
Code Of Conduct

1. The purpose of this policy is

To establish a Code of Conduct for Warringah Council in accordance with *Local Government Act 1993 (Section 440)*.

2. Policy statement

The *Local Government Act 1993 (Section 440)* requires every council to adopt a code of conduct that incorporates the provisions of The Model Code of Conduct for Local Councils in NSW. The Model Code of Conduct sets the minimum standard for Council. Areas of best practice have been included in this Code and are italicised for ready identification.

Councillors, members of staff of council and delegates of the council must comply with the applicable provisions of council's code of conduct. It is the personal responsibility of council officials to comply with the standards in the code and regularly review their personal circumstances with this in mind. Council contractors and volunteers will also be required to observe the relevant provisions of council's code of conduct.

Failure by a councillor to comply with an applicable requirement of council's code of conduct constitutes misbehaviour. *Failure by a member of staff to comply with council's code of conduct may give rise to disciplinary action.*

3. Principles

For details of Warringah Council's Code of Conduct please see Attachment A.

4. Amendments

N/A

5. Authorisation

Council adopted the code of conduct on 27th September 2005

The code of Conduct is due for review on the 27th September 2007

6. Who is responsible for implementing this policy?

All staff

7. Document owner

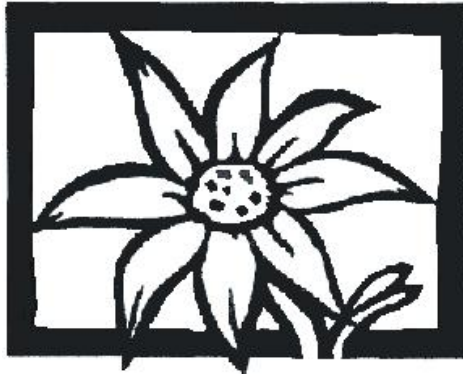
General Manager

8. File number

9. Legislation and references

Local Government Act 1993

ATTACHMENT A



Warringah Council

Code of Conduct

for

**Councillors
Members of Staff
Delegates of Council**

**Version 8a
Adopted by Council on
27 September 2005**

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1. INTRODUCTION

The *Local Government Act 1993 (Section 440)* requires every council to adopt a code of conduct that incorporates the provisions of The Model Code of Conduct for Local Councils in NSW. The Model Code of Conduct sets the minimum standard for Council. Areas of best practice have been included in this Code and are italicised for ready identification.

Councillors, members of staff of council and delegates of the council must comply with the applicable provisions of council's code of conduct. It is the personal responsibility of council officials to comply with the standards in the code and regularly review their personal circumstances with this in mind. Council contractors and volunteers will also be required to observe the relevant provisions of council's code of conduct.

Failure by a councillor to comply with an applicable requirement of council's code of conduct constitutes misbehaviour. *Failure by a member of staff to comply with council's code of conduct may give rise to disciplinary action.*

2. DEFINITIONS

The following definitions apply in the Code of Conduct:

Council official	includes councillors, members of staff of council and delegates of council.
Delegates of council	a delegate of council is a person or body to whom a function of council is delegated and <i>includes members of Section 355 Committees</i>
Designated person	see the definition in section 441 of the Local Government Act 1993
Act of disorder	see the definition in clause 29 of the Local Government (Meetings) Regulation 1999
The Act	the Local Government Act 1993
Pecuniary Interest	an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated (sections 442 and 443)
Non-pecuniary interest	a private or personal interest the council official has that does not amount to a pecuniary interest as defined in the Act (for example; a friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature

The term "you" used in the code of conduct refers to council officials.

References to sections in the model code of conduct are references to sections in the *Local Government Act 1993*.

3. PURPOSE OF THE CODE OF CONDUCT

The Code of Conduct sets the minimum requirements of behaviour for council officials in carrying out their functions. The code is prescribed by regulation.

Councils have the responsibility to serve the community in fulfilling the requirements of their charter under Section 8 of the Local Government Act 1993. Councillors are elected to represent the interests of the residents and ratepayers. As a member of the governing body of the council, councillors play a key role in creating and reviewing the council's policies and objectives. Staff have the responsibility of serving the community and owe their allegiance to the council as their employer. Staff must also know and understand the law relevant to the performance of their official duties.

