

MODEL CODE OF CONDUCT FOR LOCAL COUNCILS IN NSW

‘AT A GLANCE’ GUIDE FOR ELECTED MEMBERS

Introduction

This guide summarises the key elements of the *Model Code of Conduct for Local Councils in NSW* that apply to elected members of local and county councils and joint organisations.

The Model Code of Conduct is available at www.olg.nsw.gov.au.

Each council's and joint organisation's code of conduct must reflect the requirements of the Model Code of Conduct and may contain additional requirements.

While this guide refers to "councils" for simplicity, all references in it to "councils" are to be taken as including local and county councils and joint organisations.

References to "councillors" are to be taken as references to mayors and councillors of local councils, members and chairpersons of county councils and voting representatives and chairpersons of joint organisations.

All councillors should familiarise themselves with their council's code of conduct and understand their obligations and the obligations of others.

General Conduct

It is important that the local community has confidence in the council and those that serve it, whether as elected representatives, members of staff or as delegates or committee members.

As a councillor, you must ensure that your conduct and behaviour towards others (including members of staff) meets the high standards that the community is entitled to expect of all council officials.

→ **What conduct is expected of a councillor?** (Clauses 3.1 – 3.14)

You **must**:

- act lawfully and honestly and exercise care and diligence in undertaking your duties
- consider matters consistently, promptly and fairly and in accordance with established procedures
- ensure land use planning, development assessment and other regulatory decisions are properly made and that all parties are dealt with fairly, and
- comply with your duties under the *Work Health and Safety Act 2011* and take care of your own and others' health and safety

You **must not** conduct yourself in a way that:

- will bring the council into disrepute
- is contrary to law and council policies
- is improper, unethical or an abuse of power
- involves misuse of your position for personal benefit
- constitutes harassment or bullying or is unlawfully discriminatory, or
- is intimidating or verbally abusive.

→ **How must I behave in meetings?**

(Clauses 3.15 – 3.22)

Council and committee meetings are the key forum in which councillors exercise their role as members of governing body of the council and make decisions that are in the best interests of the council and the broader community.

It is critical that the community can have confidence in the decisions made on its behalf by its elected representatives at council and committee meetings.

For this reason, meetings must be conducted in an orderly, respectful way and decisions must be made that are informed and soundly based.

Councillors must not participate in binding caucus votes in relation to matters considered at council or committee meetings (other than for the election of the mayor or deputy mayor or to nominate a person to be a member of a committee or the council's representative on an external body).

At meetings, councillors must comply with rulings by the chair (unless a dissenting motion is passed) and must not:

- engage in disruptive or disorderly behaviour, or
- bully the chair or other councillors or council staff and members of the public attending meetings.

Councillors also must not engage in conduct at meetings that prevents the proper or effective functioning of the council including by:

- leaving the meeting to deprive it of a quorum
- submitting a rescission motion and then voting against it to prevent another councillor from submitting a rescission motion in relation to the same decision, or
- impeding the consideration of business at the meeting.

Submitting returns of interests

Councillors are required to disclose their personal interests in publicly available returns of interests.

These operate as a key transparency mechanism for promoting community confidence in decision making by councillors.

→ **When do I need to submit a written return of interests?**

(Clause 4.21)

You must submit a return of interests within three months of being elected and submit a new return annually (within three months of the start of each financial year).

If you become aware of any new interest that needs to be disclosed in the return, you must submit a new return within three months of becoming aware of the interest.

→ **What interests do I need to disclose?**

(Schedule 1)

You are required to disclose, among other things, the following types of interests in your return:

- interests in real property
- gifts
- contributions to travel
- interests and positions in corporations
- whether you are a property developer or a close associate of a property developer
- positions in trade unions and professional or business associations
- dispositions of real property
- sources of income, and
- debts

Conflicts of interest

As a member of the local community, it is inevitable that at some point you will have a conflict of interest in a matter that you are dealing with.

What is important is that you are able to identify that you have a conflict of interest and that you disclose and manage it appropriately.

There are two types of conflicts of interest – pecuniary and non-pecuniary. Your obligations to disclose and manage conflicts of interest will depend on what type of conflict of interest you have.

