or a description of the office, and
    - iii. if the person has entered into a partnership with other persons, the name (if any) under which the partnership is conducted, or
  - b in relation to income from a trust, the name and address of the settlor and the trustee, or
  - c in relation to any other income, a description sufficient to identify the person from whom, or the circumstances in which, the income was, or is reasonably expected to be, received.
- 28 The source of any income need not be disclosed by a person in a return if the amount of the income received, or reasonably expected to be received, by the person from that source did not exceed \$500, or is not reasonably expected to exceed \$500, as the case may be.
- 29 The source of any income received by the person that they ceased to receive prior to becoming a councillor or designated person need not be disclosed.
- 30 A fee paid to a councillor or to the mayor or deputy mayor under sections 248 or 249 of the LGA need not be disclosed.

### Debts

- 31 A person making a return under clause 4.15 of this code must disclose the name and address of each person to whom the person was liable to pay any debt:
- a on the return date, and
  - b at any time in the period since 30 June of the previous financial year.
- 32 A liability to pay a debt must be disclosed by a person in a return made under clause 4.18 whether or not the amount, or any part of the amount, to be paid was due and payable on the return date or at any time in the period since 30 June of the previous financial year, as the case may be.
- 33 A liability to pay a debt need not be disclosed by a person in a return if:
- a the amount to be paid did not exceed \$500 on the return date or in the period since 30 June of the previous financial year, as the case may be, unless:

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

**Discretionary disclosures**

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

## **Schedule 2: Form of Written Return of Interests Submitted Under Clause 4.15**

### **‘Disclosures by councillors and designated persons’ return**

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

### **Important information**

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

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

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

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

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

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

as at [return date]

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

[designated person's signature]

[date]

**A. Real Property**

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

**B. Sources of income**

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

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

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

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

3 Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June  
Sources of other income I received at any time since 30 June  
[Include description sufficient to identify the person from whom, or the circumstances in which, that income was received]

**C. Gifts**

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

**D. Contributions to travel**

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

**E. Interests and positions in corporations**

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

Code of Conduct for Council Committee Members, Delegates of Council and Council Advisors

36

---

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

---

---

G. Positions in trade unions and professional or business associations

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

---

---

H. Debts

---

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

---

---

I. Dispositions of property

---

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

---

---

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

---

---

J. Discretionary disclosures

---

# Bayside Council

Serving Our Community

## Gifts & Benefits Policy

**TBC**





***Gifts and benefits***

Never accept gifts of money

Never solicit gifts and benefits

Don't accept gifts and benefits

A thank you is enough

Declare all offers

© Bayside Council

Gifts & Benefits Policy

File: SF17/669 Document: 16/139277[v4]

Policy Register: F16/951 Policy No.: PP16/10

Class of document: Council Policy

Enquiries: Manager Governance & Risk



Telephone Interpreter Services - 131 450 Τηλεφωνικές Υπηρεσίες Διερμηνέων خدمة الترجمة الهاتفية 電話傳譯服務處 Служба за преведување по телефон

Gifts & Benefits Policy

2

## Contents

<b>1 Introduction .....</b>	<b>4</b>
1.1 Background .....	4
1.2 Definitions .....	4
1.3 Policy statement .....	6
<b>2 Scope.....</b>	<b>6</b>
<b>3 Overview .....</b>	<b>6</b>
3.1 Code of Conduct .....	6
3.2 Perceptions .....	6
3.3 Consequences .....	7
3.4 Bribes .....	7
<b>4 Principles .....</b>	<b>8</b>
<b>5 Typical ‘gift and benefit’ situations .....</b>	<b>9</b>
5.1 Token value.....	9
5.2 Gifts to family members and colleagues .....	9
5.3 Prizes and gifts.....	9
5.4 Purchase incentive schemes .....	10
5.5 Hospitality and work-related functions .....	10
5.6 Promotional material .....	11
5.7 Providing services .....	11
5.8 Procurement and disposal .....	12
5.9 Cultural considerations.....	12
5.10 Gifts associated with sister-city activities .....	13
5.11 Giving gifts to others .....	13
5.12 Community organisations.....	13
5.13 Gifts that cannot be returned.....	14
<b>6 Declarations by council officials .....</b>	<b>14</b>
<b>7 Determination of declarations.....</b>	<b>14</b>
<b>8 Disposal of gifts .....</b>	<b>15</b>
<b>9 Policy implementation .....</b>	<b>15</b>
9.1 Responsibilities .....	15
9.2 Procedures.....	16
9.3 Further information.....	16
<b>10 Document control.....</b>	<b>16</b>
10.1 Review .....	16
10.2 Related documents .....	16
10.3 Version history .....	17
<b>Appendix 1 – Gifts &amp; Benefits declaration .....</b>	<b>18</b>

## 1 Introduction

### 1.1 Background

In the course of their duties, council officials may encounter situations in which they are offered gifts or benefits for a variety of reasons.

