



Hawkesbury City Council

Code of Conduct

Adopted by Council
at its Meeting
held on
15 April 2004

1. INTRODUCTION

- 1.1 The Local Government Act 1993 ("the Act") (Schedule 7) required that a Council prepare or adopt by 30 June 1994 a Code of Conduct to be observed by Councillors, members of staff and delegates of the Council.
- 1.2 A Model Code of Conduct was prepared and issued by the Minister for Local Government and Co-operatives under section 440(2) of the Act. Council **has** adopted this model with some modifications. The provisions complemented the duties of disclosure which apply under Part 2 of Chapter 14 to designated persons. These duties form part of general obligations imposed by the Act on Councillors, members of staff and delegates to act honestly and exercise a reasonable degree of care and diligence in carrying out functions under the Act.
- 1.3 This Code of Conduct ("the Code") has been prepared in accordance with Section 440(1) of the Act and practice note 6 'Code of Conduct' issued by the Department of Local Government and Co-operatives (March, 1994).
- 1.4 The provisions of the Code complement the duties of disclosure which apply under Part 2 of Chapter 14 to designated persons.
- 1.5 Notes in the text are explanatory and do not form part of the code. They are provided to assist in understanding and applying the code only.

2. WHAT ARE THE OBJECTIVES OF THE CODE?

- 2.1 The objectives of the Code are to:
 - (i) assist Councillors, members of staff and delegates to fulfil their statutory duty to act honestly and exercise a reasonable degree of care and diligence and to act in a way which enhances public confidence in the system of Local Government;
 - (ii) to provide a practical means of identifying and resolving situations which involve conflict of interest or improper use of their positions; and
 - (iii) to improve and standardise the procedures for dealings between the elected members of the Council on the one hand and staff members and the Council organisation on the other;
 - (iv) to encourage Councillors to understand and respect the functions and responsibilities of staff members and the proper workings of the Council organisation;
 - (v) to ensure that Councillors have access to all information and advice that is necessary for them to exercise their statutory role as members of the governing body of the Council;
 - (vi) to ensure that staff are aware of the need for Councillors to access information and advice quickly and efficiently to enable them to undertake their civic duties;

- (vii) to ensure that both staff and Councillors are aware that there are inappropriate actions and interactions which are not permitted under this code;
- (viii) to facilitate a respectful and harmonious relationship between Councillors and staff members;
- (ix) to complement the **Council's** Code of Meeting Practice;
- (x) to act in a way which enhances public confidence in **Council** and in the system of local government; and
- (xi) to complement Council's policy on payment of expenses for and provision of facilities to Councillors.

2.2 In working to achieve the objectives of this Code Councillors, staff and all delegates of the Council are to be mindful of and at all times collectively and individually strive to comply with the following principles:

- (i) Equitable and respectful treatment of staff, colleagues and ratepayers.
 - Treat people as you would like to be treated, if you were in their position;
 - Listen to and respect the opinion of others – accept and value differences;
 - Act in a sensitive and non-judgemental manner.
- (ii) Honesty, trust and integrity in communicating with people and making decisions:
 - Communicate in an upfront manner with no hidden agenda;
 - Give clear and concise reasons for the decisions made;
 - Make decisions that are fair, unbiased and to the mutual benefit of all stakeholders.
- (iii) Lawful, ethical and honest behaviour:
 - Display honest and ethical behaviour when dealing with others;
 - Compliance with the relevant law and legislation is the minimum standard;
 - Ensure our words and behaviour reflects our values.
- (iv) Reasonable care and diligence in all aspects of the working environment:
 - Learn from the mistakes made for the “right reason”;
 - When a problem is encountered, work actively towards a solution;

- Use personal skills and knowledge to the best of individual ability.
- (v) Transparency, responsibility and accountability for actions:
- Do what we say we will do and accept responsibility for our actions – if we are unable to make a commitment then say so;
 - Provide transparency in the way we allocate resources/budget;
 - Understand that ratepayers have a right to question the work we do and that there is an obligation to address these questions in a timely and professional manner.

3. APPLICATION OF CODE

3.1 This code applies to the elected members of the Council, Delegates and Council staff members including the General Manager.

A Delegate is:

- (i) a person (other than a member of the senior staff of the council) who is a member of staff of the council or a delegate of the council and who holds a position identified by the council as the position of a designated person because it involves the exercise of functions under the **Act** or any other Act (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the person's duty as a member of staff or delegate and the person's private interest
- (ii) a person (other than a member of the senior staff of the council) who is a member of a committee of the council identified by the council as a committee whose members are designated persons because the functions of the committee involve the exercise of the council's functions under this or any other Act (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the member's duty as a member of the committee and the member's private interest.

3.2 This Code applies to the behaviour of Councillors, Delegates, or staff in all situations where it is reasonable to conclude that the person was acting in their official capacity and not merely as a member of the public acting in a private capacity. In particular this Code applies to behaviour not only in all parts of Council premises, or on Council owned or controlled land but also to personal behaviour at any place whatsoever or any function directly or indirectly connected with or related to any business or function or activities of the Council.