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

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

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

4. KEY PRINCIPLES

The Code of Conduct applies equally to formal and informal dealings between councillors, staff and others.

The Code of Conduct is based on the following key principles:

4.1 Integrity

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

4.2 Leadership

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

4.3 Selflessness

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

4.4 Objectivity

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

4.5 Accountability

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

4.6 Openness

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

4.7 Honesty

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

4.8 Respect

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

5. GENERAL CONDUCT OBLIGATIONS

General conduct

- 5.1 You have an obligation to comply with the provisions of the Local Government Act, 1993, the associated regulations and council's policies.
- 5.2 You must avoid behaviour that could constitute an act of disorder or misbehaviour. Specifically, you must avoid conduct that:
- contravenes the Act, associated regulations and council's relevant administrative requirements
 - is detrimental to the pursuit of the charter of a council
 - is improper or unethical
 - is an abuse of power or otherwise amounts to misconduct
 - causes, comprises or involves intimidation, harassment or verbal abuse
 - causes, comprises or involves discrimination, disadvantage or adverse treatment in relation to employment
 - causes, comprises or involves prejudice in the provision of a service to the community. (*Schedule 6A of the Act*)
 - causes, comprises or involves improperly directing or influencing or attempting to direct or influence a member of the staff of the council or a delegate of the council in the exercise of the functions of the member or delegate
- 5.3 You must act lawfully, honestly, *responsibly and* exercise a reasonable degree of care and diligence in carrying out your functions under the Act or any other Act. (*section 439*)
- 5.4 You have a responsibility to behave professionally and to develop and maintain constructive working relationships
- 5.5 You must respect all community members and other council officials and the role they play, treating them with courtesy at all times.

Fairness and equity

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

Harassment and discrimination

- 5.8 You must not harass, discriminate against, or support others who harass and discriminate against colleagues or members of the public. This includes, but is not

limited to harassment and discrimination, on the grounds of sex, pregnancy, age, race (including their colour, nationality, descent, ethnic or religious background), political affiliation, marital status, disability, homosexuality or transgender.

Development decisions

- 5.9 It is your duty to ensure that development decisions are properly made and that parties involved in the development process are dealt with fairly. You must avoid impropriety. You must also avoid any occasion for suspicion and any appearance of improper conduct.
- 5.10 In determining development applications, it is essential that you are highly conscious of the potential for even the slightest impropriety to lead to suspicion of misconduct. This means you must ensure that no action, statement or communication between yourself and applicants or objectors conveys any suggestion of willingness to provide concessions or preferential treatment.
- 5.10A Councillors have a judicial, or arbitral role in the determination of development applications. Councillors shall not receive or solicit representations from applicants or persons affected by the application. Should a Councillor elect to advocate an application on behalf of the applicant, or make representations on behalf of a person affected by the development, the Councillor shall declare a conflict of interest and not participate in the discussion or voting on the item at a Council meeting.

Guide to ethical decision-making

- 5.11 If you are unsure about the ethical issues around an action or decision you are about to take, you should consider these five points:
- Is the decision or conduct lawful?
 - Is the decision or conduct consistent with council's policy and with council's objectives and the code of conduct?
 - What will the outcome be for the employee or councillor, work colleagues, the council and any other parties?
 - Do these outcomes raise a conflict of interest or lead to private gain or loss at public expense?
 - Can the decision or conduct be justified in terms of the public interest and would it withstand public scrutiny?

Appointments to other organisations

- 5.12 You may be appointed or nominated by the council as a member of another body or organisation (for example, appointed to the Shore Regional Organisation of Councils (SHOROC)). If so, you will be bound by the rules of conduct of both organisations.

Alcohol and other drugs

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

Health, wellbeing and safety

- 5.14 You should ensure that council's premises are adequate to ensure the health, safety and well being of other council officials and members of the public

Public comment by council staff

- 5.15 "Public comment" includes public speaking engagements (including comments on radio and television), expressing views in letters to the press or in books or notices or where it is reasonably foreseeable that publication or circulation will enter the public domain.