In dealing with any gifts or benefits, officials must ensure that, not only do they not influence them in the performance of their duties, but also that there cannot be any public perception of undue influence due to these offers.

Ratepayers and residents of Council have a right to expect the business of the Council is conducted with efficiency, fairness, impartiality and integrity. Council officials have an obligation to carry out their duties conscientiously, honestly and objectively.

The purpose of this document is therefore to set policy and provide guidelines for councillors, staff and other council officials in relation to this most important issue.

### 1.2 Definitions

The Independent Commission Against Corruption (ICAC) in its publication *Managing Gifts and Benefits in the Public Sector 2006*, defines gifts and benefits as follows:

#### **Gifts**

In a private context, gifts are usually unsolicited, and meant to convey a feeling on behalf of the giver, for example to express congratulations or gratitude. There may be a custom of reciprocity for gifts given at birthdays and other times, but they are not generally given to create a sense of obligation in the recipient.

In a business context, however, gifts are frequently given to facilitate an ongoing working relationship and to establish patterns of loyalty to the giver. The sense of obligation that business gifts instil is the main difference between private gifts and business gifts.

In between these two are the more complicated scenarios in which gifts may be offered as a genuine expression of appreciation, or as a gesture of pure goodwill, such as those given on special occasions, but in a business context.

The important issue to consider is whether the acceptance of the gift could compromise the recipient's ability to act objectively and impartially towards the giver. This is not an area with simple solutions, particularly where not just actual, but the perception of, compromise may be damaging.

Some common examples of gifts that may be offered in the course of work include:

- alcohol
- clothes
- products
- tickets
- office or business accessories.

**Benefits**

Benefits are different to gifts in that they are generally non-tangible. They may still have financial value however, particularly to their recipients. In terms of managing them, gifts and benefits should be considered interchangeable.

Some common examples of benefit are:

- access to private spectator boxes at sporting venues
- a new job or a promotion
- preferential treatment, such as queue jumping
- access to confidential information
- relationship with a council contractor that provides a discount for private work.

Gifts and benefits that are exchanged within the business context can be categorised as one of following types:

**Gift of influence**

A gift that is intended to generally ingratiate the giver with the recipient for favourable treatment in the future.

**Gift of gratitude**

A gift offered to an individual or agency in appreciation of performing specific tasks or for exemplary performance of duties. Gifts to staff who speak at official functions would be considered gifts of gratitude.

**Token gift**

A gift that is of minimal value offered in a business situation to an agency or council official representing an agency. Such gifts are often small office or business accessories such as pens, calendars, folders, with an inscribed company logo. They are usually mass-produced rather than personalised. [The receipt of token gifts is not permitted in normal circumstances under this policy.]

**Ceremonial gift**

An official gift from one agency to another. Such gifts are often presented to a host agency by delegates from another agency during or at the end of official business. These gifts may sometimes be an expression of gratitude, usually for the work of several people in the agency. Such gifts may therefore may be considered as gifts to the agency as a whole, rather than to a particular individual.

Other definitions:

**Bribe**

A gift or benefit offered to or solicited by a council official to influence that person to act in a particular way.

**Council official**

An individual who carries out public official functions or acts in a capacity of a council official and includes councillors, employees (permanent, temporary, casual), council committee members, and others fulfilling responsibilities on behalf of Council.

***Community based (not-for-profit) organisations***

An organisation that is not operating for the purposes of profit or gain to its individual members nor allowed to make any distribution, whether in money, property or otherwise, to its members. Any profit made by the organisation goes back into the operation of the organisation to carry out its purposes.

### **1.3 Policy statement**

The Code of Conduct states:

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

## **2 Scope**

This policy relates to all gifts and benefits offered to council officials of Council. It is particularly relevant for staff involved in dealing with members of the public and the private sector in such areas as:

- providing services
- granting leases and licences
- regulation, including inspections and granting approvals
- assessment of development applications
- purchasing goods and services, including assessing of tenders
- engaging consultants.

## **3 Overview**

### **3.1 Code of Conduct**

Council’s *Code of Conduct* has a specific section dealing with ‘Personal Benefit’. It is noted that this policy provides further guidance in its application of ‘gifts and benefits’ issues.

### **3.2 Perceptions**

It is important to manage perceptions in relation to gifts and benefits. Often the intended recipient may not know the intentions of the gift giver or the intentions may be different from the public perception of the situation.

It is often the case that the perception of the gift-giving relationship is that the gift could influence the intended recipient's performance of his or her official function, despite the fact that such perceptions alone may not indicate an actual inappropriate influence.

Perceptions can be affected by various factors:

- *The relationship between the gift giver and the council official.* If the council official is, for example, a regulator of the person offering the gift or benefit, or is about to make a decision which could affect the interests of the person offering

the gift or benefit, it is more likely that the gift would be perceived as inappropriate.

