



**CITY OF
PARRAMATTA**

Code of Conduct

Model Code of Conduct		
Owner Manager Governance and Risk	Area: Governance and Risk	POL No: 218
Date of Commencement: 2008	Approval Authority: Council	Date Approved: 10 July 2017
Amendment 2	Date of Next Review: 2018	Review period: Every 4 years



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Foreword – Code of Conduct Framework

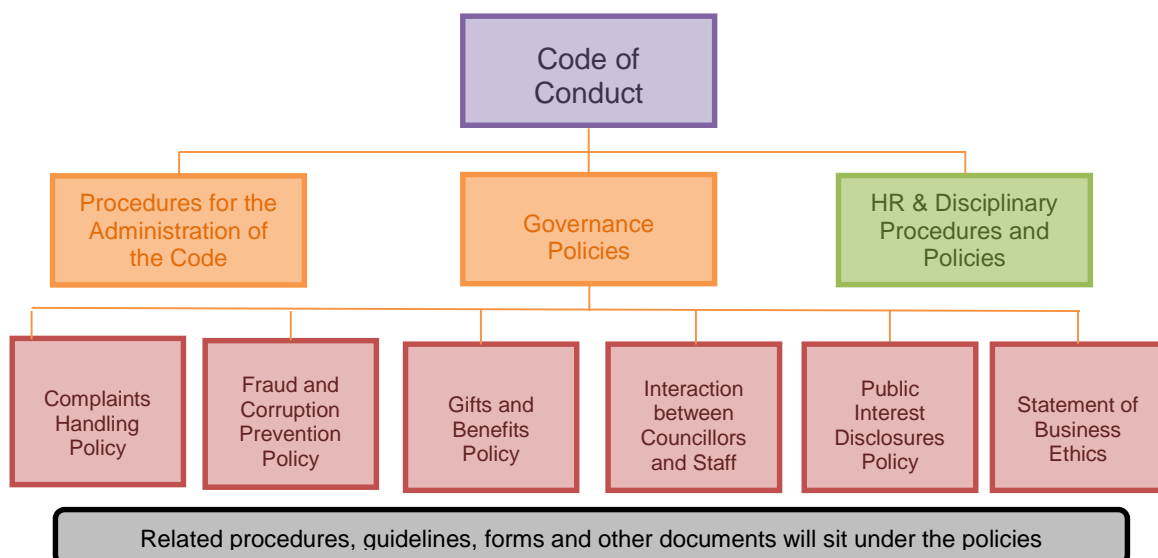
Governance is integral for the effective operations of any organisation.

The practice of good governance is critical for ensuring that Council meets legal and ethical compliance and that decisions are made in the best interests of the community.

City of Parramatta Council demonstrates good governance through its rigorous and transparent decision making processes, supplemented by the various Codes and policies that have been developed to guide Council's operations.

The Code of Conduct is Council's principal governance policy and is an important foundation for a strong ethical culture. This Code of Conduct uses the Office of Local Government's Model Code of Conduct for Local Councils in NSW as the basis, and supplements it with specific provisions relevant to City of Parramatta Council.

As the central component of Council's Good Governance framework, the Code of Conduct is supplemented by the *Procedures for the Administration of the Code* and a series of policies (depicted below) that facilitate the administration of the Code as they relate to gifts and benefits, fraud and corruption prevention, complaints management and other key aspects of ethical behaviour. Failure to comply with the provisions of these policies could be considered a breach of the Code of Conduct.



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Key Principles

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

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 Council. This means promoting public duty to others in the Council and outside, by your own ethical behaviour.

Selflessness

You have a duty to make decisions 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.

Impartiality

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.

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.

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.

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; acting within the spirit and intent of

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policies and procedures; observing the Code; fully disclosing actual or potential conflict of interests and exercising any conferred power strictly for the purposes for which the power was conferred.

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.

Part 1 – Introduction

This Code of Conduct is made for the purposes of section 440 of the *Local Government Act 1993* (the Act). Section 440 and 440A of the Act requires every Council to adopt a Code of Conduct and procedures for the administration of the Code that incorporates the provisions of the Model Code and the Model Code Procedures respectively. For the purposes of section 440 of the Act, the Model Code of Conduct underpins all parts of this document.