As a member of the community council staff have a right to enter into public debate in their private capacity. However, council staff must take care not to give the impression that their comments are made on behalf of council. Council staff will need to clearly state that such public comment reflects personal opinion. Public comment or statements on council matters should only be made in accordance with council's policy.

Child protection code of conduct

- 5.16 Under the Ombudsman Act 1974 the head of a designated agency or public authority is responsible for ensuring systems are in place for recording and responding to all allegations of a child protection nature against an employee. The General Manager is the agency head within Warringah Council.

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

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

6. CONFLICT OF INTERESTS

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

Pecuniary and non-pecuniary conflict of interests

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

Pecuniary - An interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated. (*sections 442 and 443*)

Non-pecuniary - A private or personal interest the council official has that does not amount to a pecuniary interest as defined in the Act (for example; a friendship,

membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature).

6.9 Pecuniary interest is regulated by Chapter 14 Part 2 of the Act. Where the interest is a pecuniary one, you must comply with the Act. If you do not comply with the Act, the consequences may be severe. The Act requires that if a pecuniary interest exists in a matter, you must not be involved in consideration or discussion of the matter in which you have the interest and must not participate in the decision making process or vote on any question relating to the matter. The Act requires that:

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

Designated persons are defined at section 441 of the Act.

6.10 Where you are a member of staff of council, other than a designated person (as defined by section 441), you must disclose to your supervisor or the general manager, the nature of any pecuniary interest you have in a matter you are dealing with as soon as practicable.

6.11 If you have a non-pecuniary conflict of interests, you must disclose the nature of the conflict. If this is in a meeting, do so as soon as practicable.

6.12 If you have declared a non-pecuniary conflict of interests you have a broad range of options for managing the conflict. The option you choose will depend on an assessment of the circumstances of the matter, the nature of your interest and the significance of the issue being dealt with. You must deal with a non-pecuniary conflict of interests in at least one of these ways:

- It may be appropriate that no action is taken where the potential for conflict is minimal *or can be eliminated by disclosure or effective supervision*. However, council officials should consider providing an explanation of why they consider a conflict does not exist.
- Limit involvement if practical (for example, participate in discussion but not in decision making or vice-versa). Care needs to be taken when exercising this option.
- Remove the source of the conflict (for example, relinquishing or divesting the personal interest that creates the conflict or reallocating the conflicting duties to another officer).
- Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in section 451(2) of the Act apply (particularly if you have a significant non-pecuniary conflict of interest) or restrict your access to all relevant information.

- Include an independent person in the process to provide assurance of probity (for example, for tendering or recruitment selection panels).

Other business or employment

6.13 A member of staff of council who is considering outside employment or contract work that relates to the business of the council or that might conflict with their council duties must notify and seek the approval of the general manager in writing. (*section 353*)

6.14 Before you engage in outside employment or business you must ensure that it will not:

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

Political support

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

Personal dealings with council

6.16 You will inevitably deal personally with your council (for example, as a ratepayer, recipient of a council service or applicant for a consent granted by council). You must not expect or request preferential treatment for yourself or your family because of your position. You must avoid any action that could lead members of the public to believe that you are seeking preferential treatment. *If you have an interest in the outcome of a decision relating to your or your family's personal dealings with council you must declare that interest and refrain from taking part in any consideration of the matter.*

Club/organisation membership

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

Personal relationships

6.18 You should consider the depth of a personal relationship in deciding whether or not it gives rise to a conflict of interests

Sponsorships

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

Lobbying

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

You must consider evidence and arguments put by a wide range of organisations and individuals in order to perform your duties effectively. However, councillors should not respond to oral requests for concessions and require written application to be made to the general manager for evaluation by council staff and reporting to council of all the consequences of granting the request.

Caucus votes

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

Former council officials

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

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

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

Staff political participation

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

Information to Guide decisions about conflict of interests

6.24 There are a number of questions that you can ask yourself to help in deciding whether or not you have a conflict of interests or whether your behaviour could create the impressions that there is a conflict and so undermine the confidence in the council. These questions are:

- Do I, a relative, friend or associate stand to gain or lose financially from council's decision or action on this matter?
- Do I, a relative, friend or associate stand to gain or lose my/our reputation because of council's decision or action?