→ What is a pecuniary conflict of interest?

(Clauses 4.1 – 4.5)

You will have a pecuniary interest in a matter you are dealing with where there is a reasonable likelihood or expectation that you or a related person (eg a relative, your employer or business partner or a company you hold shares in) will gain or lose financially appreciably as a result of any decision made in relation to the matter.

→ How do I manage pecuniary conflicts of interest that I have in matters I am dealing with?

(Clauses 4.28 and 4.29)

Where you have a pecuniary interest in a matter being dealt with at a meeting, you must:

- disclose the nature of the interest, and
- leave the chamber while the matter is being considered and voted on.

You must do this at each meeting where the matter arises.

→ What is a non-pecuniary conflict of interest?

(Clauses 5.1, 5.2 and 5.8)

Non-pecuniary interests are private or personal interests that are not pecuniary interests.

You will have a non-pecuniary conflict of interest in a matter you are dealing with if a reasonable and informed person would perceive that you could be influenced by a private interest that you have in that matter. This is also known as the “pub test”.

How you deal with a non-pecuniary conflict of interest will depend on whether it is significant.

→ How do I know if I have a significant non-pecuniary conflict of interest in a matter I am dealing with?

(Clause 5.9)

You will have a significant non-pecuniary conflict of interest in a matter you are dealing with where you have a:

- close relationship (including a business relationship) with a person who will be affected by any decision made in relation to the matter
- strong affiliation with an organisation that will be affected by any decision made in relation to the matter, or
- financial interest in the matter that is not a pecuniary interest, or you otherwise stand to gain or lose a personal benefit as a result of a decision made in relation to that matter.

You will also have a significant non-pecuniary conflict of interest in a matter where you are member of the board or management committee of an organisation as the council’s representative and the interests of the council and the organisation are potentially in conflict in relation to the matter under consideration. This is what is known as a “conflict of duties”.

→ **How do I manage significant non-pecuniary conflicts of interest that I have in matters I am dealing with?**

(Clause 5.10)

You must manage significant non-pecuniary conflicts of interest you have in matters being dealt with at meetings in the same way you would a pecuniary interest. You must:

- disclose the nature of the interest, and
- leave the chamber while the matter is being considered and voted on.

You must do this at each meeting where the matter arises.

→ **How do I manage non-pecuniary conflicts of interest that are not significant?**

(Clauses 5.6, 5.7 and 5.11)

If you believe that you have a non-pecuniary conflict of interest in a matter that is not significant and that does not require further action, you must still disclose the interest.

You must disclose the interest at each meeting the matter arises and explain why you believe it is not significant and no further action is necessary to manage it.

→ **Will I have a conflict of interest in a matter if I have campaigned on it or expressed a personal or political opinion on it?**

(Clause 5.3)

No. Absent any other personal interest in a matter, your personal or political views on a matter, or those of any organisation you are a member of, cannot, on its own give rise to a conflict of interest.

→ **Managing conflicts of interest in environmental planning instruments**

(Clauses 4.36, 4.37 and 5.20)

To prevent the loss of quorum at meetings, special rules apply to the management of pecuniary and significant non-pecuniary conflicts of interest in relation to environmental planning instruments applying to the whole or a significant portion of the council's area.

Where you have a pecuniary interest or a significant non-pecuniary conflict of interest in an environmental planning instrument that applies to the whole or a significant portion of your council's area, you must disclose the interest but may participate in consideration and voting on the matter provided the only interests affected are your home or the homes of your relatives and close friends or others you are closely associated with (eg your employer or business partner).

The interests affected must be disclosed in a special return of interests that is tabled at the meeting.

If you, your relatives or close friends or associates have other property interests other than their homes that are affected by the environmental planning instrument under consideration at the meeting, you must remove yourself from any consideration and voting on the matter.

→ **Managing conflicts of interest arising from the receipt of political donations**

(Clauses 5.15 – 5.19)

Where councillors receive or directly benefit from a reportable political donation, this will give rise to a non-pecuniary conflict of interest. Councillors have specific obligations under the code of conduct to disclose and manage conflicts of interest that arise from political donations.

