



Premier & Cabinet
Division of Local Government

Your obligations as a council committee member

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Summary

This Guide has been prepared to assist council committee members to understand their responsibilities under the Model Code of Conduct for Local Councils in NSW (“the Model Code of Conduct”). It contains a summary of the ethical standards prescribed under the Model Code of Conduct that you should be aware of as a member of a council committee.

Section 440 of the *Local Government Act 1993* (“the Act”) requires every council to adopt a code of conduct that incorporates the provisions of the Model Code.

All council officials must comply with the applicable provisions of council’s code of conduct in carrying out their functions. 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.

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1. Purpose of the code of conduct

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

The Model 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
- act in a way that enhances public confidence in the integrity of local government.

2. General conduct obligations

General conduct

You must not conduct yourself in carrying out your functions in a manner that is likely to bring the council or holders of civic office into disrepute. Specifically, you must not act in a way that:

- contravenes the Act, associated regulations, council's relevant administrative requirements and policies
- is detrimental to the pursuit of the charter of 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.

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

You must treat others with respect at all times.

Fairness and equity

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

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

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

Development decisions

You must ensure that development decisions are properly made and that parties involved in the development process are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the development assessment process.

In determining development applications, you must ensure that no action, statement or communication between yourself and applicants or objectors conveys any suggestion of willingness to provide improper concessions or preferential treatment.

3. Conflict of Interest

A conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty.

You must avoid or appropriately manage any conflict of interests. The onus is on you to identify a conflict of interests and take the appropriate action to manage the conflict in favour of your public duty.

Any conflict of interests must be managed to uphold the probity of council decision-making. When considering whether or not you have a conflict of interests, it is always important to think about how others would view your situation.

Private interests can be of two types: pecuniary or non-pecuniary.

What is a pecuniary interest?

A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person.

A person will also be taken to have a pecuniary interest in a matter if that person's spouse or de facto partner or a relative of the person or a partner or employer of the person, or a company or other body of which the person, or a nominee, partner or employer of the person is a member, has a pecuniary interest in the matter.

Managing pecuniary interests

Pecuniary interests are regulated by the Act. 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
- councillors and members of council committees disclose an interest and the nature of that interest at a meeting, leave the meeting and be out of sight of the meeting and not participate in discussions or voting on the matter
- designated persons immediately declare, in writing, any pecuniary interest.

Designated persons include members of a committee of the council identified by the council as a committee whose members are designated persons because the functions of the committee involve the exercise of the council's functions that could give rise to a conflict between the member's duty as a member of the committee and the member's private interest.

What are non-pecuniary conflict of interests?

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

Managing non-pecuniary conflict of interests

Where you have a non-pecuniary interest that conflicts with your public duty, you must disclose the interest fully and in writing, even if the conflict is not significant. You must do this as soon as practicable.

If a disclosure is made at a council or committee meeting, both the disclosure and the nature of the interest must be recorded in the minutes. This disclosure constitutes disclosure in writing for the purposes noted above.

How you manage a non-pecuniary conflict of interests will depend on whether or not it is significant.

As a general rule, a non-pecuniary conflict of interests will be significant where a matter does not raise a pecuniary interest but it involves:

- a relationship between a council official and another person that is particularly close, for example, parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse, current or former spouse or partner, de facto or other person living in the same household
- other relationships that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship
- an affiliation between the council official and an organisation, sporting body, club, corporation or association that is particularly strong.

If you are a council official, other than a member of staff of council, and you have disclosed that a significant non-pecuniary conflict of interests exists, you must manage it in one of two ways:

- remove the source of the conflict, by relinquishing or divesting the interest that creates the conflict, or reallocating the conflicting duties to another council official
- have no involvement in the matter, by absenting yourself from and not taking part in any debate or voting on the issue.

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

Personal dealings with council

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

4. Personal benefit

Gifts and benefits

You must avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to secure favourable treatment from you or from the council.

You must take all reasonable steps to ensure that your immediate family members do not receive gifts or benefits that give rise to the appearance of being an attempt to secure favourable treatment. Immediate family members ordinarily include parents, spouses, children and siblings.

Token gifts and benefits

Generally speaking, token gifts and benefits include:

- free or subsidised meals, beverages or refreshments provided in conjunction with:
 - the discussion of official business
 - council work related events such as training, education sessions, workshops
 - conferences
 - council functions or events
 - social functions organised by groups, such as council committees and community organisations
- invitations to and attendance at local social, cultural or sporting events
- 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)
- ties, scarves, coasters, tie pins, diaries, chocolates or flowers
- prizes of token value.

Gifts and benefits of value

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

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

You must not:

- seek or accept a bribe or other improper inducement
- seek gifts or benefits of any kind

- accept any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your public duty
- accept any gift or benefit of more than token value
- accept an offer of cash or a cash-like gift, regardless of the amount.