- Have I contributed in a private capacity in any way to the matter before council?
- Have I made any promises or commitments in relation to the matter?
- Have I received a benefit or hospitality from someone who stands to gain or lose from council's decision or action?
- Am I a member of an association, club or professional organisation, or do I have particular ties and affiliations with organisations or individuals, who stand to gain or lose from council's consideration of the matter?
- Is the person an election campaign donor or someone who helped during my election campaign?
- Could there be benefits for me in the future that could cast doubt on my objectivity?
- If I do participate in assessment or decision making, would I be happy if my colleagues and the public became aware of my association or connection?
- Would a fair and reasonable person perceive that I was influenced by personal interest in performing my public duty?
- Do I need to seek advice or discuss the matter with an objective party?
- Am I confident of my ability to act impartially and in the public interest?
- Do I understand the possible penalties if I go on with the action?

Examples/Case studies

Example 1 – Pecuniary Interest and perception

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

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

If the councillor has a pecuniary interest in the matter, within the meaning of section 442 of the Local Government Act 1993 and no exemption can be relied upon, then a pecuniary interest exists during the entire period the matter is being considered, including during the discussion when standing orders are suspended. This equally applies to councillor participation on advisory committees.

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

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

Example 2 – Secondary employment

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

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

Example 3 – Political support

A potential conflict of interest could arise for a councillor when a campaign donor who contributes financially to the council's election campaign has a matter before the council for determination.

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

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

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

Example 4A – Development applications

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

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

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

Example 4B

A council staff member receives a development application that contains an architectural style and colours about which he or she has strong personal negative views. The policy and standards that have been adopted by council do not preclude the style and colours. The staff member needs to objectively consider the policies and standards and not allow his or her personal views to affect his or her decision on the development application. If the staff member does not think he or she can objectively assess the application then he or she should declare a conflict of interests and arrange for another staff member to assess the application. Alternatively, council could arrange to outsource the assessment.

Example 5 - Selection processes

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

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

Example 6A– Club Membership

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

The club has recently submitted a development application to the council for a major extension to the facility.

In this instance, there may be a public perception that the councillor's activities with the club would make it difficult for the councillor to view the matter before the council as a representative of residents and ratepayers generally. Therefore, the councillor should disclose his conflict of interests in the matter when it comes up for consideration. The

councillor must then consider whether he should refrain from participating in council's discussion and voting on the matter. If the councillor decides not to vote then he should leave the room when the vote is being taken to ensure that the votes is not recorded in the negative.

Example 6B– Club Membership

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

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

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

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

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

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

Example 7 – Lobbying on development decisions

A council comprising seven councillors is dealing with a rezoning proposal from a developer. The rezoning, if supported, will result in the value of the land in question increasing by several million dollars. The developer approaches four councillors in the week before the application comes before council and provides them with some written material and verbal argument in support of the rezoning. However, the material in question is not made available to the other three councillors nor is it submitted to council staff as material supporting the rezoning proposal. The proposal is opposed by groups in the community who have responded by way of written submission to council's public advertising of the application. These groups are also actively lobbying in support of their written submissions.

At the council meeting some councillors verbally refer to the information they have received from the applicant. However, this material is never tabled, is not put out for public comment, and is not subjected to analysis by council's professional staff. The submissions received

from community groups are tabled, are analysed by council staff, and form part of the public record, which is available for scrutiny by any person.

The four councillors who responded to the developer's lobbying without ensuring the material provided is formally submitted to council have shown poor judgement and invite suspicion of partial decision making. They should have advised the developer to formally submit the material to council and then require council to put it out for public comment. At the end of this process council professional staff would be able to provide, as part of open accountable processing of the application, an analysis of the developer's material and the public responses to it.

Although some delay would result in the processing of the application this delay is the direct result of the developer introducing new material into the issue. Lobbying in this matter has, in practical terms, introduced an element of preferential treatment and denied other stakeholders their right to also make submission on relevant material. The fact that only four councillors were provided with the material suggests a manipulative approach in the lobbying process, which should have been seen as such by the four councillors and firmly rejected.