Where you have received or knowingly benefitted from a reportable political donation of \$1,000 or more:

- made by a major political donor in the previous four years, and
- 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 leaving the chamber while the matter is being considered and voted on.

→ **What if I am not sure?**

(Clause 5.4)

Remember, no one knows your personal circumstances better than you and for that reason, the onus is on you to identify and disclose any potential conflict of interest you may have in a matter you are dealing with and to manage it appropriately.

If you are not sure whether you have a conflict of interest in a matter you are dealing with or what type of conflict of interest it is, always err on the side of caution.

If in doubt, get out.

→ **How do I deal with council in my private capacity as a resident or ratepayer?**

(Clauses 5.28 and 5.29)

As a member of the community, it is inevitable that you will need to deal with your council in your private capacity.

Where this occurs, you should deal with the council in the same way as other members of the public. You should not expect or seek any preferential treatment because you are a councillor.

For example, if you have lodged a development application with the council, you must avoid discussing the application with staff in staff-only areas.

You must not use your position to obtain a private benefit for yourself or for someone else or to influence others in the performance of their functions to obtain a private benefit for yourself or for someone else (except where doing so through the proper exercise of your functions as an elected representative).

Gifts and benefits

In the course of performing your functions you may be offered a gift or a personal benefit. There are strict rules that govern what gifts or benefits you may accept and those that you must refuse.

These rules are informed by the following principles:

- you must not benefit personally from the performance of your role as a councillor except from the receipt of your fee and the payment of any expenses and the provision of any facilities by the council permitted under the council's councillor expenses and facilities policy to support you in the performance of your functions as a councillor, and
- you must not be influenced or be seen to be influenced in the performance of your functions as a result of the receipt of a gift or personal benefit.

→ **What is a gift or benefit?**

(Clauses 6.1 and 6.2)

A gift or benefit is something offered to or received by you or someone closely associated with you for personal use or enjoyment.

Gifts and benefits do not include:

- items with a value of \$10 or less
- political donations
- a gift or benefit provided to the council as part of a cultural exchange or sister city relationship (provided it is not used for your personal use and enjoyment)
- a benefit or facility provided to you by the council
- attendance at a work-related event or function for the purpose of undertaking your official functions, or
- meals, beverages or refreshments that are provided to you while you are carrying out your official functions.

→ **What gifts or benefits must I refuse?**

(Clause 6.5)

You **must not**:

- seek or accept bribes
- seek gifts or benefits of any kind
- accept any gift or benefit that may create a sense of obligation, or that may be perceived as intended or likely to influence you in undertaking your duties
- accept any gift or benefit that is worth more than \$100
- accept tickets to major sporting or cultural events with a ticket value of over \$100 or corporate hospitality at such events
- accept cash or cash-like gifts (such as gift vouchers, credit cards, debit cards with credit on them, phone or internet credit, lottery tickets etc) of any amount
- participate in competitions for prizes where eligibility is based on the council being a customer of the competition organiser, or
- personally benefit from reward points programs when purchasing on behalf of council.

→ **What if I can't refuse a gift or benefit?**

(Clause 6.7)

If you are offered a gift or benefit that is worth more than \$100 that cannot be reasonably refused, you must surrender it to the council.

→ **What gifts can I accept and who must I report this to?**

(Clauses 6.6, 6.8 and 6.11)

You may accept gifts with a value of under \$100. However, if you receive further gifts from the same person or another person associated with them in the next 12 months with a value which, when combined with the value of the first gift exceeds \$100, you must refuse to accept the additional gifts.

If you accept a gift of any value above \$10, you must disclose this promptly to the general manager in writing. The following details must be recorded in the council's gift register:

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

Interactions with council staff

Under the *Local Government Act 1993*, the general manager is responsible for the management of council staff. For this reason, the mayor and councillors cannot direct staff in the performance of their duties.

There should be little need for you to directly contact council staff. Most contact with staff is likely to occur through the general manager or other senior staff approved by the general manager.

If you need to contact staff about council-related business, any interaction must be with the general manager's approval or comply with your council's councillor/staff interaction policy.