A “cash-like gift” includes but is not limited to gift vouchers, credit cards, debit cards with credit on them, prepayments such as phone or internal credit, memberships or entitlements to discounts.

Where you receive a gift or benefit of more than token value that cannot reasonably be refused or returned, this must be disclosed promptly to the general manager. The recipient or general manager must ensure that any gifts or benefits of more than token value that are received are recorded in a Gifts Register. The gift or benefit must be surrendered to council, unless the nature of the gift or benefit makes this impractical.

Improper and undue influence

You must not use your position to influence other council officials in the performance of their public or professional duties to obtain a private benefit for yourself or for somebody else.

You must not take advantage (or seek to take advantage) of your status or position with or of functions you perform for council in order to obtain a private benefit for yourself or for any other person or body.

5. Relationship between council officials

Obligations during meetings

You must act in accordance with council's Code of Meeting Practice, if council has adopted one, and the *Local Government (General) Regulation 2005* during council and committee meetings.

You must show respect to the chair, other council officials and any members of the public present during council and committee meetings or other formal proceedings of the council.

6. Access to information and council resources

Use of certain council information

In regard to information obtained in your capacity as a council official, you must:

- only access council information needed for council business
- not use that council information for private purposes
- not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for yourself, or any other person or body, from any information to which you have by virtue of your office or position with council
- only release council information in accordance with established council policies and procedures and in compliance with relevant legislation.

Use and security of confidential information

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

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

- protect confidential information
- only release confidential information if you have authority to do so
- only use confidential information for the purpose it is intended to be used
- not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person
- not use confidential information with the intention to cause harm or detriment to your council or any other person or body
- not disclose any information discussed during a confidential session of a council meeting.

Personal information

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

Use of council resources

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

You must be scrupulous in your use of council property, including intellectual property, official services and facilities, and must not permit their misuse by any other person or body.

You must avoid any action or situation that could create the appearance that council property, official services or public facilities are being improperly used for your benefit or the benefit of any other person or body.

You must not use council letterhead, council crests and other information that could give the appearance it is official council material for non-official purposes.

You must not convert any property of the council to your own use unless properly authorised.

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.

7. Maintaining the integrity of the code

You must not conduct yourself in a manner that is likely to undermine confidence in the integrity of the code or its administration.

Complaints made for an improper purpose

You must not make a complaint or cause a complaint to be made under the code for an improper purpose.

A complaint is made for an improper purpose where it is trivial, frivolous, vexatious or not made in good faith, or where it otherwise lacks merit and has been made substantially for one or more of the following purposes:

- to intimidate or harass another council official
- to damage another council official's reputation
- to obtain a political advantage
- to influence a council official in the exercise of their official functions or to prevent or disrupt the exercise of those functions
- to influence the council in the exercise of its functions or to prevent or disrupt the exercise of those functions
- to avoid disciplinary action under the code
- to take reprisal action against a person for making a complaint under the code except as may be otherwise specifically permitted under the code
- to take reprisal action against a person for exercising a function prescribed under the procedures for the administration of the code except as may be otherwise specifically permitted under the code
- to prevent or disrupt the effective administration of the code.

Detrimental action

You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for;

- a complaint they have made under the code except as may be otherwise specifically permitted under the code.
- any function they have exercised under the code except as may be otherwise specifically permitted under the code.

Detrimental action is an action causing, comprising or involving any of the following:

- injury, damage or loss
- intimidation or harassment
- discrimination, disadvantage or adverse treatment in relation to employment
- dismissal from, or prejudice in, employment
- disciplinary proceedings.

Compliance with requirements under the code

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

You must comply with a reasonable and lawful request made by a person exercising a function under the code.

Disclosure of information about the consideration of a matter under the code

You must report breaches of the code in accordance with the reporting requirements under the code.

You must not make allegations of suspected breaches of the code at council meetings or in other public forums.

You must not disclose information about the consideration of a matter under the code except for the purposes of seeking legal advice unless the disclosure is otherwise permitted under the code.

8. Definitions

The phrase, “the code” used in this Guide refers to the Model Code of Conduct and the procedures for the administration of the Model Code of Conduct prescribed under the Local Government (General) Regulation 2005.

Term	Definition
the Act	the <i>Local Government Act 1993</i>
administrator	a person appointed under section 256 of the Act
committee	a council committee
conflict of interests	a conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty
council committee	a committee or group established by resolution of council
“council committee member”	a person other than a councillor or member of staff of a council who is a member of a council committee
council official	includes councillors, members of staff of council, administrators, council committee members, conduct reviewers and delegates of council
councillor	a person elected or appointed to civic office and includes a Mayor
designated person	see the definition in section 441 of the Act
personal information	information or an opinion about a person whose identity is apparent, or can be ascertained from the information or opinion