The object lesson is that absolute compliance with the principles of ethical decision-making is not optional...it is mandatory if council is to meet its charter of open, accountable decision making.

7. PERSONAL BENEFIT

For the purposes of this section, a reference to a gift or benefit does not include a political donation or contribution to an election fund that is subject to the provisions of the relevant election funding legislation.

Gifts or benefits

7.1 You must not:

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

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

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

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

Token gifts and benefits

7.4 Generally speaking, token gifts and benefits may include:

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

Gifts of value

- 7.5 You must never accept an offer of money, regardless of the amount.
- 7.6 In general, you must not accept gifts and benefits that have more than a nominal or token value. These include tickets to major sporting events, corporate hospitality at a corporate facility at a sporting venue, discounted products for personal use, the frequent use of facilities such as gyms, use of holiday homes, free or discounted travel and free training excursions.
- 7.7 If you receive a gift of more than token value in circumstances where it cannot reasonably be refused or returned, you should accept the gift and disclose this promptly to your supervisor, the Mayor or the general manager. The supervisor, Mayor or general manager will ensure that any gifts received are recorded in a Gifts Register. Where you are offered a gift and you refuse the gift, you must ensure that the offer and refusal are also recorded in the Gifts register.
- 7.8 You must avoid situations in which the appearance may be created that any person or body, through the provision of hospitality or benefits of any kind, is securing or attempting to influence or secure a favour from you or the council.
- 7.9 You must also take all reasonable steps to ensure that your immediate family members do not receive gifts or benefits that could appear to an impartial observer to be an attempt to influence or secure a favour. Immediate family members ordinarily include parents, spouses, children and siblings.
- 7.10 Councillors and designated persons must by law disclose a description of any gift or gifts totalling a value exceeding \$500 made by the same person during a period of 12 months or less. (*required to be included in the disclosure of interests returns – section 449*)

Improper and undue influence

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

Examples/Case Studies

Example 1 – Gifts, benefits and hospitality

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

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

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

Example 2 – Acceptance of gifts and bribery

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

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

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

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

Example 3 – Acceptance of gifts and influence

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

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

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

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



8. RELATIONSHIP BETWEEN COUNCIL OFFICIALS

Obligations of councillors

8.1 Council is a statutory corporation. The councillors are the governing body of the corporation. Councillors have the responsibility of directing and controlling the affairs of the council in accordance with the Act.

8.2 Councillors must:

- Only provide, by way of council or committee resolution, or by the Mayor exercising their power under Section 226 of the Act, proper and appropriate direction to the general manager in the performance of council's functions.
- refrain from directing council staff other than by giving appropriate direction to the general manager in the performance of council's functions by way of council or committee resolution, or by the Mayor exercising their power under section 226 of the Act (*section 352*)
- refrain from, in any public or private forum, directing or influencing, or attempting 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 member or delegate (*Schedule 6A of the Act*)
- refrain from contacting a member of the staff of the council unless in accordance with procedures governing the interaction of councillors and council staff that have been authorised by the general manager
- not contact or issue instructions to any of council's contractors or tenderers, including council's legal advisers, unless by the Mayor exercising their power under section 226 of the Act.

Role of the Mayor

8.3 The role of the Mayor is defined by section 226 of the Act. This role is the same whether the Mayor is popularly elected or elected by the councillors.