4. WHAT IS THE RELATIONSHIP OF THIS CODE TO THE ACT?

4.1 This Code has been prepared pursuant to section 440(2) of the Act and is to be read in conjunction with the Act and the regulations made thereunder. However, nothing in this code overrides or affects the Act, the regulations made thereunder or any other law.

Note: parts of the following Acts also have a bearing on this code:

- *the Anti-Discrimination Act 1987;*
- *the Crimes Act 1900;*
- *The Defamation Act 1973 (NSW);*
- *the Freedom of Information Act 1989;*
- *the Independent Commission Against Corruption Act 1988;*
- *the Occupational Health and Safety Act 1983;*
- *the Ombudsman Act 1974;*
- *the Trade Practices Act;*
- *the Protected Disclosures Act; and*
- *the Administrative Decisions Tribunal Act 1997.*

- 4.2 The charter in Chapter 3 of the Act comprises a set of principles to guide Council in the performance of its functions. Councils Charter, Mission Statement and Vision Statement as contained in its adopted Management Plan comprise a further set of principles to guide Council in the performance of its functions.

The following guidelines have been issued and should also be considered in conjunction with this Code:

- (i) Ombudsman's Good Conduct & Administrative Practice - Guidelines for Councils.
- (ii) Ombudsman's FOI Policies & Guidelines.

5. CONFLICTS OF INTEREST

5.1 What is the Special Duty of a Councillor, Member of Staff or Delegate?

- (i) A Councillor, member of staff or delegate must avoid and appropriately resolve any conflict or incompatibility between his or her private or personal interests and the impartial performance of his or her public or professional duties.
- (ii) A Councillor, member of staff or delegate must avoid any perception of any conflict or incompatibility between his or her private or personal interests and the impartial performance of his or her public or professional duties.

Note: *The mere fact that a person has both a public or professional duty and a private or personal interest in relation to a particular matter does not necessarily mean that the two must be in conflict. What is important is how any conflict, if it exists, is dealt with. What is also important is the public perception of the way a person deals with any such conflict.*

5.2 When does a Conflict of Interest Arise?

A conflict of interest arises if it is likely that the person with the private or personal interest could be prejudicially influenced in the performance of his or her public or professional duties by that interest, or that a reasonable person would believe or could hold a perception that the person could be so influenced.

5.3 How should a Conflict of Interest be dealt with?

- (i) The onus is on the individual to declare an interest, whether perceived or real. Such disclosure should be made promptly either orally or in writing to the Council, Mayor or General Manager as appropriate.
- (ii) Where a Councillor, member of staff or delegate has any doubt as to whether he or she has a conflict of interest in a particular matter, the person should, seek their own personal and independent expert legal or other appropriate advice and act accordingly.
- (iii) A Councillor, member of staff or delegate must not discuss any matter in which they have an interest (direct or indirect) and which is or is likely to be considered by Council with any member of staff other than the General Manager or such other members of staff as the General Manager may nominate;
- (iv) Where the interest in question is a pecuniary interest, the person with the interest must comply with the provisions of the Act in those respects.

*Note: See section 442 of the Act as to what is a "pecuniary interest." Note especially that by virtue of the Act the interest of another person may also be deemed to be the interest of the Councillor or other designated person. Note also **the definition of "relative" in the dictionary to the Act.** See Part 2 of Chapter 14 of the Act in relation to duties of disclosure and participation in meetings. By virtue of section 460(1) of the Act, any person may make a complaint to the Director-General or the Director-General may make a complaint that a person has or may have contravened Part 2. The Pecuniary Interest Tribunal may conduct a hearing into a complaint referred to it. See section 482 of the Act as to what action the tribunal may take if it finds a complaint proven.*

- (v) Where the interest in question is a non-pecuniary one, the person with the interest should not do anything which he or she could not justify to the public and should avoid any occasion or activity which **may** give rise to reasonable suspicion or the appearance of improper conduct or partiality and/or bias in the performance of his or her public or professional duties.

Note: A "non pecuniary interest" includes any private or personal interest which does not pertain directly or indirectly or relate to money (eg, kinship, friendship, membership of an association, society or trade union or involvement or interest in an activity).

6. OTHER RESPONSIBILITIES OF COUNCILLORS, MEMBERS OF STAFF AND DELEGATES

6.1 Equitable Treatment of People and Situations

A Councillor, member of staff or delegate must:

- (i) not act contrary to law including the law of defamation
- (ii) not act unreasonably, unjustly or oppressively or in a discriminatory manner;
- (iii) deal with like situations in a like manner, but at the same time treat each matter on its own merits;
- (iv) take all relevant information into consideration and not take any irrelevant information or opinions into consideration;
- (v) take all reasonable steps to ensure that the information upon which decisions or actions are based is factually correct and that all relevant information has been obtained;
- (vi) treat members of the public and Community Groups, other Councillors and members of Council staff fairly and equitably and with respect, courtesy, compassion and sensitivity. **This** equitable treatment must not only be done, but be seen to be done;
- (vii) refrain from any form of conduct, in the performance of his or her public or professional duties, which may cause any reasonable person unwarranted offence or embarrassment refrain from any form of conduct that gives rise to the reasonable suspicion or appearance of improper conduct or partiality with performance of his or her public or professional duties; and
- (viii). not act for an improper or ulterior purpose or on irrelevant grounds.
- (ix). not wilfully damage or destroy or misuse property of the Council.