City of Parramatta Council has adopted a clear set of Values that underpins the conduct of its officials and provide a foundation in its approach to delivering services to the community. Council's Code of Conduct provides guidelines to ensure that behaviour and decisions reflect the Corporate Values which are:

Values

- Innovation

We build on our strengths, champion creative solutions and seek new and sustainable ways to deliver superior outcomes.

- Customer Focus

We communicate openly with our customers, are responsive to their needs and create new relationships as our City grows. We work as one team

- Teamwork

We support the role of leadership, collaborate within and across our teams, build effective partnerships with colleagues and our community to achieve our goals.

- Integrity

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We deliver on promises, act ethically, take responsibility for our actions and speak up respectfully. Integrity is the foundation on which everything is based.

Councillors, Administrators, members of staff of Council, independent conduct reviewers, members of Council committees including a conduct review committee and delegates of the Council must comply with the applicable provisions of Council's Code of Conduct in carrying out their functions as Council officials. 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.

Failure by a Councillor to comply with the standards of conduct prescribed under this Code constitutes misconduct for the purposes of the Act. The Act provides for a range of penalties that may be imposed on Councillors for misconduct, including suspension or disqualification from civic office. A Councillor who has been suspended on three or more occasions for misconduct is automatically disqualified from holding civic office for five years.

Failure by a member of staff to comply with Council's Code of Conduct may give rise to disciplinary action.

Part 2 – Purpose of the Code of Conduct

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

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.

Part 3 – General Conduct Obligations

General conduct

3.1 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,

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you must not act in a way that:

- a) contravenes the Act, associated regulations, Council's relevant administrative requirements and policies
- b) is detrimental to the pursuit of the charter of a Council
- c) is improper or unethical
- d) is an abuse of power or otherwise amounts to misconduct
- e) causes, comprises or involves intimidation, harassment or verbal abuse
- f) causes, comprises or involves discrimination, disadvantage or adverse treatment in relation to employment
- g) Causes, comprises or involves prejudice in the provision of a service to the community. (*Schedule 6A*)¹

3.2 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. (*Section 438*)

3.3 You must treat others with respect at all times.

Fairness and equity

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

3.5 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

3.6 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.

¹ All references in brackets refer to sections within the *Local Government Act 1993*.

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Regulatory or Development decisions

- 3.7 You must ensure that regulatory or 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 or in undertaking regulatory functions.
- 3.8 In determining development applications or any other planning matters, 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.

Binding caucus votes

- 3.9 You must not participate in binding caucus votes in relation to matters to be considered at a Council or committee meeting.
- 3.10 For the purposes of clause 3.9, a binding caucus vote is a process whereby a group of Councillors are compelled by a threat of disciplinary or other adverse action to comply with a predetermined position on a matter before the Council or committee irrespective of the personal views of individual members of the group on the merits of the matter before the Council or committee.
- 3.11 Clause 3.9 does not prohibit Councillors from discussing a matter before the Council or committee prior to considering the matter in question at a Council or committee meeting or from voluntarily holding a shared view with other Councillors on the merits of a matter.
- 3.12 Clause 3.9 does not apply to a decision to elect the Lord Mayor or Deputy Mayor or to nominate a person to be a member of a Council committee.

Lobbying

- 3.13 Appropriate lobbying of Councillors is part of the democratic process and is an acceptable feature of the relationship between citizens and their elected representatives. It is however in the public interest that lobbying is done fairly and does not undermine public confidence in Council decision making. Councillors are reminded of their obligations under the ICAC Lobbying Local Government Councillors guide (see Attachment A).
- 3.14 Council officials must also be mindful of inappropriate interactions and the avoidance of situations that may be perceived as or constitute improper and undue influence.

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Part 4 – Conflict of Interest

- 4.1 A conflict of interest exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty.
- 4.2 You must avoid or appropriately manage any conflict of interests. The onus is on you to identify a conflict of interest and take the appropriate action to manage the conflict in favour of your public duty.
- 4.3 Any conflict of interest must be managed to uphold the probity of Council decision-making. When considering whether or not you have a conflict of interest, it is always important to think about how others would view your situation.
- 4.4 Private interests can be of two types: pecuniary or non-pecuniary.