Obligations of staff

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

8.5 Members of staff of council have an obligation to:

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

Obligations during meetings

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

Inappropriate interactions

- 8.8 The following interactions are inappropriate:
- Councillors approaching council staff other than directors or senior staff for information on sensitive or controversial matters.
 - Council staff approaching councillors directly on individual staffing matters.
 - Councillors approaching council staff outside the council building or outside hours of work to discuss council business.
 - Council staff refusing to give information which is available to other councillors to a particular councillor because of the staff member's or councillor's political views.
 - Councillors who have lodged a development application with council, discussing the matter with council staff in staff-only areas of the council.
 - Councillors being overbearing or threatening to council staff.
 - Councillors directing or pressuring council staff in the performance of their work, or recommendations they should make.
 - Council staff providing ad hoc advice to councillors without recording or documenting the interaction as they would if the advice was provided to a member of the community.
 - Councillors approaching council staff organisations; for example unions and associations; in relation to staffing matters that relate to individual staff members rather than broader industrial policy issues.
 - Council staff meeting with developers alone and outside office hours to discuss development applications or proposals.
 - Councillors attending on-site inspection meetings with lawyers and/or consultants engaged by council associated with current or proposed legal proceedings unless permitted to do so by council's general manager or, in the case of the Mayor, exercising their power under section 226 of the Act.
- 8.9 Information to help decide the appropriateness of contact between councillors and staff:
- Can I justify the need for the information or the approach to staff or councillor?
 - Do I feel comfortable supplying the information or discussing this issue?
 - Is it information that is publicly available, whether by statute or council policy?
 - Is its release required to enable me to do my civic duty?

- How would a member of the public view my giving or receiving this information?
- Am I the right person to ask?
- Does council normally charge for this service?
- Am I entitled to the information under relevant legislation (for example, LGA, Freedom of Information Act)?
- Contact should not be made where:
- It cannot be justified to members of the public.
- The information requested is not necessary for the performance of a councillor's role.
- It is known or should be known that the information should not be sought, nor expected to be provided.

Councillors and unions

8.10 It is not appropriate for the Mayor or Councillors to discuss with Union officials general staff or industrial issues that are the management responsibility of the General Manager under Section 335 of the Local Government Act. Circumstances where it may be appropriate for councillors and unions to hold discussions include:

- Competitive tendering policies
- Industrial policies
- Organisation structure
- Management plans
- EEO plans

It is desirable that the General Manager is kept informed about such contacts.

Examples/Case studies

Example 1 – Attempting to improperly direct/influence staff

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

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

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

If the staff member feels intimidated or there are concerns about the propriety of the actions of a councillor, the staff member should advise the general manager. The

9. ACCESS TO INFORMATION AND COUNCIL RESOURCES

Councillor access to information

- 9.1 A council must provide access to the documents available under section 12 of the *Local Government Act 1993* to all members of the public, and to councillors. A council must also provide councillors with information sufficient to enable them to carry out their civic functions.
- 9.2 Any information that is given to a particular councillor in the pursuant of their civic duties must also be available to any other councillor who requests it.
- 9.3 Councillors who have a personal (as distinct from civic) interest in a document of council have the same rights of access as any member of the public. *All requests for access of such documents must be made in writing. The request and response will be recorded in Council's Records Management System.*
- 9.4 Members of staff of council have an obligation to provide full and timely information to councillors about matters that they are dealing with in accordance with council procedures.
- 9.5 Councillors have an obligation to properly examine and understand all the information provided to them relating to matters that they are dealing with to enable them to make a decision on the matter in accordance with council's charter.

Refusal of access to documents

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

Use of council information

- 9.7 You must:
- protect confidential information
 - only access information needed for council business
 - not use confidential information for any non-official purpose
 - only release confidential information if you have authority to do so
 - only use confidential information for the purpose it is intended to be used
 - only release other information in accordance with established council policies and procedures and in compliance with relevant legislation
 - not use council information for personal purposes
 - not disclose any information discussed during a confidential session of a council meeting.

- 9.8 You must carry out your duties in a manner that allows council officials and the public to remain informed about local government activity and practices.
- 9.9 You must not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person.
- 9.10 You must not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for yourself, or any other person or body, from any information to which you had access in the exercise of your official functions or duties by virtue of your office or position.
- 9.11 You must not use confidential information with the intention to improperly cause harm or detriment to your council or any other person or body.

Security of information

- 9.12 You must take care to maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible.
- 9.13 When dealing with personal information you must comply with:
- *the Privacy and Personal Information Protection Act 1998,*
 - *the Health Records and Information Privacy Act 2002,*
 - the Information Protection Principles and Health Privacy Principles,
 - council's privacy management plan,
 - the Privacy Code of Practice for Local Government

Personal information is information or an opinion about a person whose identity is apparent, or can be determined from the information or opinion.