Note: *Section 439(1) of the Act provides that a Councillor, member of staff and delegate must act "honestly" and exercise a "reasonable degree of care and diligence " in carrying out his or her functions under the Act or any other Act.*

By virtue of section 352 of the Act, a member of staff is not subject to direction by the Council as to the content of any advice or recommendation made by the member. However, the Council may direct a member of staff to provide advice or a recommendation.

6.2 Bribes, Gifts, Benefits

A Councillor, member of staff or delegate must:

- (i) not seek or accept a bribe, or other improper inducement;

- (ii) not take advantage of his or her official position to improperly influence other Councillors, members of staff or delegates in the performance of their public or professional duties for the purpose of securing a private benefit for himself or herself or for some other person; and
- (iii) not by virtue of his or her official position accept or acquire a personal profit or advantage of a pecuniary value (other than of a token kind) other than as permitted by the Act.

6.3 Use of Council's Resources

A Councillor, member of staff or delegate must:

- (i) use Council resources effectively and economically in the course of his or her public or professional duties and must not use them for private purposes unless such use is lawfully authorised and proper payment is made where appropriate or unless such use is authorised as part of a contract of employment;
- (ii) not convert to his or her own use any property of the Council;
- (iii) at all time be scrupulously honest in the use of Council resources of all kinds, both physical and human and including intellectual property;
- (iv) Ensure that use of such resources, whether for official or authorised private purposes, is in accordance with the Council's policy concerning payment of expenses, provision of facilities and any other relevant policy. A Councillor, member of staff or delegate should not use his or her position to obtain any benefit which would not otherwise be available.

6.4 Use of Information

A Councillor, member of staff or delegate must:

- (i) conduct their duties in a manner which allows Councillors, members of staff, delegates and the public to remain informed about local government activity and practices;
- (ii) not use any information gained by virtue of his or her official position (which is not otherwise in the public domain) for the purpose of securing a private benefit for himself or herself or for any other person;
- (iii) not without lawful authority (disclose otherwise than to the Council, a Councillor, or a member of staff entitled to know) information concerning any matter referred to in section 10A(2)(a)(g) of the Act.

7. PARTICULAR OBLIGATIONS OF STAFF

7.1 Members of staff must:

- (i) while on duty give the whole of their time and attention to the business of the Council and ensure that their work is carried out efficiently, economically and effectively;
- (ii) carry out lawful directions given by any person having authority to give such directions;
- (iii) give effect to the lawful policies, decisions and practices of the Council, whether or not the staff member agrees with or approves of them.
- (iv) report immediately to their Manager or immediate supervisor or to the General Manager any attempts by Councillors to direct staff or pressure them as to the performance of their work.
- (v) not approach Councillors directly but only through their director, staff representative or union delegate on staffing or political issues.
- (vi) not refuse to give information which is available to other Councillors to a particular Councillor because of the staff member's or Councillor's political views.
- (vii) not rescind or undo any lawful action that the Council has resolved to do.
- (viii) Not make adverse public comment on decisions of Council or its Committees or defamatory comments about fellow Staff, Councillors or residents of the Local Government Area.

7.2 In addition to all other requirements under this code where Council directs or resolves that a matter thing or complaint be done, procured, or made, the General Manager must personally or where permitted by delegation pursuant to Section 377 of the Act put into effect the direction or resolution of the Council.

Note: *By virtue of section 341 of the Act, a senior staff member must give notice to the General Manager of him or her becoming bankrupt or making a composition, arrangement or assignment for the benefit of his or her creditors.*

Section 353(2) provides that members of staff must not engage, for remuneration, in private employment or contract work outside the service of the Council that relates to the business of the Council or that might conflict with their Council duties unless they have notified the General Manager in writing of the employment or work.

By virtue of section 353(4) a member of staff must not engage, for remuneration, in private employment or contract work outside the service of the Council if prohibited from doing so by the General Manager.

8. PARTICULAR OBLIGATIONS OF COUNCILLORS AND DELEGATES

Councillors and delegates must:

- (i) Refrain from bringing **the Council** into disrepute either directly or indirectly by their personal behaviour or demeanour and avoid over indulgence in alcohol or any other substance or substances (at any time or public place) which behaviour may contribute to or cause conduct likely to cause Council to be held in disrepute
- (ii) at all time abide by Council resolutions, whether or not the Councillor agrees with or approves of them.
- (iii) not make defamatory or adverse public comment on individual Council management and staff
- (iv) Not approach junior members of staff for information or advice on sensitive or controversial matters
- (v) avoid social contact with staff outside the Council building or outside hours of work where the purpose of the contact is to obtain information or advice on Council related matters.
- (vi) not discuss planning **or any other** applications with junior staff of the Council.
- (vii) not attempt to direct staff or pressure them as to the performance of their work. Staff must report all such attempts immediately to their Manager or immediate supervisor or to the General Manager.
- (viii) not request staff to undertake work for a Councillor or any other person where that work does not relate to the Councillor's civic duties.
- (ix) when appropriate, make an appointment to see a member of staff. Staff may request a Councillor to arrange an appointment.
- (x) not disrupt normal day-to-day operations.
- (xi) not originate or instruct staff to send, communicate or publish defamatory material.

