

MODEL CODE OF CONDUCT FOR LOCAL COUNCILS IN NSW

A GUIDE TO COMPLETING RETURNS OF INTEREST

Introduction

Under the *Model Code of Conduct for Local Councils in NSW*, certain council officials 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 council decision making, whether by councillors or by staff or others under delegation.

You must complete and lodge your return of interests in accordance with the requirements in the Model Code of Conduct.

You must not lodge a return that you know or ought 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 (OLG) and may result in disciplinary action by the council, the Chief Executive of OLG or the NSW Civil and Administrative Tribunal.

Important information

Who must submit a return of interests?

You must complete and lodge a return of interests if you are a councillor or designated person.

Designated persons include:

- the general manager
- senior staff, and
- staff, delegates of councils or members of committees who the council identify as exercising functions that could give rise to a conflict of interest.

When must I submit a written return of interests?

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

You do not need to submit a return of interests if you have already submitted a return in the three months preceding 30 June, or if you ceased to be a councillor or designated person in the three months preceding 30 June.

If, at any time, you become aware of any new interests that need to be disclosed, you must submit a new return within three months of becoming aware of the interests.

Who must I lodge my return of interests with?

All returns of interests are to be lodged with the council's general manager.

A return lodged within 3 months of 30 June must be tabled at the first council meeting after the last day the return was required to be lodged.

A return lodged at any other time must be tabled at the first council meeting after the return was lodged.

Must my return of interests be made publically available?

Yes. Councils must make all returns of interests 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 NSW Information Commissioner.

If you are concerned that your safety or the safety of your family may be put at risk if information about your home address is disclosed in your return of interests, you may request that the information be redacted under section 739 of the *Local Government Act 1993*.

Such a request should be made to the general manager in writing.

Is there a standard form for submitting a return of interests?

Yes. Written returns of interests are to be in the form set out in Schedule 2 of the Model Code of Conduct.

A copy is attached to this Guide.

How do I complete a return of interests?

For those who are lodging their first return

If you are lodging a return for the first time, you do not need to complete Parts C, D and I of the return.

All other parts should be completed with information based on your circumstances at the date when you became a councillor or designated person.

Note:

→ If you are lodging your first return:

- the 'return date' is the date you became a councillor or designated person, and

- leave the return 'period' at the top of the form blank

If you have acquired any new interests that need to be disclosed in the return in the period between the return date and the date on which you are completing a return for the first time, you should also disclose these in the return to avoid the need to complete a further return disclosing the new interests.

For those who are lodging their annual return

Complete all parts of the return if you are lodging a new return for the new financial year.

The return should be completed with information based on your circumstances for the 12-month period beginning on 30 June of the previous year to 30 June of this year.

Note:

→ If you are lodging your annual return:

- the 'return date' is 30 June of the calendar year in which the return is made, and
- the return 'period' is from 30 June of the previous year to 30 June of the current year.

For those who are disclosing new interests

Complete all parts of the return if you are disclosing a new interest that was not disclosed in the last return you lodged with the general manager.

The form should be completed with information based on your circumstances from either 30 June of the previous financial year **or** the date you became a councillor or designated person (**whichever is later**), to the date you became aware of the new interest you are disclosing.

Note:

→ If you are disclosing new interests:

- the 'return date' is the date you became aware of the interest(s), and
- the return 'period' is from 30 June of the previous financial year, or the date on which you became a councillor or

designated person (whichever is later) to the date you became aware of the interest(s).

What interests do I need to disclose?

You must not lodge a return that you know or ought to know is false or misleading in a material particular.

In completing your return, you must disclose all relevant interests whether or not they are acquired or held in NSW or Australia.

In the case of interests in real property, you must disclose all interests in real property you hold in Australia.

Part A – Real property

In this section, you must disclose the:

- street address of each parcel of real property you had an interest in:
 - on the return date, and
 - since 30 June of the previous financial year, and
- nature of the interest (eg freehold, lease, option to purchase etc).

You do not need to disclose an interest in a parcel of real property if you ceased to have the interest prior to becoming a councillor or designated person.

You also do not need to disclose an interest in a parcel of real property if your interest was:

- as executor of a will, or administrator of an estate, of a deceased person, **and** you were not a beneficiary under the will or intestacy, or
- as a trustee, if the interest was acquired in the course of an occupation that was not related to your duties as a councillor or designated person.

Note:

- **'Address' is defined in clause 1 of schedule 1 of the Model Code of Conduct**
- **'Real property' refers to any real property in Australia.**

Part B – Sources of income

In this section you must disclose each source of income you:

- reasonably expect to receive from the first day after the return date to 30 June, and
- received in the period since 30 June of the previous financial year.