What is a pecuniary interest?

- 4.5 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. (*Section 442*)
- 4.6 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. (*Section 443*)
- 4.7 Pecuniary interests are regulated by Chapter 14, Part 2 of the Act. The Act requires that:
 - a) 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*)
 - b) 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 (*Section 451*)
 - c) designated persons immediately declare, in writing, any pecuniary interest. (*Section 459*)
- 4.8 Designated persons are defined at section 441 of the Act, and include, but are not limited to, the Chief Executive Officer and other senior staff of the Council.
- 4.9 Where you are a member of staff of Council, other than a designated person (as

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defined by section 441), you must disclose in writing to your supervisor or the Chief Executive Officer, the nature of any pecuniary interest you have in a matter you are dealing with as soon as practicable.

What are non-pecuniary interests?

- 4.10 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.
- 4.11 The political views of a Councillor do not constitute a private interest.

Managing non-pecuniary conflict of interests

- 4.12 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.
- 4.13 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 of clause 4.12.
- 4.14 How you manage a non-pecuniary conflict of interests will depend on whether or not it is significant.
- 4.15 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) 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
 - b) 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
 - c) an affiliation between the Council official and an organisation, sporting body, club, corporation or association that is particularly strong.
- 4.16 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 interest exists, you must manage it in one of two ways:

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- a) 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
- b) have no involvement in the matter, by absenting yourself from and not taking part in any debate or voting on the issues as if the provisions in section 451(2) of the Act apply.

- 4.17 If you determine that a non-pecuniary conflict of interest 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.
- 4.18 If you are a member of staff of Council, the decision on which option should be taken to manage a non-pecuniary conflict of interests must be made in consultation with your manager.
- 4.19 Despite clause 4.16(b), a Councillor who has disclosed that a significant non-pecuniary conflict of interests exists may participate in a decision to delegate Council's decision-making role to Council staff through the Chief Executive Officer, or appoint another person or body to make the decision in accordance with the law. This applies whether or not Council would be deprived of a quorum if one or more Councillors were to manage their conflict of interests by not voting on a matter in accordance with clause 4.16(b) above.

Reportable political donations

- 4.20 Councillors should note that matters before Council involving political or campaign donors may give rise to a non-pecuniary conflict of interests.
- 4.21 Where a Councillor has received or knowingly benefitted from a reportable political donation:
- a) made by a major political donor in the previous four years
 - b) where the major political donor has a matter before Council

then the Councillor must declare a non-pecuniary conflict of interests, disclose the nature of the interest, and manage the conflict of interests in accordance with clause 4.16(b).

- 4.22 For the purposes of this part:
- a) a "reportable political donation" is a "reportable political donation" for the purposes of section 86 of the *Election Funding, Expenditure and Disclosures Act 1981*
 - b) a "major political donor" is a "major political donor" for the purposes of section 84 of the *Election Funding, Expenditure and Disclosures Act 1981*.

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- 4.23 Councillors should note that political donations below \$1,000, or political donations to a registered political party or group by which a Councillor is endorsed, may still give rise to a non-pecuniary conflict of interests. Councillors should determine whether or not such conflicts are significant and take the appropriate action to manage them.
- 4.24 If a Councillor has received or knowingly benefitted from a reportable political donation of the kind referred to in clause 4.21, that Councillor is not prevented from participating in a decision to delegate Council's decision-making role to Council staff through the Chief Executive Officer or appointing another person or body to make the decision in accordance with the law (see clause 4.19 above).