9. CONDUCT DURING MEETINGS

- 9.1 Councillors and Delegates must respect the vital role of Council and Committee meetings in the governance of Council and act accordingly. Councillors and Delegates must abide by the Code of Meeting Practice and must not engage in conduct which inhibits debate or prevents members from participating fully and freely in debate.
- 9.2 A Councillor or Delegate must not, at a meeting or conference of the Council or any Committee of Council or on any occasion when that person is representing the Council or attending a function or engagement in his or her capacity as a Councillor

or delegate, or speaking or writing publicly in his or her capacity as a Councillor or Delegate:

- (i) make statements or imputations concerning, or do anything which reflects improperly on the character, competence or reputation of a Councillor delegate, or staff member; or
- (ii) make disparaging statements or imputations, or disclose confidential information concerning the personal affairs of a Councillor, delegate or staff member without the consent of that person.
- (iii) bring Council into disrepute.

9.3 A Councillor or delegate:

- (i) Must always be mindful of the relevance of questions that are put to a staff member during meetings or conferences of the Council or Committees of Council;
- (ii) must permit a staff member a reasonable time to research and provide answers to questions asked of them in meetings or conferences of the Council; and
- (iii) must listen to answers and not interrupt a staff member who is speaking at a conference or meeting of the Council or any Committee of Council.
- (iv) must not make any defamatory comment about Councillors or other persons.

10. QUESTIONS TO STAFF MEMBERS FROM COUNCILLORS AND PROVISION OF INFORMATION AND ADVICE TO COUNCILLORS BY STAFF MEMBERS

- 10.1 A Councillor may outside a meeting or conference of the Council direct a question to or request information from the General Manager or a Manager or other staff member nominated by the General Manager.
- 10.2 The Councillor may decide whether the question or request is to be made orally or in writing but must not unreasonably ignore a request from the staff member for it to be made in writing as a request for action.
- 10.3 On receipt of a question or request under subclause (10.1), the staff member concerned must answer the Councillor's question or provide to the Councillor the information sought orally or in writing as the Councillor prefers.
- 10.4 If the staff member concerned is unable or unwilling to answer the Councillor's question or provide the information sought, the staff member must give reasons to the Councillor in such form and manner as reasonably requested by the Councillor. The staff member (if not the General Manager) must at the same time provide a copy of his reasons for declining to answer the Councillor's question to the General Manager who may direct the staff member to answer the question.

- 10.5 If the General Manager declines to answer a Councillor's question, the General Manager must provide a copy of his reasons for declining to answer the question to the Council. The Council may direct the General Manager to answer the question.
- 10.6 Any information that is given to a particular Councillor should also be available to any other Councillor who requests it.
- 10.7 The General Manager may require a Councillor to put a Notice of Motion to Council to obtain detailed or otherwise time consuming information.

11. DEALINGS WITH STAFF MEMBERS AND THE ORGANISATION GENERALLY

- 11.1 Councillors and Delegates, in their dealings with staff members and the Council organisation, must:
- (i) have regard to all of the following provisions of the Act:
 - (a) the role of the governing body under section 223;
 - (b) the functions of the Mayor under section 226;
 - (c) the functions of themselves as members of the governing body under section 232(1) and their role as elected persons under section 232(2);
 - (d) the functions of the General Manager under section 335;
 - (e) the manner in which the Council exercises its functions under section 355 and, in particular, the manner in which functions that have been delegated under section 377 may be exercised.
 - (ii) respect the functions, responsibilities and workload of individual staff members.
 - (iii) respect and comply with the proper and reasonable practices and procedures of the organisation.
- 11.2 Councillors and delegates must recognise that **the** Council premises are used for numerous meetings of other organisations some of which may not be open to attendance by Councillors and others open by invitation only. Councillors must therefore abide by the protocols adopted by the organisations using Council premises.

12. RESTRICTION ON PERSONAL DEALINGS BETWEEN COUNCILLORS AND STAFF MEMBERS RELATING TO THE PERSONAL AFFAIRS OF A COUNCILLOR

- 12.1 A Councillor must not engage a staff member in tasks, or seek information from a staff member, concerning matters that do not relate to the affairs of the Councillor as a member of the governing body.
- 12.2 A Councillor has by virtue of his or her status as a member of the governing body a right of access to a document that is necessary to enable the Councillor to exercise the **role** of Councillor. The Councillor does not have a right of access to documents about

which the Councillor is merely curious and which do not relate to the business of the Council in which the Councillor participates.

12.3 A Councillor refused access to a document or record of Council may:

- (i) exercise his or her right under and in accordance with other legislation (such as the Freedom of Information); or
- (ii) put a notice of motion to Council to seek access to the document or record in question.