Use of council resources

- 9.14 You must use council resources ethically, effectively, efficiently and carefully in the course of your public or professional duties, and must not use them for private purposes (except when supplied as part of a contract of employment) unless this use is lawfully authorised and proper payment is made where appropriate.
- 9.15 Union delegates and consultative committee members may have reasonable access to council resources for the purposes of carrying out their industrial responsibilities, including but not limited to:
- the representation of members with respect to disciplinary matters
 - the representation of employees with respect to grievances and disputes
 - functions associated with the role of the local consultative committee.
- 9.16 You must be scrupulous in your use of council property, including intellectual property, official services and facilities and should not permit their misuse by any other person or body.

- 9.17 You must avoid any action or situation which could create the impression that council property, official services or public facilities are being improperly used for your own or any other person or body's private benefit or gain.
- 9.18 The interests of a councillor in their re-election is considered to be a personal interest and as such the reimbursement of travel expenses incurred on election matters is not appropriate. Council letterhead, council crests and other information that could give the impression it is official council material must not be used for these purposes.
- 9.19 You must not convert any property of the council to your own use unless properly authorised.
- 9.20 You must not use council's computer resources to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature.

Councillor access to council buildings

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

Contractors

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

Business investments

- 9.25 You must avoid investments or business activities in relation to which your potential access to confidential information might reasonably be perceived as giving you an unfair or improper advantage over other people.

Examples/Case Studies

Example 1 – use of council equipment

A local resident approaches a councillor with information about his neighbour, who is a council employee. He reports that the previous weekend he saw council equipment being used to dig up his neighbour's driveway.

The councillor reports the matter to the general manager. He discusses the matter with one of the council's internal auditors. The auditor decides to interview the employee, who has worked for council for 20 years and has an excellent work record. At the interview the employee admits that he used the equipment the previous weekend. He says he didn't realise it was wrong to do this as he was only "borrowing" the equipment to do work on his own property. He did the work in his own time and not as a second job for which he got paid.

The auditor reports back to the general manager and, as this was a one-off offence, recommends that no formal disciplinary action be taken. In this case it would be appropriate if the general manager counsels the employee on the use of council resources and gives him a copy of council's code of conduct and policy. The council could also run a series of awareness-raising sessions for staff.

Example 2 – Use of council information for personal and business interests

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

Example 3 – Forms of misuse

Forms of misuse include:

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

Example 4 – Information security

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

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

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

10. REPORTING BREACHES, COMPLAINT HANDLING PROCEDURES AND SANCTIONS

Corrupt conduct, maladministration and waste of public resources

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

Reporting breaches of the code of conduct

- 10.3 You should report suspected breaches of the code of conduct to the general manager, preferably in writing.
- 10.4 Where you believe that the general manager has failed to comply with this code, you should report the matter to the Mayor, preferably in writing, who will report the matter to the conduct committee.

Complaint handling procedures – staff conduct (excluding the general manager)

- 10.5 Where appropriate, the general manager will make enquiries, or cause enquiries to be made, into breaches of the code of conduct regarding members of staff of council and others engaged by the council and will determine the matter.
- 10.6 Where the general manager has determined not to enquire into the matter, the general manager will give the complainant the reason/s in writing.
- 10.7 Enquiries made into staff conduct which might give rise to disciplinary action must occur in accordance with the relevant local government award and make provision for procedural fairness including the right of an employee to be represented by their union.

Complaint handling procedures – councillor and general manager conduct

- 10.8 Council will establish a conduct committee that will consist of the Mayor, the general manager and two (2) independent persons, such independents to be selected by two (2) representatives of the Council's Solicitor firms and the Council's Auditors. In the instance of a complaint being made by or against the Mayor or the general manager, the Deputy Mayor, or another councillor who has been designated by council, will take the place of the Mayor or general manager on the committee.
- 10.9 Councillors should report suspected breaches of the code of conduct to the general manager, preferably in writing, in the first instance and refrain from making allegations at council meetings. Where appropriate, the general manager will report the matter to the conduct committee.
- 10.10 Where a councillor believes that the general manager has failed to comply with the code, the councillor should report the matter to the Conduct Committee.