→ **What are the obligations of the mayor and councillors in dealing with council staff?**

(Clauses 7.6 and 8.26)

You are not entitled to access staff only areas of the council and can only speak directly to council staff about council related matters where permitted to do so under the council's councillor/staff interaction policy or with the consent of the general manager.

You **must not**:

- behave in an overbearing or threatening way towards staff
- direct, pressure or influence staff in the performance of their duties, including in relation to the making of recommendations, or
- make personal attacks on staff at council meetings or other public forums including social media.

→ **What obligations do staff have when dealing with you?**

(Clause 7.6)

Members of staff also have obligations that apply to how they deal with councillors.

In particular:

- staff should not discuss personal workplace matters such as operational issues, grievances, workplace investigations or disciplinary matters with you
- staff should treat you with respect and not behave in an overbearing or threatening way towards you, and
- staff should not provide ad hoc advice to you without recording or documenting the interaction in the same way they would a member of the public.

→ **What information am I entitled to?**

(Clauses 8.1 – 8.6)

It is important that councillors have all the information they need to make informed decisions on behalf of the community.

For this reason, the mayor and councillors are entitled to any information necessary to perform their functions effectively as members of the governing body and as elected representatives.

You must make any requests by way of the councillor action/information request system or in accordance with council's councillor/staff interaction policy. The general manager will decide whether you can be provided with information you have requested and where approved, the information you have requested should be provided to you in a timely way. If information is provided to one councillor, then it must also be provided to all other councillors who request it.

You are not entitled to access information relating to matters you have a conflict of interest in. Requests for this information can be denied unless the information is otherwise publicly available.

If you have a private interest only in council information (ie you don't require it for the purpose of performing your role), you have the same rights of access to that information as any other member of the public.

Use of council information and resources

Council resources (including council information) are public resources. You must use council resources ethically, effectively, efficiently and carefully when performing your duties.

You must not use council resources for private purposes, or convert council property for your own use unless you are authorised to do so.

→ **Use of council resources for election purposes**

(Clauses 8.17 and 8.18)

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 (whether council, State or Federal) unless they are otherwise available for use or hire by the public and any publicly advertised fee is paid for their use.

You also 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 for the purpose of assisting your election campaign or the election campaign of others (whether council, State or Federal), or for other non-official purposes.

→ **What records should I keep?**

(Clauses 8.21 – 8.24)

All information created, sent or received in your official capacity (whether or not stored on a council device or a council email account) and any information stored in either soft or hard copy on council resources is considered to be a council record and must be kept in accordance with the *State Records Act 1998* and your council's records management policy.

Do not destroy, alter or dispose of records unless authorised to do so.

→ **What are my obligations in relation to the use of council information?**

(Clauses 8.9 – 8.11)

You can only access and use council information for council business. You must not use council information for private purposes and you must not seek to privately benefit from any council information you have obtained in your role as a councillor.

You must only release council information in accordance with established council policies and procedures and in compliance with relevant legislation (including privacy legislation).

You must maintain the integrity and security of any confidential or personal information you have access to. In particular, you must:

- only access confidential or personal information that you have been authorised to access and only for the purposes of performing your functions
- protect confidential and personal information
- only release confidential or personal information if authorised to do so
- only use confidential or personal information for the purpose for which it is intended to be used
- not use confidential or personal information to obtain a private benefit for you or for someone else
- not use confidential or personal information to cause harm to the council or anyone else, and
- not disclose confidential information discussed during a closed session of a council or committee meeting or any other

confidential forum (such as councillor workshops or briefing sessions).

→ **What are my obligations when using my council computer or mobile device?**

(Clause 8.20)

You must not use council's computer or mobile devices to access, download or communicate any material that is offensive, obscene, pornographic, threatening, abusive or defamatory or could lead to civil or criminal liability and/or damage council's reputation.

Making complaints under the code of conduct

Your council's code of conduct is the key mechanism for promoting and enforcing the ethical and behavioural standards the community rightly expects of those who serve the council.

For this reason, it is important that your council's code of conduct is correctly used and that code of conduct processes are respected and complied with.