- *Transparency and openness.* If a gift is offered to a council official in a public forum, it is less likely to be perceived as a gift of influence than if it were offered in a private context.
- *The value of the gift.* Expensive gifts are more likely to be perceived as gifts to win favours. In determining the value of the gift or benefit, any previous gifts given by an individual or agency to the council official (or to colleagues serving the same functions) should be considered, to calculate their cumulative value. While the perception that one gift may not be considered sufficient to cause an employee to act outside his or her official duty, the sum of multiple gifts may be considered sufficient to do so.

### 3.3 Consequences

If gifts and benefits are not managed appropriately there can be a range of negative consequences for both the individual and Council.

The consequences for individual council officials may be:

- embarrassment
- disciplinary action
- being the subject of an internal or external inquiry
- loss of employment
- criminal prosecution.

The consequences for Council may be:

- embarrassment for the organisation
- loss of public trust
- being the subject of an external enquiry
- legal action.

### 3.4 Bribes

Offering or accepting a bribe is a special case in relation to gifts and benefits that has particularly serious consequences.

If a council official is offered a gift of money or other gift or benefit, which he or she believes is meant to be a bribe, the official must immediately notify his or her supervisor. Council's General Manager has an obligation under the ICAC Act to inform the Commission about any matter that he or she suspects on reasonable grounds concerns or may concern corrupt conduct, including bribery.

The Commission's brochure on bribery<sup>1</sup> details the steps to be taken should a council employee be offered a bribe or otherwise suspects that bribery has occurred.

A gift or benefit offered or sought in order to influence a council official's behaviour is a bribe and such persons may be guilty of an offence under section 249B of the Crimes Act 1900 and subject to a gaol term.

---

<sup>1</sup> ICAC 2006, *Bribery, corrupt commissions and rewards*

## 4 Principles

In common with other public sector agencies, Council's policy on gifts and benefits is:

- If a council official is offered a bribe, the incident must immediately be reported to (their supervisor and) the General Manager. ICAC, and where relevant, the police must be informed immediately. For further information refer to the ICAC brochure *Bribery, corrupt commissions and rewards*, 2006 or subsequent revision.
- Soliciting personal gifts or benefits is strictly prohibited under all circumstances. If a council official becomes aware of another council official soliciting gifts or benefits, he or she should report it immediately to (their supervisor and) the General Manager, who should inform the ICAC through a section 11 report.<sup>2</sup>
- Gifts that may not be outright bribes but are nevertheless suspected of being offered for the purposes of influencing a council official's behaviour in his or her official capacity are always to be declined. In such circumstances the incident should be notified to (the supervisor and) the General Manager, who should consider whether to make a section 11 report to ICAC.
- The acceptance of any offer of money (or equivalent) is strictly prohibited in all cases, since in all likelihood such a gift would be perceived as an attempt at bribery. 'Money' includes any form of credit or cash-like gift such as, but not limited to cash, cheques, money orders, bank deposits, gift vouchers, credit cards, debit cards with credit on them, prepayments such as phone or internal credit, memberships or entitlements to discounts, regardless of the amount or value. This situation includes offers of money to cover expenses for trips to view samples of work, or to expedite the work of Council.

If an official is offered a gift of 'money', it is to be refused and the incident reported immediately to (their supervisor and) the General Manager and declared in accordance with this policy. Any such gift that is received without the recipient's knowledge, for example in the mail, must immediately be reported and declared, and every effort made to return it.

In addition, and taking into account the issues of perception, negative consequences and current developments, the thrust of Council's policy is that 'gifts and benefits are not accepted' as far as is practicable. Accordingly Council also requires:

- In normal circumstances, all gifts and/or benefits offered to a council official of Council are to be declined. No gift or benefit should ever be personally retained by a council official.
- Notwithstanding the above requirement there are provisions for special circumstances:
  - situations that relate to protocol, cultural aspects, sister-city relationships, international delegations and the like
  - hospitality associated with events and functions hosted by community based (not-for-profit) organisations, attendance at which is consistent

<sup>2</sup> Under section 11 of the ICAC Act, principal officers are obliged to report suspected corrupt conduct to ICAC.

- with the council official's role – in particular the statutory role of a councillor
  - insignificant gifts / benefits associated with hospitality, promotional materials and other situations described in this policy.
- All gifts offered are to be formally declared, and subsequent actions determined (if required), and the details entered into Council's *Gifts and Benefits Register*.

## 5 Typical 'gift and benefit' situations

To assist council officials in properly identifying the extent of gifts and benefits under the policy, and the typical situations in which they may be offered, the following further guidance is provided:

### 5.1 Token value

Previous policies defined 'token gifts' as those whose estimated value was below a certain amount. This policy does not distinguish types of gifts by value – all of which in normal circumstances are to be declined and declared.

### 5.2 Gifts to family members and colleagues

As with gifts offered directly to the council official, gifts given to family members and business colleagues may be viewed as affecting the official.

Council officials must take all reasonable steps to ensure that business colleagues and family members do not receive gifts and benefits that give rise to the appearance of being an attempt to secure favourable treatment. Family members ordinarily include close family connections, including those by marriage.