12.4 Access to documents pursuant to a statutory right is to be under and in accordance with the relevant statutory provisions governing the access.

13. RIGHTS OF PERSONS MAKING COMPLAINTS

13.1 Except where a complaint is deemed to be vexatious the person making a complaint will be protected. In this regard:

- (i) the confidentiality of the identity of the person making the complaint will be protected/maintained (where this is possible or reasonable);
- (ii) complaints will be assessed and acted on, fairly and reasonably;
- (iii) responsible officers who receive complaints in accordance with this Policy are obliged to:
 - (a) protect/maintain the confidentiality of the identity of the person making the complaint where this is possible or reasonable.
 - (b) assess complaints impartially and in a timely manner, and
- (iv) complaints will be investigated as discreetly as possible, with a strong emphasis on maintaining confidentiality both as to the identity of the person making the complaint and the person the subject of the complaint.
- (v) the person making the complaint has the right to:
 - (a) expect that the complaint will be dealt with expeditiously
 - (b) to be advised of the outcome of the investigation of the complaint
 - (c) Answer any counter claims or respond to other new facts or evidence which may emerge
 - (d) lodge an appeal in terms of this policy if a decision is made to regard the complaint as frivolous or vexatious
 - (e) lodge an appeal in terms of this Policy if a decision is taken to close the complaint.
 - (f) reports on the progress of the complaint, where investigations extend over a period of time.

- 13.2 where the allegation made in the complaint is substantiated, the person making the complaint is entitled to the support of the Council and its senior management and can expect that the Council will take all reasonable steps to provide protection to persons who make such complaints from any detrimental action in reprisal for the making of the complaint.

14. RIGHTS OF PERSONS THE SUBJECT OF COMPLAINTS

- 14.1 The rights of persons the subject of complaints will be protected. In this regard:
- (i) the confidentiality of the identity of persons the subject of complaints will be protected/maintained (where this is possible and reasonable);
 - (ii) complaints will be assessed and acted on, fairly and reasonably;
 - (iii) responsible officers who receive complaints in accordance with this Policy are obliged to:
 - (a) protect/maintain the confidentiality of the identity of the person the subject of the complaint,
 - (b) assess complaints impartially and in a timely manner,
 - (c) resolve the matter promptly and without undue delay.
 - (vi) complaints will be investigated as discreetly as possible, with a strong emphasis on maintaining confidentiality both as to the identity of the person making the complaint and the persons the subject of the complaint.
 - (v) where investigations or other enquires do not substantiate the complaint, the fact the investigation/enquiry has been carried out, the results of the investigation/enquiry, and the identity of persons the subject of the complaint will be kept confidential, unless the persons the subject of the complaint request otherwise;
 - (vi) the person the subject of the complaint which **is** investigated by or on behalf of the Council, has the right to:
 - (a) be advised without delay that a complaint has been lodged
 - (b) be informed as to the substance of the allegations;
 - (c) be informed as to the substance of any adverse comment that may be included in a report/memorandum/letter or the like arising out of any such investigation;
 - (d) be given a reasonable opportunity to put their case (either orally or in writing) to the persons carrying out the investigation for or on behalf of the **Council**, and
 - (e) be given the opportunity to respond to any new factor or evidence which may emerge in the investigation before any final

decision/determination/report/memorandum/letter or the like is made, **published, issued or otherwise made public;**

- (vii) where investigations extend over a period of time, the person the subject of the complaint is entitled to a report on the progress of the complaint
 - (viii) where the allegations in a complaint have been investigated by or on behalf of the Council, and the person the subject of the complaint has been advised of the substance of the allegations, the substance of any adverse comment, or the fact of the investigation, he or she should be formally notified of the outcome of such investigation.
- 14.2 Where the allegations contained in a complaint are clearly wrong or unsubstantiated, the person the subject of the complaint is entitled to the support of the Council and its senior management (the nature of the support that would be reasonable and appropriate would depend on the circumstances of the case, but could include a public statement of support or a letter setting out the Council's views that the allegations were either clearly wrong or unsubstantiated).

15. ALLEGED BREACHES OF THIS CODE BY A STAFF MEMBER

- 15.1
- (i) A complaint against a staff member (other than the General Manager) must be in writing addressed to the General Manager who shall furnish a copy of the complaint to the staff member.
 - (ii) A complaint (other than by the Mayor) against the General Manager must be in writing addressed to the Mayor who shall furnish a copy of the complaint to the General Manager.
 - (iii) A complaint by the Mayor against the General Manager must be set out in a report to the Council meeting in a confidential session from which the General Manager may be excluded by resolution of the Council.
 - (iv) Complaints must be lodged in writing or recorded by the person taking the complaint and identified as a complaint under this Code. No anonymous complaints will be processed.
 - (v) All complaints will be recorded in a complaint register and given an identifying number that will be used to maintain confidentiality.
- 15.2 If the complaint under clause **15.1** concerns a senior staff member (as defined in the Act) the Council must, without delay, be informed of the complaint by the General Manager and must be consulted with respect to the findings and recommendations arising from any investigation of the complaint before any action is taken. However, nothing in this provision authorises the Council to direct what action is to be taken by the General Manager in relation to the complaint.
- 15.3 Otherwise than may be required by the provisions of this code or the law for dealing with any such complaint or complaints the facts of the complaint and the substance and particulars thereof shall be confidentially maintained by every person having any knowledge whatsoever thereof.