Loss of quorum as a result of compliance with this part

- 4.25 Where a majority of Councillors are precluded under this Part from consideration of a matter the Council or committee must resolve to delegate consideration of the matter in question to another person.
- 4.26 Where a majority of Councillors are precluded under this Part from consideration of a matter and the matter in question concerns the exercise of a function that may not be delegated under section 377 of the Act, the Councillors may apply in writing to the Executive to be exempted from complying with a requirement under this Part relating to the management of a non-pecuniary conflict of interests.
- 4.27 The Executive will only exempt a Councillor from complying with a requirement under this Part where:
- a) compliance by Councillors with a requirement under the Part in relation to a matter will result in the loss of a quorum
 - b) the matter relates to the exercise of a function of the Council that may not be delegated under section 377 of the Act.
- 4.28 Where the Executive exempts a Councillor from complying with a requirement under this Part, the Councillor must still disclose any interests they have in the matter the exemption applies to in accordance with the requirements of this Part.
- 4.29 A Councillor, who would otherwise be precluded from participating in the consideration of a matter under this Part because they have a non-pecuniary conflict of interests in the matter, is permitted to participate in consideration of the matter, if:
- a) the matter is a proposal relating to
 - i. the making of a principal environmental planning instrument applying to the whole or a significant part of the Council's area
 - ii. the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the

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whole or a significant part of the Council's area

- b) the non-pecuniary conflict of interests arises only because of an interest that a person has in that person's principal place of residence
- c) the Councillor declares the interest they have in the matter that would otherwise have precluded their participation in consideration of the matter under this Part.

Other business or employment

- 4.30 If you are a member of staff of Council considering outside employment or contract work that relates to the business of the Council or that might conflict with your Council duties, you must notify and seek the approval of the Chief Executive Officer in writing. (*Section 353*)
- 4.31 As a member of staff, you must ensure that any outside employment or business you engage in will not:
- a) conflict with your official duties
 - b) involve using confidential information or Council resources obtained through your work with the Council
 - c) require you to work while on Council duty
 - d) discredit or disadvantage the Council.

Personal dealings with Council

- 4.32 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.

Part 5 – 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 and benefits

- 5.1 You must avoid situations giving rise to the appearance that a person or body,

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through the provision of gifts, benefits or hospitality of any kind, is attempting to secure favourable treatment from you or from the Council.

- 5.2 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

- 5.3 Generally speaking, token gifts and benefits include:

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

Token value in relation to this clause is considered to be \$50.

Gifts and benefits of value

- 5.4 Notwithstanding clause 5.3, 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.

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

5.5 You must not:

- a) seek or accept a bribe or other improper inducement
- b) seek gifts or benefits of any kind
- c) 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
- d) accept any gift or benefit of more than token value
- e) accept an offer of cash or a cash-like gift, regardless of the amount.

5.6 For the purposes of clause 5.5(e), 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 internet credit, memberships or entitlements to discounts.

5.7 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 your supervisor, the Lord Mayor or the Chief Executive Officer. The recipient, supervisor, Lord Mayor or Chief Executive Officer 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

5.8 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. A Councillor will not be in breach of this clause where they seek to influence other Council officials through the appropriate exercise of their representative functions.

5.9 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.

Part 6 – Relationship between Council Officials

Obligations of Councillors and Administrators

6.1 Each Council is a body politic. The Councillors or Administrator/s are the governing body of the Council. The governing body has the responsibility of directing and controlling the affairs of the Council in accordance with the Act and is responsible

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for the policy determinations, for example, those relating to workforce policy.

6.2 Councillors or Administrators must not:

- a) direct Council staff other than by giving appropriate direction to the Chief Executive Officer in the performance of Council's functions by way of Council or committee resolution, or by the Lord Mayor or Administrator exercising their power under section 226 of the Act (*section 352*)
- b) in any public or private forum, direct or influence or attempt 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*)
- c) contact a member of the staff of the Council on Council related business unless in accordance with the policy and procedures governing the interaction of Councillors and Council staff that have been authorised by the Council and the Chief Executive Officer.
- d) contact or issue instructions to any of Council's contractors or tenderers, including Council's legal advisors, unless by the Lord Mayor or Administrator exercising their power under section 226 of the Act. This does not apply to Council's external auditors or the Chair of Council's audit committee who may be provided with any information by individual Councillors reasonably necessary for the external auditor or audit committee to effectively perform their functions
- e) make statements to the media without identifying it is their own opinion only, and as such, does not represent the position of Council. Statements should be well considered as to the potential impact they could make on Council, its decisions and its services.

As specified in section 664 of the Act, Councillors must not, at any time, disclose materials classified as confidential in reports presented to our discussions held at Council.

Likewise, Councillors should understand that comments they make via social media platforms are as public as if they were making the same comments to the media or at a public forum and therefore the use of social media technology follows the same standards of professional practice and conduct associated with all other media practices.