Council treats gifts and benefits to family members and business colleagues in the same way as those to the council officials themselves.

### 5.3 Prizes and gifts

On some occasions a council official may receive a 'prize' as a result of entering a competition while engaging in official duties. For example, an individual may win a raffle or lucky door prize drawn at a meeting or win a prize that was promoted as an incentive to complete a survey. Another example might be, those attending a specific session at a conference may enter a draw for a prize by submitting their business cards or signing up for further information about the product or service.

In such cases, since the official is representing Council, any prize should be treated as a gift or benefit and respectively declined and declared accordingly.

In exceptional circumstances where it is inappropriate to decline the prize, the determination by the General Manager or nominee as outlined in this policy (or Mayor if the prize winner is the General Manager) of the appropriate action that follows the declaration, is to consider case-by-case issues such as: the nature of the Council's relationship with the prize giver; whether Council has business dealings with the organisation that provided the prize; whether Council has discretionary power that could be exercised in the prize giver's favour; and whether accepting the prize may lead to perceptions of improper influence. A determination to accept a



particular prize, should ordinarily include a stipulation that it becomes the property of the Council, not the individual. This approach better manages potential negative perceptions since the prize can ultimately be of benefit to the public.

#### **5.4 Purchase incentive schemes**

Gifts and benefits may be obtained through a purchase incentive scheme. For example, a company may offer a free computer to clients after they have purchased a certain quantity of product. It is important to ensure that Council does not compromise any duty of impartiality in order to obtain such bonuses. Nor should the bonus computer bring private benefit to any one individual in Council.

As with others, these gifts or benefits should be declared and acted on accordingly. In determining the appropriate action Council may still obtain the benefit while ensuring impartiality. For the above example, a determination may include the following actions:

- obtain a refund
- dispose of the computer at a public auction
- retain the computer but ensure it is only used for official purposes and its use is not restricted to the officer responsible for making the purchases.

Another example of a purchase incentive scheme is the accumulation of 'frequent flyer' points offered by airlines and other companies. Council officials are not to seek or accept frequent flyer points from airlines or other companies in respect of official transport or other products/services purchased, to ensure that choice of airline or other company is not influenced by the availability of frequent flyer points.

Council supplier discounts to Councillors, employees and other council officials for the personal purchase of goods and services from such suppliers must also be declined.

#### **5.5 Hospitality and work-related functions**

In the course of their duties, council officials may attend work-related functions in a representative capacity. The appropriate response to the offer of hospitality in various situations is outlined below:

##### ***External Meetings***

Often hospitality such as tea and coffee, or a modest luncheon will be offered during meetings, functions and similar events hosted by other organisations – these offers are normally considered a courtesy rather than a gift or benefit. Such refreshments are normally the 'standard' type of hospitality offered to business partners when conducting official duties for reasons of sustenance, and is acceptable hospitality.

##### ***Conferences, seminars and launches***

It is appropriate to accept modest hospitality at industry conferences, seminars, product launches and the like, at which large numbers of people from other similar organisations are also attending, subject to attendance at the event having been previously approved. It is not appropriate to accept hospitality from such hosts / organisers in circumstances such as: where Council officials are the only invited guests; and/or where the event is held out of business hours.

Consideration must always be given to the potential public perception, and whether or not attendance at the event is relevant and of benefit to Council.

### ***Presentations***

Sometimes a council official may be invited to give a presentation to a conference / seminar or address a meeting of industry colleagues. Subject to the attendance at the event having been approved as an appropriate use of resources, it would be appropriate to accept modest hospitality and for Council to receive travel expenses to help cover the cost of attending.

In such cases, it is important that the request or offer is made to the Council and not the individual council official, and it is Council that decides which official should attend. This approach reduces the possibility of individuals being compromised by accepting hospitality.

### ***Disproportionate hospitality***

Hospitality that extends beyond courtesy, where there is no real benefit to Council as a whole, or is disproportionate to the occasion and clearly offered in an attempt to influence a council official's decisions, such as in relation to a procurement process or development approvals, are to be declined. Examples of such hospitality include invitations to participate in golf days, professional sporting events in a 'corporate box', and luncheons / dinners with developers outside of Council offices and/or outside of normal business hours.

## **5.6 Promotional material**

At some functions and events, other organisations (including potential suppliers) distribute promotional material, which may include factual product / service information and other items such as inexpensive pens and stationary. It would be appropriate to receive such promotional material on the basis that it is of benefit to Council to remain abreast of industry developments, and that the material is also being distributed to other individuals of similar organisations.

It would not be appropriate to also receive such items as:

- tickets to sporting events or other entertainment
- discounted products for personal use
- free / discounted passes for the use of leisure facilities
- vouchers and the like to purchase goods / services.

## **5.7 Providing services**

Some parts of Council provide services directly to the public. Such areas include, but not limited to the Library, aquatic centres, early education centres, the golf course, Development Advisory Service and Customer Service. People who have received services from such areas may show their appreciation to council officials who have assisted them by giving gifts at the end of a year or at other times. In these circumstances, officials are to respectively decline the gift and declare the offer.