16. ALLEGED BREACHES OF THIS CODE BY A COUNCILLOR OR DELEGATE

- 16.1 A complaint alleging a breach of this Code by a Councillor or Delegate must be in writing addressed to the Mayor except:
- (i) if the complaint is against the Mayor it must be in writing addressed to the Deputy Mayor,
 - (ii) if the complaint is against the Mayor and the Deputy Mayor it must be in writing addressed to the General Manager.
 - (iii) if the complaint is by the Mayor against a Councillor or Delegate (other than the Deputy mayor) it must be in writing addressed to the Deputy Mayor.
 - (iv) if the complaint is by the Mayor against the Deputy Mayor it must be in writing addressed to the General Manager.
 - (v) All complaints will be recorded in a complaint register and given an identifying number that will be used to maintain confidentiality.
- 16.2 Complaints from Councillors must make specific reference to **the** part of this Code which it is alleged has been breached.
- 16.3 Complaints will not be accepted from Councillors against other Councillors when the matter giving rise to the complaint occurred at a Council or Committee meeting and the matter had been finally resolved at that meeting.
- 16.4 The Mayor, Deputy Mayor or General Manager as appropriate shall furnish without delay a copy of the complaint to the Councillor or delegate who is alleged to have committed the breach.
- 16.5 Otherwise than may be required by the provisions of this code or the law for dealing with any such complaint or complaints the facts of the complaint and the substance and particulars thereof shall be confidentially maintained by every person having any knowledge whatsoever thereof.

17. PROCEDURES TO BE FOLLOWED IN HANDLING A COMPLAINT

- 17.1 (i) The person authorised to receive a complaint must deal with the complaint in accordance with this section and in accordance with the guidelines given in the document "Internal Investigations" published by the ICAC.
- 17.2 (i) all complaints shall be regarded as confidential.
- (ii) the identity of the Complainant and of the person the subject of the complaint will be kept confidential unless it is necessary to reveal the identity of the Complainant to ensure that natural justice is preserved.
- (iii) no action is to be taken to process a complaint where either party to the complaint has initiated action with the Police in respect to the complaint. Processing of the complaint will be commenced at the time that the Police finish dealing with the matter.

- (iv) if during the processing of a complaint either party initiates action with the Police in respect to the complaint then processing of the complaint is to be suspended until the Police finish dealing with the matter.
- 17.3
 - (i) the person authorised to receive the complaint will determine whether or not the complaint is frivolous or vexatious.
 - (ii) if a decision is taken by the person handling the complaint that the complaint is frivolous or vexatious then the complainant may in writing request a review of that decision.
 - (iii) if the Complainant requests a review of the decision the person handling the complaint is to report to a confidential session of the Council for a decision.
 - (iv) if the Council decides that in its opinion the complaint is not frivolous or vexatious, the Council shall instruct the person handling the complaint to investigate the complaint.
- 17.4
 - (i) the person authorised to receive the complaint shall undertake a preliminary investigation of the complaint and prepare a preliminary report.
 - (ii) except where the complaint relates to the General Manager himself, the Mayor or the Deputy Mayor may seek the assistance of the General Manager in giving advice on the complaint and in carrying out the preliminary investigation and preparing the preliminary report.
 - (iii) preparation of the preliminary report is a critical step in the assessment of a complaint and therefore the Complainant and the person the subject of the complaint are required to supply the person authorised to receive the complaint with all of the documentation they wish to be taken into consideration in assessing the complaint. This is to include all statements from witnesses.
- 17.5
 - (i) at the end of the preliminary investigation the person undertaking the investigation may be required to report the matter to a statutory authority (ICAC, Police, or NSW Ombudsman)
 - (ii) If a decision is taken to refer the matter to a statutory authority the person authorised to deal with the complaint shall inform the Complainant and the person the subject of the complaint of the action to be taken. It may be also necessary to advise other people who have been involved in the preliminary investigation.
 - (iii) If the matter concerns a member of staff the General Manager is to advise the Mayor of the decision taken.
 - (iv) If the matter concerns a Councillor (including the Mayor or Deputy Mayor) the Council is to be advised in a confidential session of the decision taken.
- 17.6
 - (i) at the end of the preliminary investigation the person undertaking the investigation may decide to close the complaint.