Obligations of staff

6.3 The Chief Executive Officer is responsible for the efficient and effective operation of the Council's organisation and for ensuring the implementation of the decisions

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of the Council without delay.

6.4 Members of staff of Council must:

- a) give their attention to the business of Council while on duty
- b) ensure that their work is carried out efficiently, economically and effectively
- c) carry out lawful directions given by any person having authority to give such directions
- d) give effect to the lawful decisions, policies, and procedures of the Council, whether or not the staff member agrees with or approves of them
- e) ensure that any participation in political activities outside the service of the Council does not conflict with the performance of their official duties.

Obligations during meetings

6.5 You must act in accordance with Council's Code of Meeting Practice, and the *Local Government (General) Regulation 2005* during Council and committee meetings.

6.6 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.

Inappropriate interactions

6.7 You must not engage in any of the following inappropriate interactions:

- a) Councillors and Administrators approaching staff and staff organisations to discuss individual or operational staff matters other than broader workforce policy issues
- b) Council staff approaching Councillors and Administrators to discuss individual or operational staff matters other than broader workforce policy issues
- c) Council staff refusing to give information that is available to other Councillors to a particular Councillor
- d) Councillors and Administrators who have lodged a development application with Council, discussing the matter with Council staff in staff-only areas of the Council
- e) Councillors and Administrators being overbearing or threatening to Council staff
- f) Councillors and Administrators making personal attacks on Council staff

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in a public forum

- g) Councillors and Administrators directing or pressuring Council staff in the performance of their work, or recommendations they should make
- h) Council staff providing ad hoc advice to Councillors and Administrators without recording or documenting the interaction as they would if the advice was provided to a member of the community
- i) Council staff meeting with applicants or objectors alone AND outside office hours to discuss applications or proposals
- j) 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 Chief Executive Officer or, in the case of the Lord Mayor or Administrator, exercising their power under section 226 of the Act.

Part 7 – Access to Information and Council Resources

Councillor and Administrator access to information

- 7.1 The Chief Executive Officer and public officer are responsible for ensuring that members of the public, Councillors and Administrators can gain access to the documents available under the *Government Information (Public Access) Act 2009*.
- 7.2 The Chief Executive Officer must provide Councillors and Administrators with information sufficient to enable them to carry out their civic office functions.
- 7.3 Members of staff of Council must provide full and timely information to Councillors and Administrators sufficient to enable them to carry out their civic office functions and in accordance with Council procedures.
- 7.4 Members of staff of Council who provide any information to a particular Councillor in the performance of their civic duties must also make it available to any other Councillor who requests it and in accordance with Council procedures.
- 7.5 Councillors and Administrators who have a private (as distinct from civic) interest in a document of Council have the same rights of access as any member of the public.

Councillors and Administrators to properly examine and consider information

- 7.6 Councillors and Administrators must properly examine and consider 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.

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Refusal of access to documents

- 7.7 Where the Chief Executive Officer and public officer determine to refuse access to a document sought by a Councillor or Administrator they must act reasonably. In reaching this decision they must take into account whether or not the document sought is required for the Councillor or Administrator to perform their civic duty (see clause 7.2). The Chief Executive Officer or public officer must state the reasons for the decision if access is refused.

Use of certain Council information

- 7.8 In regard to information obtained in your capacity as a Council official, you must:
- a) only access Council information needed for Council business
 - b) not use that Council information for private purposes
 - c) 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
 - d) only release Council information in accordance with established Council policies and procedures and in compliance with relevant legislation.

Use and security of confidential information

- 7.9 You must maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible.
- 7.10 In addition to your general obligations relating to the use of Council information, you must:
- a) protect confidential information
 - b) only release confidential information if you have authority to do so
 - c) only use confidential information for the purpose it is intended to be used
 - d) not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person
 - e) not use confidential information with the intention to cause harm or detriment to your Council or any other person or body
 - f) not disclose any information discussed during a confidential session of a Council meeting.