In exceptional circumstances, if for some reason the gift cannot be returned, the appropriate determination may include the gift becoming the property of Council or disposed of in an appropriate manner (as described elsewhere), rather than being kept by the individual, as determined by the General Manager or nominee.

In declining these gifts of gratitude, officials may suggest to potential givers, that a letter of appreciation for exceptional service written to the official or Council would be more appropriate than a gift.

## **5.8 Procurement and disposal**

A contract to supply goods or the opportunity to buy Council assets can be highly profitable to the supplier or buyer. Suppliers and tenderers may attempt to influence procurement processes by offering gifts and benefits to the council official responsible for making the decisions. These risks can apply not only to staff responsible for procurement and disposal but also to those who have contact with suppliers or buyers as part of their jobs.

An example of such a benefit would be a relationship between a council official and a council contractor, who is carrying out work on an official's property and offers a discount for the work due to this relationship. In order to manage the public perception of such situations, either the contractor and/or the official should declare the circumstance in accordance with this policy, whether a discount is being offered or not.

Ideally, the roles in client relationship and tendering functions within agencies should as far as possible be segregated. However, due to the size of Council, these responsibilities will often overlap. It is therefore important that council officials in a position to make procurement or disposal decisions need to exercise greater care when faced with offers of gifts and benefits from suppliers or buyers – all offers of such gifts and benefits are to be declined and declared.

## **5.9 Cultural considerations**

Council residents encompass a wide range of linguistic, religious and cultural backgrounds. Some individual residents and business people may be unfamiliar with acceptable gift-giving etiquette in the context of relationships with council officials.

The giving or exchange of gifts and hospitality plays an important role in business and professional life in many societies, and may be part of established business protocols elsewhere. For example, business and government delegations from a number of countries including Japan, Korea and China customarily offer gifts to council officials from other countries.

Conversely, in some situations gift-giving traditions may be abused and lead to widespread bribery of council officials. Culture or tradition (including religious festivals) is not to be used as an excuse to accept inappropriate gifts and benefits. Dealing appropriately with offers of gifts and benefits across cultures therefore requires special care.

In normal circumstances, all gifts and benefits to individual council officials should be respectfully declined and declared.

In exceptional circumstances, the General Manager or nominee (or Mayor) may endorse ceremonial gifts being received by Council from official delegations and the like (and similarly reciprocal giving of ceremonial gifts) and determine that such gifts be retained and/or disposed of in an appropriate manner as described elsewhere.

Refer also to 'Gifts associated with sister-city activities'.

### **5.10 Gifts associated with sister-city activities**

Sister-city gifts for the Council (normally presented to the Mayor or head of a sister-city delegation) are quite often non-token / ceremonial gifts such as a plaque, work of art or craft, or other items of significance that relate to a specific occasion. They may be of a reasonable monetary value and given with the intention to express welcome or gratitude to the receiving organisation as a whole, rather than to an individual.

All gifts associated with sister-city activities are to be declared and acted on accordingly. The determination by the General Manager or nominee (or Mayor if it is received by the General Manager) will often include a stipulation that such gifts be displayed in an appropriate location within Council.

Sometimes, gifts may also be presented to individual council officials within Council's delegation. These gifts should be respectfully declined, unless the acceptance of such is otherwise determined because of exceptional circumstances.

### **5.11 Giving gifts to others**

There may be occasions when it is appropriate for Council to give gifts or benefits to individuals from other public or private agencies. For example, it may be appropriate for Council to offer a modest lunch to a delegation visiting its workplace as part of work-related activities, or to give a token of appreciation to an individual who has given a presentation to Council.

The same guidelines apply for the giving of gifts as for their acceptance, including taking into account how the offer of the gift may be perceived. Council should exercise particular caution when the proposed recipient or organisation has a continuing business relationship with Council.

### **5.12 Community organisations**

Council officials may, in the course of their duties, be offered benefits by a community based (not-for-profit) organisation expressing gratitude or respect for the civic office of the official. Such benefits may include invitations to events and functions of such organisations, including complimentary attendance at performances of local community musical / drama / cultural groups, local community sporting games, and the like.

In particular, councillors, as elected representatives, may receive invitations from community organisations, which have an expectation that attendance is part of a councillor's role. Under normal circumstances it is appropriate for councillors to accept such invitations as a representative of Council, particularly where the occasion provides an opportunity for councillors to understand 'the interests of residents and ratepayers'.<sup>3</sup> It is recognised such events and functions may include incidental or modest hospitality.

It would be inappropriate for council officials, including councillors, to accept benefits:

- at a time when such community organisations are awaiting a Council decision on a grant application, seeking to commence/continue doing business with Council, seeking favourable use of Council facilities, and/or having other similar interactions with Council.