- (ii) if there is a decision to close the complaint the Complainant and the person the subject of the complaint shall be advised. It may be also necessary to advise other people who may have been involved in the preliminary investigation.
 - (iii) If the Complainant wishes to appeal against a decision to close the complaint then the person handling the complaint must report the matter to the Council for a decision as to whether or not further investigation should be undertaken. The decision of the Council will be final.
 - (iv) If the person the subject of the complaint wishes to appeal against a decision to close the complaint then the person handling the complaint must report the matter to the Council for a decision as to whether or not further investigation should be undertaken. The decision of the Council will be final.
- 17.7 (i) at the end of the preliminary investigation if the complaint is not closed the person undertaking the investigation must offer the Complainant and the person the subject of the complaint the option of resolving the complaint by way of mediation. If mediation is successful the complaint will be closed. In those instances where the complaint has already been referred to an external agency, the matter may be opened if a report from the external agency shows that to be necessary.
- 17.8 (i) If mediation is not successful or refused the person authorised to receive the complaint must decide whether to
- (a) recommend that Council determine the complaint on the basis that it is a minor matter; or
 - (b) recommend that Council have the complaint assessed externally.
- 17.9 (i) If a decision is taken to refer the matter to Council for determination as a minor matter the person authorised to deal with the complaint shall inform the Complainant and the person the subject of the complaint of the action to be taken and supply them with a copy of the preliminary report. The preliminary report is then to be tabled at a meeting of Council where Council may decide either to determine the complaint or to require that the complaint be subject to external assessment.
- (ii) If Council decides to determine the complaint then the consideration of the matter will be carried out in accordance with clause 17.11. The Council may decide that no action **will be** taken on the complaint or may resolve to apply any of the sanctions provided for in the Code.
- 17.10 (i) If a decision is taken to refer the matter to Council with a recommendation that the complaint be externally assessed the person authorised to deal with the complaint shall inform the Complainant and the person the subject of the complaint of the action to be taken and supply them with a copy of the preliminary report. The preliminary report is then to be tabled at a meeting of Council where Council may decide either to determine the complaint or to require that the complaint be subject to external assessment.

- (ii) If Council decides to determine the complaint then the consideration of the matter will be carried out in accordance with clause 17.11. The Council may on the basis of the preliminary report resolve that no action be taken or may apply any of the sanctions provided for in **the** Code.
 - (iii) If Council resolves that the complaint be externally assessed it may limit the extent to which any further investigation is carried out. In the absence of any direction from Council the General Manager (or the Mayor in the case of a complaint involving the General Manager) will engage a person to undertake an external assessment of the complaint based on the contents of the preliminary report.
 - (iv) External assessment of complaints will normally be carried out on the basis of written material supplied for inclusion in the preliminary report and by a meeting with both parties present where oral evidence can be given and the Assessor can question both parties. Only for serious complaints will oral evidence be taken from witnesses.
 - (v) The external Assessor will prepare a written report for Council including an opinion as to whether or not there has been a breach of Council's Code of Conduct and, if there has been a breach, what sanction if any Council should consider applying. A copy of the report shall be given to the complainant and the person the subject of the complaint.
 - (vi) The external Assessor's report shall be tabled at a confidential session of the Council at which the Complainant and person the subject of the complaint may be present. Consideration of the report shall follow the procedure set out in clause 17.11.
- 17.11 If Council decides to deal with a complaint directly without resorting to external assessment then the following procedure shall be followed. This procedure will also be followed for the consideration of the report from the external assessor.
- (i) The Complainant (if the Complainant has agreed to be identified) and the person the subject of the complaint will be invited to be present at the Council meeting and will be given seven (7) days notice of such meeting.
 - (ii) Council will determine the matter on the basis of documentation contained in the preliminary report and Council reserves the right to reject any additional written material. Any additional written material proposed to be presented to the Council meeting will not be tabled unless it has been supplied to the General Manager at least four working days before the date of the meeting.
 - (iii) The Complainant and the person the subject of the complaint may make an oral statement at the meeting and may agree to answer questions from Councillors. The Complainant and the Respondent will have a right of reply to any statements made by the other or to any answers given to questions.
 - (iv) The Complainant and the person the subject of the complaint will be deemed to have a conflict of interest and unless excused by resolution of Council shall, after all oral evidence both parties has been given including any right of reply, retire from the Chamber when directed to do so by the Chairperson

and not take part in the discussion or in the case of a Councillor not vote on the matter.

- 17.12 (i) all complaints are to be dealt with as confidential matters by all parties until otherwise determined.
- (ii) breach of this confidentiality is in itself a breach of this Code.
- (iii) the Council shall in each case that comes before it determine the extent to which details of the complaint and the actions decided by Council are to be made public.
- 17.13 A complainant may if not satisfied with the outcome of the investigation of the complaint refer the matter to an outside body.
- 17.14 The person the subject of the complaint may if not satisfied with the outcome of the investigation refer the matter to an outside body.