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Personal information

7.11 When dealing with personal information you must comply with:

- a) the *Privacy and Personal Information Protection Act 1998*
- b) the *Health Records and Information Privacy Act 2002*
- c) the Information Protection Principles and Health Privacy Principles
- d) Council's Privacy Management Plan
- e) the Privacy Code of Practice for Local Government

Use of Council resources

7.12 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 (except when supplied as part of a contract of employment) unless this use is lawfully authorised and proper payment is made where appropriate.

7.13 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:

- a) the representation of members with respect to disciplinary matters
- b) the representation of employees with respect to grievances and disputes
- c) functions associated with the role of the City of Parramatta Council consultative committee.

7.14 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.

7.15 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.

7.16 You must not use Council resources, property or facilities for the purpose of assisting your election campaign or the election campaign of others unless the resources, property or facilities are otherwise available for use or hire by the public and any publicly advertised fee is paid for use of the resources, property or facility.

7.17 You must not use Council letterhead, Council crests and other information that could give the appearance it is official Council material for:

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- a) the purpose of assisting your election campaign or the election campaign of others
 - b) for other non-official purposes.
- 7.18 You must not convert any property of the Council to your own use unless properly authorised.
- 7.19 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

- 7.20 Councillors and Administrators are entitled to have access to the Council chamber, committee room, mayoral room (subject to availability), Councillors' room, and public areas of Council's buildings during normal business hours and for meetings. Councillor and Administrator entitlement to meeting and office space is detailed in Council's Policy for the Payment of Expenses and the Provision of Facilities for Councillors.
- 7.21 Councillors and Administrators needing access to other facilities must obtain authority from the Chief Executive Officer.
- 7.22 Councillors and Administrators must not use staff or access any public areas within Council buildings or other Council properties for media or other political purposes (refer to Council's Policy for the Payment of Expenses and the Provision of Facilities for Councillors).
- 7.23 Councillors and Administrators must not enter staff-only areas of Council buildings without the approval of the Chief Executive Officer (or delegate) or as provided in the procedures governing the interaction of Councillors and Council staff.
- 7.24 Councillors and Administrators must ensure that when they are within a staff area they avoid giving rise to the appearance that they may improperly influence Council staff decisions.

Part 8 – Maintaining the Integrity of this Code

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

Complaints made for an improper purpose

- 8.2 You must not make a complaint or cause a complaint to be made under this Code

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for an improper purpose.

- 8.3 For the purposes of clause 8.2, 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:
- a) to intimidate or harass another Council official
 - b) to damage another Council official's reputation
 - c) to obtain a political advantage
 - d) to influence a Council official in the exercise of their official functions or to prevent or disrupt the exercise of those functions
 - e) to influence the Council in the exercise of its functions or to prevent or disrupt the exercise of those functions
 - f) to avoid disciplinary action under this Code
 - g) to take reprisal action against a person for making a complaint under this Code except as may be otherwise specifically permitted under this Code
 - h) to take reprisal action against a person for exercising a function prescribed under the procedures for the administration of this Code except as may be otherwise specifically permitted under this Code
 - i) To prevent or disrupt the effective administration of this Code.

Detrimental action

- 8.4 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 this Code except as may be otherwise specifically permitted under this Code.
- 8.5 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for any function they have exercised under this Code except as may be otherwise specifically permitted under this Code.
- 8.6 For the purposes of clauses 8.4 and 8.5 detrimental action is an action causing, comprising or involving any of the following:
- a) injury, damage or loss
 - b) intimidation or harassment
 - c) discrimination, disadvantage or adverse treatment in relation to

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employment

- d) dismissal from, or prejudice in, employment
- e) Disciplinary proceedings.

Compliance with requirements under this Code

- 8.7 You must not engage in conduct that is calculated to impede or disrupt the consideration of a matter under this Code.
- 8.8 You must comply with a reasonable and lawful request made by a person exercising a function under this Code.
- 8.9 You must comply with a practice ruling made by the Office of Local Government.
- 8.10 Where you are a Councillor or the Chief Executive Officer, you must comply with any Council resolution requiring you to take action as a result of a breach of this Code.

Disclosure of information about the consideration of a matter under this Code

- 8.11 You must report breaches of this Code in accordance with the reporting requirements under this Code.
- 8.12 You must not make allegations of suspected breaches of this Code at Council meetings or in other public forums.
- 8.13 You must not disclose information about the consideration of a matter under this Code except for the purposes of seeking legal advice unless the disclosure is otherwise permitted under this Code.