---

<sup>3</sup> Refer 'What is the role of a councillor?' Section 232 *Local Government Act 1993*

- where the hospitality is complimentary and disproportionate to the occasion.

In such circumstances, it would be appropriate to either respectfully decline the invitation, or seek endorsement to attend and pay for the 'ticket'. Council's Expenses & Facilities Policy outlines situations where Councillors can be reimbursed for the cost of attending certain non-Council functions.

In order to manage public perception, council officials are to be sensitive to the timing and the potential purpose of such benefits (including invitations) offered by community based (not-for-profit) organisations.

All offers and invitations accepted without the purchase of a 'ticket' are to be declared.

### **5.13 Gifts that cannot be returned**

There may be exceptional circumstances where the acceptance of a gift that is unacceptable under Council's policy is inadvertently accepted by an employee or may not easily be returned. Examples include:

- a wrapped gift that the recipient does not open in the presence of the gift giver
- gifts accepted for cultural, protocol or other reasons, where returning it would be inappropriate
- anonymous gifts received through the mail or left for the official without a return address
- a gift received in a public forum where attempts to refuse or return it would cause significant embarrassment.

In such circumstances, the gift along with details of the incident are to be declared. The determination of the action to be taken will normally include a stipulation that the gift becomes the property of the Council rather than be kept by the council official.

## **6 Declarations by council officials**

The subsequent actions of declared gifts and benefits are to be determined by the General Manager or nominee as outlined in this policy (or the Mayor, in the case of the potential recipient being the General Manager). Apart from the exceptional circumstance, where a gift or benefit is being retained, options for determinations are included in the section 8 *Disposal of gifts*.

The details of declarations of gifts and benefits that are to be entered in the Gifts and Benefits Register are outlined in the declaration form – refer Appendix 1.

The inclusion of an entry in the Gifts & Benefits Register does not relieve Councillors and designated persons from their obligations to make disclosures in association with Disclosure of Interest Returns (that is, annual pecuniary interest returns) required in Schedule 1 of the *Code of Conduct*.

## **7 Determination of declarations**

For employees, who are offered a gift, the decision on what action to take is made by various position-holders, depending on the position of the declarer, as follows:

- Where it is an employee (other than General Manager, director or manager), the relevant Manager and Manager Governance & Risk decide; where there is no agreement it is to be escalated to the relevant department or head (ie Director or General Manager).
- Where it is a manager, the relevant Director and Manager Governance & Risk decide; where there is no agreement it is to be escalated to the General Manager.
- Where it is a director, the General Manager determines with advice from the Manager Governance & Risk
- Where it is the General Manager, it is determined by the Mayor on advice from the Manager Governance & Risk.

These arrangements are subject to the condition that issues of significance and / or controversy are to be referred to the General Manager for determination with advice from the Manager Governance & Risk.

## 8 Disposal of gifts

When a gift is accepted for some exceptional reason, Council will 'dispose' of it in some way. The determination of the action to be taken may include one of the following disposal options:

- displaying the gift (particularly if it is a ceremonial gift)
- sharing the gift amongst staff or using it as a Council resource (for example a networked computer printer) – for the ultimate benefit of the public purse
- holding a fundraiser with the gift / benefit as the prize
- donating the gift / benefit to an appropriate charity
- holding an auction with the proceeds going to a charity.

## 9 Policy implementation

### 9.1 Responsibilities

The General Manager or nominee (as outlined in *7 Determination of declarations*) is responsible for determining the actions to be taken in respect of each declaration of a gift and benefit that requires determination under this policy, unless the General Manager is making the declaration.

The Manager Governance & Risk is responsible for:

- the implementation of this policy, including monitoring its effectiveness
- providing advice to the General Manager, councillors, employees and other council officials
- maintenance of the Gifts & Benefits register
- managing the determination of declarations of gifts and benefits.

Directors, Managers, Coordinators and others supervising staff are responsible to ensure that their staff are aware of this policy, its intent and the associated procedures, and to be available to give advice on its interpretation.

All council officials are to be aware of this policy and to be available for appropriate training.

## 9.2 Procedures

The Manager Governance & Risk may approve procedures associated with this policy to address such issues as the following:

- What to do if offered a gift or benefit
- Details of responsibilities
- Declaration forms
- Details of Gifts & Benefits Register
- Sample letter to gift-givers and potential gift-givers.

Procedures may change from time to time with the approval of the Manager Governance & Risk.

## 9.3 Further information

Further information may be obtained from:

- Council's Code of Conduct
- Council's Intranet
- Manager Governance & Risk
- ICAC web site [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)

# 10 Document control

## 10.1 Review

Due to the nature of this policy and the possible implications that may flow from any gift or benefit received, it may be reviewed at any time. However, as a minimum, the policy will be reviewed within 12 months of an ordinary election of the Council. Apart from inconsequential editing changes, amendments to this policy are to be submitted to Council for approval.