18. SANCTIONS FOR BREACHES OF THIS CODE BY A COUNCILLOR OR DELEGATE

- 18.1 This Code is authorised by Local Government Act 1993. Sanctions may be applied if this code or any relevant law is breached. Sanctions for Councillors will depend on theseverity, scale and importance of the breach and specifically Council may by resolution do one or more of the following:
- (i) require a Councillor to apologise to a person concerned and formally retract and apologise for any allegation about a person that is defamatory and/or false and untrue;
- (ii) formally publish any such retraction as referred to in clause 18.1(i) above;
- (iii) instruct the Mayor (or Deputy Mayor depending on the particular circumstances) and General Manager to counsel the Councillor;
- (iv) reprimand the Councillor (publicly or privately);
- (v) resolve to make its decision on the matter public;
- (vi) pass a censure motion at a Council meeting;
- (vii) make public disclosures of inappropriate conduct (such as making the community aware of the breach through the media or annual report);
- (viii) refer the matter to an appropriate investigative body if the matter is serious;
- (ix) report the breach or misbehaviour to the Minister of Local Government;
- (x) prosecute any breach of the law;
- (xi) exclude the Councillor from the Councillor's room except on those occasions when the room is being used for a formal or informal meeting of Council or a Committee of Council;

- (xii) exclude the Councillor from staff only areas of the Council;
- (xiii) require the Councillor not to make contact with any member of the staff other than the General Manager or the Mayor and Councillor's Assistant;
- (xiv) where a complaint is found by Council to be frivolous or vexatious or clearly unsubstantiated the complainant shall be asked to provide a formal withdrawal and apology in writing to:
 - (a) the person/s the subject of the complaint
 - (b) and to Council.

19. SANCTIONS FOR BREACHES OF THIS CODE BY A MEMBER OF STAFF

- 19.1 Sanctions for staff, will depend on the severity, scale and importance of the breach. Specifically the General Manager may do one or more of the following:
- (i) require a staff member to apologise to a person concerned;
 - (ii) request a formal apology and retraction of any allegations or comment and may also request publication of such retraction;
 - (iv) reprimand the staff member (publicly or privately);
 - (v) make public disclosures of inappropriate conduct (such as malting the community aware of the breach through the media);
 - (vi) refer the matter to an appropriate investigative body if the matter is serious;
 - (vii) refer the matter to the Council for prosecution of any breach of the law
 - (viii) institute disciplinary proceedings;
 - (ix) dismiss the staff member.

20. PROCEDURE TO BE FOLLOWED BEFORE THE IMPOSITION OF SANCTIONS UNDER THIS CODE

- 20.1 Before imposing a sanction under this Code (in addition to any other obligations which may arise under the Law) the Council or the General Manager (in the case of a complaint in respect to a member of staff), must give notice to the person against whom the sanction is proposed, of the intention to impose the sanction and the nature of the sanction.
- 20.2 The notice must indicate the substance of the matter or complaint in respect of which it is proposed to impose the sanction including, where appropriate, copies of any written complaints or submissions made to Council or the General Manager (as the case may be), so that the person concerned has to the fullest extent reasonably possible all information available to the Council or the General Manager in respect of the matter.

- 20.3 The notice must also indicate that the person against whom the sanction is proposed to be imposed may make representations to the Council or the General Manager (as the case maybe) as to why the sanction should not be imposed.
- 20.4 The notice shall provide that the representations are to be made to the Council or the General Manager (as the case may be) on or before a nominated date being a date which is reasonable in the circumstances of the case. The representations may be oral or in writing or partly oral and partly in writing. They may be made by the person against whom the sanction is proposed to be imposed or by any other person on his or her behalf.
- 20.5 The Council or the General Manager (as the case may be), in addition to any other obligations which may arise under the Law, shall not impose any sanction without first hearing and taking into consideration the representations made.
- 20.6 After hearing and considering any representations made concerning the proposed sanction the Council or the General Manager (as the case may be) may determine:
- (i) to impose the sanction in accordance with the notice of intention;
 - (ii) to impose the sanction with modifications; or
 - (iii) not to impose a sanction.
- 20.7 If the determination is to impose a sanction with modifications the Council or the General Manager (as the case may be) proposing to impose the sanction is required to give notice in the same manner as it had in relation to the original proposed sanction and thereafter to proceed in accordance with the previously mentioned requirements of this Section 19.
- 20.8 The Council or the General Manager (as the case may be) must give the person to whom the sanction is addressed the reasons for the imposition of sanction at the time the sanction is imposed or as soon as is reasonably possible thereafter.
- 20.9 If the sanction requires action by a Councillor or Delegate either as complainant, or the subject of the complaint, and that person refuses to comply after receiving written direction to do, then such refusal constitutes a further breach of this Code and may give rise to the imposition of further sanctions.

21. INDEMNITY TO COUNCILLORS AND STAFF

- 21.1 Section 731 of the Local Government Act 1993 provides:

“A matter or thing done by the Minister, the Director-General, a council, a councillor, a member of a committee of the council or an employee of the council or any person acting under the direction of the Minister, the Director-General, the council or a committee of the council does not, if the matter or thing **was done in good faith for the purpose of executing this or any other Act**, and for and on behalf of the Minister, the Director-General, **the council or a committee of the council**, subject a councillor, a member, an employee or a person so acting personally to any action, liability, claim or demand.”

Emphasis has been added to the above and below. Councillors and employees should be aware of the circumstances in which the statutory indemnity **may not** apply namely where a matter or thing is **not** done in good faith for the purpose of executing the Local Government Act 1993 or any other act.