Complaints alleging a breach of this part

- 8.14 Complaints alleging a breach of this Part (Part 8) by a Councillor, the Chief Executive Officer or an Administrator are to be made to the Office of Local Government.
- 8.15 Complaints alleging a breach of this Part by other Council officials are to be made to the Chief Executive Officer.

Part 9 – Definitions

In the Code of Conduct the following definitions apply:

The Act The *Local Government Act 1993*.

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Act of disorder	See the definition in clause 256 of the <i>Local Government (General) Regulation 2005</i> .
Administrator	An Administrator of a Council appointed under the Act other than an Administrator appointed under section 66 Chief.
Executive	Executive of the Office of Local Government.
Chief Executive Officer	Chief Executive Officer of the City of Parramatta Council
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 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.
Delegate of Council	A person (other than a Councillor or member of staff of a Council) or body, and the individual members of that body, to whom a function of the Council is delegated.
Designated person	See the definition in section 441 of the Act.
Election Campaign	Includes Council, State and Federal election campaigns.
Personal information	Information or an opinion about a person whose identity is apparent, or can be ascertained from the information or opinion.
The Regulation	The <i>Local Government (General) Regulation 2005</i> The term “you” used in the Code of Conduct refers to Council officials.

The phrase “this Code” used in the Code of Conduct refers also to the Procedures for the Administration of the Model Code of Conduct prescribed under *the Local Government (General) Regulation 2005*.

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Attachment A – ICAC Lobbying Local Government Councillors (2006)

The Lobbying Local Government Councillors brochure (2006) has been reproduced with permission from ICAC. Further information can be obtained by contacting the Commission on 02 8281 5999 or toll free on 1800 463 909 (for callers outside metropolitan Sydney).

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A guide for councillors, constituents and other interested parties

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INDEPENDENT
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CORRUPTION

Lobbying local government councillors

AUGUST 2006

Introduction

In this brochure, the term “lobbying” is used to cover those types of communication between local government councillors and the community that include representations to councillors by special interest groups, by individuals with a direct interest in a council decision and by advocates acting on behalf of others.

Lobbying is common in local government. The most common form occurs when a group or individual makes direct contact with a councillor in an attempt to influence a council decision. Councillors are lobbied over such issues as:

- development matters
- the upgrading of local facilities, including playgrounds and sporting amenities
- revenue decisions, including the setting of business, mining, farming or special rates.

The Commission’s view is that appropriate lobbying of councillors is normal. In many cases lobbying is part of the democratic process and is an acceptable feature of the relationship between citizens and their elected representatives.

Section 232(2) of the *Local Government Act 1993* also makes it clear that councillors have a representative role in considering the views of constituents and communicating with them. Section 232(2) states:

(2) The role of a councillor is, as an elected person:

- *to represent the interests of the residents and ratepayers*
- *to provide leadership and guidance to the community*
- *to facilitate communication between the community and the council.*

Section 79C of the *Environmental Planning and Assessment Act 1979* (EP&A Act) also makes it clear that relevant views of members of the public are applicable to the merit assessment of development applications.

Interactions with community members are also a way for councillors to obtain information that may be relevant to their decision-making. In development matters, for example, the Land and Environment Court has made it clear that where council determines a development application, councillors should not rely exclusively on council officers to consider all matters relevant to the determination but must also consider the relevant matters themselves.¹

Inappropriate lobbying

It is in the public interest that lobbying is fair and does not undermine public confidence in impartial decision-making. Lobbying is a two-way process between councillors and lobbyists. Occasionally a lobbyist can try to improperly influence a councillor’s decision-making. Councillors should take care that their duty to consider issues fairly and properly is not compromised by participating in lobbying practices that are outside the bounds of appropriate or lawful behaviour.

It is not possible to define every type of activity that could constitute inappropriate or unlawful lobbying. Generally, however, inappropriate or unlawful conduct on the part of someone lobbying a councillor usually involves an attempt to obtain preferential consideration or treatment based on factors other than the merits of a matter.