→ **How do I make a code of conduct complaint?**

(Part 4 of the Procedures)

Complaints alleging breaches of the code of conduct must be made in writing to the general manager. Complaints about the general manager must be made in writing to the mayor. Complaints must be made within 3 months of the conduct occurring or you becoming aware of the conduct.

To be dealt with under the council's code of conduct, a complaint must show or tend to show conduct by another councillor, a member of staff, or another person exercising council functions under delegation or who is otherwise subject to the council's code of conduct in connection with their official role or the exercise of their official functions that would constitute a breach of the council's code of conduct if proven.

The following types of complaints must not be dealt with under a council's code of conduct and should instead be dealt with under the council's routine complaints management processes:

- complaints about the standard or level of service provided by the council or a council official
- 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
- complaints about the policies or procedures of the council, and
- 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 council's code of conduct.

→ **What happens if a code of conduct complaint is made about me?**

(Parts 5, 6 and 7 of the Procedures)

The general manager (or a person authorised to exercise the general manager's complaints management functions in relation to code of conduct matters) has a discretion to decline or informally resolve complaints at the outset.

If the complaint is not informally resolved at the outset, it is referred to an independent expert conduct reviewer who will deal with the matter at arms' length of the council.

The conduct reviewer will undertake a preliminary assessment to determine how the matter should be dealt with. Most matters will be resolved informally by means such as explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour.

Only more serious matters are formally investigated. Investigations must follow strict rules that are designed to ensure that matters are dealt with fairly, confidentially and with rigour.

Where, following a formal investigation, the conduct reviewer determines that a councillor has breached the code of conduct, the conduct reviewer may recommend that the council formally censures the councillor for the breach

and, where the breach is serious, that the matter be referred to the Office of Local Government (OLG) for further disciplinary action.

Where the council censures a councillor for a breach of the code of conduct, the council must specify in its resolution the grounds on which the councillor is being censured. It does this by disclosing in the resolution the conduct reviewer's findings and determination. This information is recorded in the minutes of the meeting, thereby ensuring the councillor is publicly accountable to their electors for their conduct.

As noted above, serious breaches of the code of conduct may also be referred to the OLG for further disciplinary action.

Some matters are automatically deemed to be serious and are referred to OLG for consideration instead of being dealt with under the council's code of conduct. These include allegations of:

- pecuniary interest breaches
- failure to disclose conflicts of interest arising from political donations, and
- breaches of the "integrity" provisions (ie misuse of the code of conduct, reprisal action, disclosure of information about code of conduct matters and failure to comply with a council resolution).

The Chief Executive of OLG can take disciplinary action or refer more serious matters to the New South Wales Civil and Administrative Tribunal (NCAT). Disciplinary action includes suspension from office or suspension of the payment of fees for up to three months by the Chief Executive, or for up to six months by the NCAT.

The NCAT can also disqualify a councillor from holding office in any council for up to five years. Councillors who have been suspended by either the Chief Executive or the NCAT on three or more occasions are automatically disqualified for five years.

In the case of pecuniary interest breaches, the Chief Executive can also apply to the Supreme Court for an order requiring a councillor to pay to the council any financial benefit they received from a pecuniary interest breach.

→ **What are my responsibilities in relation to code of conduct complaints?**

(Clauses 9.1 – 9.7, 9.9, 9.13 and 9.15)

You have certain obligations in relation to any code of conduct complaints that you make or that are made about you. These obligations are designed to safeguard the integrity of your council's code of conduct and the processes for investigating and dealing with alleged breaches by ensuring code of conduct matters are dealt with in a manner that is robust, fair and confidential. Breaches of these obligations may themselves constitute a breach of your council's code of conduct.

In particular you must not:

- make code of conduct complaints for an improper purpose
- take or cause reprisal action to be taken against someone for making or dealing with a code of conduct complaint
- disclose any information about a code of conduct complaint you have made or that has been made about you except for the purpose of seeking legal advice, or
- impede or disrupt the consideration of a code of conduct complaint and you must comply with any reasonable and lawful requests made by anyone dealing with a code of conduct complaint.

Breaches of these obligations are deemed to be serious and are to be referred to OLG for disciplinary action under the misconduct provisions of the Act.