## 10.2 Related documents

This document should be read in conjunction with:

- *Local Government Act 1993*
- *Local Government (General) Regulation 2021*
- *Council's Code of Conduct*
- *Council's Conflict of Interest Procedure*
- *Council's Public Interest Disclosures Policy*
- *Council's Expenses & Facilities Policy*
- *Independent Commission Against Corruption Act 1988*
- *ICAC Managing Gifts & Benefits in the Public sector – Toolkit 2006.*

### 10.3 Version history

Version	Release Date	Author	Reason for Change
1.0	07/11/2016	Bruce Cooke	Harmonised document from former Councils
2.0	28/01/2021 (Executive)	Coordinator Governance	Determination of declarations devolved; minor edits; sample form added.
3.0	15/09/2022	Coordinator Governance	Reviewed as within 12 months of an ordinary election of the Council. Minor amendment with regard to Personal Benefits.
4.0	TBC	Manager Governance & Risk	Reviewed as within 12 months of an ordinary election of the Council, no changes proposed.



## Appendix 1 – Gifts & Benefits declaration

The following is a typical Gifts & Benefits declaration form:

Gift or Benefits Declaration

\*

 Offered by

Company / Organisation

\*

 Date offered

\*

 Description

\*

 Reason for offer

\*

 Estimated value

\*

 Officer's response

Find items

\*

 Manager / Director / General Manager

Find items

Submit

Cancel

---

## City Performance Committee

9/07/2025

Item No	CP25.032
Subject	<b>Review of Organisational Structure</b>
Report by	Meredith Wallace, General Manager
File	F20/844

---

### Summary

The General Manager is required to consult with Council about the organisational structure within 12 months of an ordinary election.

Previously Council would also consider senior staff positions (Directors). Consistent with recent legislative changes, all Bayside Directors are no longer on senior staff contracts but are permanent employees under the Local Government State Award.

This report recommends that Council retain its four (4) departmental structure and that the responsibilities under each director be largely retained, noting new and emerging priorities highlighted for the information of Council.

---

### Officer Recommendation

That Council:

- 1 Notes that the current four departmental structure provides the appropriate level of senior management and span of control for Bayside, which is categorised as a large metropolitan council.
  - 2 Notes that the broad responsibilities under each department remain unchanged with the minor realignment of Transport Planning to Traffic and Transport (both within the City Futures Department) and Environment and Contamination from City Futures to City Life, to join the Environment and Resilience Team.
  - 3 Notes that Business Transformation, Communications & Engagement, Events, Art & Design, City Projects, the Office of the Mayor and the Office of the General Manager continue to report directly to the General Manager.
- 

### Background

The Local Government Act 1993 No 30 was amended in 2016 to clarify the process by which the council would review and determine its structure.

As a result of those legislative changes, under the provisions of Section 59 of the Local Government Act 1993, the Council must review their organisation structure within 12 months of the Ordinary Council election. Once the Departmental Structure has been determined, the functions within each department can be finalised.

The structure under each Director and the positions within each department, are determined by the General Manager and must give effect to the priorities set out in the strategic plans, including the Community Strategic Plan and the Delivery Program of the Council [LGA Section 332 (1B)].

The current structure responds to the immediate and emerging needs of our community and the ever-changing legislative environment. It was last reviewed in March 2022, where realignment of several business units occurred to reflect the community's feedback about current and emerging priorities and to allow the organisation to be better placed to respond to the broader strategic objectives of this new council term.

The current structure and reporting lines ensure an equitable distribution of responsibility between departments and provide a strong foundation on which, over time, fine tuning can occur to reflect the community and Council's priorities. During the last term of Council Property Services moved from City Performance to City Futures, Council assumed internal management of Bexley Pool and the Communications and Events functions split to reflect the increasing demands in these areas. These changes were accommodated within the current 4 department structure with several organisation wide functions remaining with the General Manager's Unit.

Therefore, no change is proposed to the current structure at Departmental level. It is however important to note that the future may see an increased focus on information technology, digital communications, cyber security and artificial intelligence. Any changes at an operational level if required, will be considered and reported to Council via the quarterly budget review process.

Further, Council continues to apply for various current opportunities from the Office of Local Government, who are funding an additional 1,300 apprentices, trainees and cadets in the local government sector across the state. This is in line with the NSW Government's goal for 15 per cent of local government workforces being apprentices and trainees. Bayside Council has been successful in obtaining funding for various positions and will continue to apply for grant opportunities in the future.

**Attachment 1** to this report presents the current structure and includes the function areas of responsibility assigned to each Director and Manager.