10.11 Where the general manager has determined not to report the matter to the conduct committee, the general manager will give the complainant the reason/s in writing.

10.12 Council's conduct committee is responsible for making enquiries into allegations of breaches of the code of conduct by councillors and must either:

- determine not to make enquiries into the allegation and give the reason/s in writing
- make enquiries into the alleged breach to determine the particular factual matters, or
- engage an independent person to make enquiries into the allegation to determine the particular factual matters.

10.13 Enquiries made by the general manager, an independent person or the conduct committee will follow the rules of procedural fairness. The enquirer must:

- inform the person/s against whose interests a decision may be made of any allegations against them and the substance of any adverse comment in respect of them
- provide the person/s with a reasonable opportunity to put their case
- hear all parties to a matter and consider submissions
- make reasonable enquiries before making a recommendation
- ensure that no person is involved in enquiries in which they have a direct interest
- act fairly and without bias, and
- conduct the enquiries without undue delay.

10.14 Council's conduct committee must decide whether a matter reported to it discloses a prima facie breach of this code. The conduct committee will report its findings, and the reasons for these findings, in writing to the council, the complainant and the person subject of the complaint.

10.15 The conduct committee may recommend that council take any actions provided for in this code of conduct that the committee considers reasonable in the circumstances.

Sanctions

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

- censure the councillor for misbehaviour in accordance with section 440G of the Act
- require the councillor to apologise to any person adversely affected by the breach
- reprimand the councillor
- counsel the councillor
- make public findings of inappropriate conduct

- refer the matter to an appropriate investigative body if the matter is serious (for example, the Department of Local Government, the Independent Commission Against Corruption, the NSW Ombudsman or the NSW Police)
- prosecute for any breach of law.

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

- Counselling the staff member
- Documentation on the personnel file for a period of time depending on the nature of the breach of the code
- Disciplinary action such as demotion, forgoing the capacity to seek promotion, or to act in a higher duty capacity
- Dismissal from employment
- Reference to an appropriate investigative body
- Prosecution for any breach of law which could lead to dismissal and recovery of costs/damages suffered by council and/or imprisonment

Local Government Amendment (Discipline) Act 2004

10.18 The ICAC, Ombudsman and Director General of the Department of Local Government retain the power to act on misbehaviour allegations including a breach of the council's code of conduct regardless of any council enquiries or findings.

11. COUNCILLOR MISBEHAVIOUR

- 11.1 For the purposes of Chapter 14, Part 1, Division 3 of the Act, failure by a councillor to comply with an applicable requirement of this code of conduct constitutes misbehaviour (*section 440F*).
- 11.2 Under section 440G a council may by resolution at a meeting formally censure a councillor for misbehaviour.
- 11.3 Under section 440H, the process for the suspension of a councillor from civic office can be initiated by a request made by council to the Director General of the Department of Local Government.
- 11.4 The first ground on which a councillor may be suspended from civic office is where the councillor's behaviour has been disruptive over a period, involving more than one incident of misbehaviour during that period, and the pattern of behaviour during that period is of such a sufficiently serious nature as to warrant the councillor's suspension.
- 11.5 Council cannot request suspension on this ground unless during the period concerned the councillor has been:
- formally censured for incidents of misbehaviour on two or more occasions, or
 - expelled from a meeting of the council or a committee of the council for an incident of misbehaviour on at least one occasion.
- 11.6 The second ground on which a councillor may be suspended from civic office is where the councillor's behaviour has involved one incident of misbehaviour that is of such a sufficiently serious nature as to warrant the councillor's suspension.
- 11.7 Council cannot request suspension on this ground unless the councillor has been:
- formally censured for the incident of misbehaviour concerned, or
 - expelled from a meeting of the council or a committee of the council for the incident of misbehaviour concerned.
- 11.8 Under section 440H, the process for the suspension of a councillor can also be initiated by the Department of Local Government, the Independent Commission Against Corruption or the NSW Ombudsman.