In disclosing sources of income from your occupation, you must disclose:

- a description of your occupation, and
- if you are employed or the holder of an office, the name and address of your employer, or a description of the office, and
- if you have entered into a partnership with other persons, the name (if any) of the partnership.

In disclosing sources of income from a trust, you must disclose the name and address of the settlor and trustee.

In disclosing the sources of any other income, you must provide a description that identifies the person you received or reasonably expect to receive the income from, or the circumstances in which you received or reasonably expect to receive the income.

You do not need to disclose a source of income if:

- it did not exceed, or you do not reasonably expect it to exceed, \$500
- you ceased to receive income from that source prior to becoming a councillor or designated person, or
- it is your fee as a councillor.

Part C – Gifts

In this section, you must disclose all gifts you have received since 30 June of the previous financial year.

Gifts include any item, property or money you have been given without consideration or with inadequate consideration, unless it was received under a will.

You must provide a description of the gift and the name and address of the person/organisation that gave you the gift.

You do not need to disclose gifts if:

- they did not exceed \$500 in value, unless it was among gifts totalling more than \$500 from the same person/organisation within the last 12 months
- it was given to you by a relative (see below for a definition of "relative")
- it was a political donation that has been disclosed or is required to be disclosed under the *Electoral Funding Act 2018*, or
- it was received prior to you becoming a councillor or designated person (unless you have received a subsequent gift from the same person/organisation since becoming a councillor/designated person and within a 12 month period and the gifts total more than \$500).

Note:

- **The amount of a gift (other than money) is equal to the monetary value of the gift**
- **'Relative' is defined in clause 1 of schedule 1 of the Model Code of Conduct. Relatives include your:**
 - **spouse or de facto partner**
 - **parents, grandparents, brothers, sisters, uncles, aunts, nephews, nieces, lineal descendants or adopted children and any of those persons' spouses or de factor partners, and**
 - **spouse's or de facto partner's parents, grandparents, brothers, sisters, uncles, aunts, nephews, nieces, lineal descendants or adopted children and any of those persons' spouses or de factor partners.**

Part D – Contributions to travel

In this section you must disclose the:

- name and address of any person who has made a financial or other contribution to the expenses of any travel you have undertaken since 30 June of the previous financial year
- dates on which you undertook the travel, and
- names of the states and territories and of the overseas countries where the travel was undertaken.

You do not need to disclose a contribution to travel if:

- it was made from public funds
- it was made by a relative (see above for a definition of "relative")
- it was made in the ordinary course of your occupation that was not related to your functions as a councillor or designated person
- it was under \$250, unless it was among gifts totalling more than \$250 from the same person/organisation within the last 12 months
- it was a political donation that has been disclosed or is required to be disclosed under the *Electoral Funding Act 2018*
- it was made by a political party you are a member of and you undertook the travel for the purpose of political activity of the party in NSW, or to represent the party within Australia, or
- you received the contribution prior to becoming a councillor or designated person (unless you have received a subsequent gift or contribution from the same person/organisation since becoming a councillor/designated person and within a 12 month period and the gifts/contributions total more than \$250).

Note:

- **The amount of a contribution (other than money) is equal to the monetary value of the contribution.**

Part E – Interests and positions in corporations

In this section, you must disclose:

- the name and address of each corporation in which you held an interest or position (whether remunerated or not) on the return date and since 30 June of the previous financial year
- the nature of the interests or positions held in each corporation, and
- a description of the principal objects (if any) of each corporation, except if it is a listed company.

You do not need to disclose an interest or position in a corporation if the corporation:

- is 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**
- it is required to apply its profits or other income for the purpose of promoting its objects, **and**
- it is prohibited from paying any dividend to its members.

You also do not need to disclose an interest in a corporation if it is a beneficial interest in shares in the corporation that does not exceed 10 per cent of the voting rights in the corporation.

You also do not need to disclose an interest or position in a corporation if you ceased to hold the interest or position prior to becoming a councillor or designated person.

Part F – Are you a property developer or close associate of a property developer?

In this section, you must disclose if you are a ‘property developer’ or a close associate of an individual or corporation that is a ‘property developer’ for the purposes of the *Electoral Funding Act 2018*.

A person or a corporation is a ‘property developer’ if they carry out a business mainly concerned with the residential or commercial development of land, with the ultimate purpose of the sale or lease of the land for profit, **and** in the course of that business:

- one ‘relevant planning application’ has been made by or on behalf of the individual or corporation and is pending, or
- three or more ‘relevant planning applications’ made by or on behalf of the individual or corporation have been determined within the preceding seven years.