---

## Financial Implications

Not applicable	<input type="checkbox"/>	
Included in existing approved budget	<input checked="" type="checkbox"/>	Employee costs in the proposed structure are contained within the current staff budget.
Additional funds required	<input type="checkbox"/>	

---

---

## Community Strategic Plan

- |  |                                     |
|--|-------------------------------------|
| Theme One – In 2035 Bayside will be a vibrant and liveable place                                 | <input type="checkbox"/>            |
| Theme Two – In 2035 our Bayside community will be connected and feel that they belong            | <input type="checkbox"/>            |
| Theme Three – In 2035 Bayside will be green, resilient and sustainable                           | <input type="checkbox"/>            |
| Theme Four – In 2035 Bayside will be financially sustainable and support a dynamic local economy | <input checked="" type="checkbox"/> |
- 

## Risk Management – Risk Level Rating

- |                |                                     |
|----------------|-------------------------------------|
| No risk        | <input type="checkbox"/>            |
| Low risk       | <input checked="" type="checkbox"/> |
| Medium risk    | <input type="checkbox"/>            |
| High risk      | <input type="checkbox"/>            |
| Very High risk | <input type="checkbox"/>            |
| Extreme risk   | <input type="checkbox"/>            |
- 

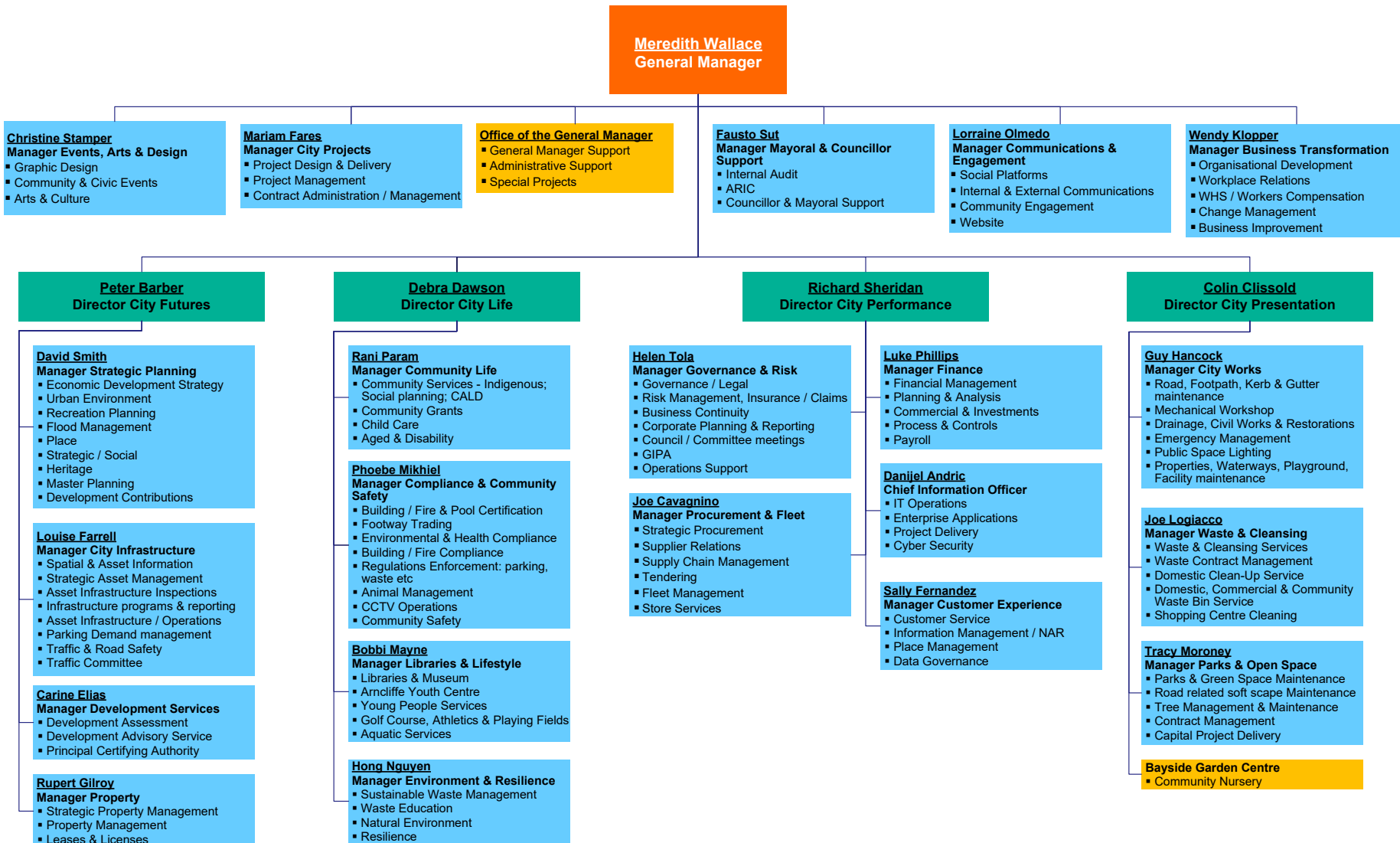
## Community Engagement

Community engagement is not required when determining the organisational structure. Internal consultation in the preparation of this report has occurred between the General Manager and Directors.

## Attachments

- 1 [↓](#) Current Bayside Organisational Structure - May 2025

# ORGANISATIONAL STRUCTURE



@ May 2025