You will be a close associate of a person who is a property developer if:

- you are the spouse of the person, or
- where the person has made a ‘relevant planning application’ that is pending, you are in a joint venture or partnership with the person in connection with the ‘relevant planning application’ and you are likely to obtain a financial gain if it is approved or carried out.

You will be a close associate of a corporation that is a property developer if:

- you or your spouse are a director or officer of the corporation
- you or your spouse have voting power in the corporation or a related body corporate of the corporation that is greater than 20%
- where the corporation is a trustee, manager or responsible entity in relation to a trust, you hold more than 20% of the units in the trust (in the case of a unit trust) or you are a beneficiary of the trust (in the case of a discretionary trust), or
- where the corporation has made a ‘relevant planning application’ that is pending, you are in a joint venture or partnership with the corporation in connection with the ‘relevant planning application’ and you are likely to obtain a financial gain if it is approved or carried out.

Note:

→ ‘Relevant planning application’ is defined in section 10.4 (Disclosure of political donations and gifts) of the *Environmental Planning and Assessment Act 1979*.

Part G – Positions in trade unions and professional or business associations

In this section, you must disclose:

- the name of each trade union and of each professional or business association in which you held any position (whether remunerated or not) on the return date and since 30 June of the previous financial year, and
- a description of the position.

You do not need to disclose a position in a trade union or a professional or business association if you ceased to hold that position prior to becoming a councillor or designated person.

Part H – Debts

In this section, you must disclose the name and address of each person you are/were liable to pay a debt to on the return date, and at any time since 30 June of the previous financial year.

You must disclose a liability to pay a debt 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.

You do not need to disclose a liability to pay a debt if:

- the debt arose from a loan you have with a deposit taking institution (eg a bank) or other authorised deposit taking institution which lends money, and the loan was part of the institution's ordinary course of business
- the amount to be paid did not exceed \$500, **unless** the debt was one of two or more debts owed to the same person, and the combined value of the debts exceed \$500.
- the debt was owed to a relative (see above for a definition of "relative")
- in the case of a debt for the supply of goods or services:
 - the goods or services were supplied to you within the 12 months before the return date, or at any time since 30 June of the previous financial year, or
 - the goods or services were supplied to you in the ordinary course your occupation that is not related to your duties as a councillor or designated person, or
- the debt was discharged prior to you becoming a councillor or designated person, unless the debt was one of two or more debts you owe to the same person, and the value of the combine debts exceeds \$500.

Part I – Dispositions of real property

In this section you must disclose details of each disposition of real property by you (including the street address of the property) since 30 June of the previous financial year if you wholly or partly retained the use and benefit of the property, or the right to re-acquire it.

You must also disclose details of each disposition of real property to another person under an arrangement with you (including the street address of the property), since 30 June of the previous financial year under which you obtained wholly or partly the use of the property.

You do not need to disclose a disposition of real property if it was made prior to you becoming a councillor or designated person.

Part J – Discretionary disclosures

In this section, you may voluntarily disclose any other interests, benefits, advantages or liabilities you may have, whether or not they are pecuniary, which you have not been required to disclose elsewhere in the return.

DISCLOSURE OF INTERESTS FORM

REQUIRED TO BE LODGED UNDER CLAUSE 4.21
OF THE MODEL CODE OF CONDUCT FOR
LOCAL COUNCILS IN NSW



Disclosure of pecuniary interests and other matters by *[full name of councillor or designated person]* as at *[return date]* in respect to the period from *[date]* to *[date]*.

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

Date: *[date]*

A. Real Property

Street address of each parcel of real property in which I had an interest at the return date and at any time since 30 June	Nature of interest
<i>[address]</i>	<i>[details]</i>

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, and
- 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)
<i>[description]</i>	<i>[name and address]</i>	<i>[name]</i>

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, and
- received from a trust since 30 June:

Name and address of settlor	Name and address of trustee
[name and address]	[name and address]

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:

Source	Amount
[source]	[amount]

C. Gifts

Description of each gift I received at any time since 30 June	Name and address of donor
[details]	[name and address]

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	Names of states and territories of the Commonwealth and overseas countries in which travel was undertaken
[name and address]	[dates]	[names]

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 and 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)
[name and address]	[details]	[details]	

F. Property development

Were you a property developer or a close associate of a property developer on the return date?

[Yes/No]

G. Positions in trade unions and professional or business associations

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

H. Debts

Name and address of each person to whom I was liable to pay any debts at the return date and at any time since 30 June
[name]

I. Disposition 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

[details]

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

[details]

J. Discretionary disclosures

[details]