Examples of inappropriate or unlawful conduct by councillors that could occur during the lobbying process include:²

- accepting undisclosed payments or benefits whilst making a decision that affects the gift giver’s interests
- accepting a political donation in return for the favourable exercise of discretion during decision-making. Ideally, councillors should keep the lobbying and fundraising activities in which they are involved quite separate to avoid even the perception that a political donation could influence their decision-making

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- granting access to a particular individual or group while *unreasonably* denying similar access requested by another party. The Commission is, however, mindful of the fact that the part-time nature of councillors' work can impose time constraints on their ability to meet all requests for meetings
- fettering discretion by giving undertakings to an interested party prior to considering all the information relevant to a decision. Councillors are under a particular obligation to give real consideration to all mandated matters when dealing with statutory powers such as section 79C of the EP&A Act
- acting in a manner that exceeds the role of a councillor as defined in section 232 of the Local Government Act as a result of being lobbied. An example could be directing council staff over the content of any advice or recommendation on a council matter as a result of being lobbied by a third party³
- disclosing confidential information whilst being lobbied
- being unduly influenced by factors that are irrelevant to the merits of the matter under consideration.

Councillors who are lobbied over council matters by close friends, associates or relatives should also consider whether the nature of their relationship with the proponent and the impact of the matter on the proponent's interests give rise to a pecuniary or non-pecuniary interest. In such cases, councillors should manage the matter in accordance with the provisions of the Local Government Act (in the case of a pecuniary interest) and the DLG Model Code of Conduct (in the case of a non-pecuniary interest).

Transparency

Councillors work in a unique environment which is often characterised by:

- a lack of time during business hours to attend to council matters
- a likelihood of chance encounters with people who have an interest in council matters
- limited availability of resources such as support staff
- high community demand for accessibility.

The Commission acknowledges that this environment can make it difficult for councillors to avoid informal discussions with constituents who seek to lobby them. It would also be unnecessarily onerous and impractical to require councillors to avoid such contact, especially for routine and non-controversial matters.

Nevertheless, councillors should exercise judgement when deciding whether to be involved in private meetings with people seeking to influence a council decision. Suspicions of inappropriate lobbying can occur when lobbying is not open to public scrutiny. Regardless of whether such suspicions are justified, they still have the potential to undermine public confidence in council decision-making and adversely affect a councillor's reputation.

Transparency is a useful means of governing accountability and perceptions of fairness in lobbying processes. There are a number of ways councillors can help ensure transparency whilst being lobbied. These include:

- documenting meetings with proponents
- generally conducting meetings in official locations such as council premises
- having other people present during meetings
- inviting applicants who have approached them for a meeting to discuss a significant development to write to council seeking a meeting with all councillors and relevant staff
- providing copies of information presented during lobbying meetings to council officers for consideration and assessment (if required), distribution to other councillors and filing as part of council's records
- asking people who have requested a meeting to put their arguments in writing
- making a declaration at a council meeting about lobbying activities they have been engaged in that are not part of council's formal processes.

Councillors can consider these options in situations where it would be beneficial to have some form of record about what transpired between themselves and a proponent. Examples include matters where complaints of preferential treatment have already been made, or in matters involving individuals who have been the subject of complaints of preferential treatment in the past.

Late submissions

Most councils invite public participation, by way of lobbying, by interested parties when called upon to determine development applications. Codes and practices intended to control and manage the process vary from council to council. Some prohibit accepting submissions later than two days before the meeting at which the development application is to be determined. Others invite submissions (mostly oral) at the meeting at which the development application is to be determined.

Lobbying local government councillors

It goes without saying that councils, in the discharge of their planning discretion, are entitled to develop appropriate codes of practice. It is, however, the law that a body discharging a public function is not entitled to adopt a code or practice which has the effect of precluding receipt of relevant matters for consideration.

On the other hand, councils are entitled to regulate, in a general way, how to deal with submissions and the like and they are entitled to discourage or prohibit manipulative lobbying practices – both by those who support the development and those who oppose it.

Councils must discharge their public function fairly and impartially. But what amounts to fairness and impartiality varies according to the circumstances of the case.

When dealing with lobbying in the context of determining development applications, a council must first ask whether the received submission should be entertained (and bearing in mind that it must be relevant to the development application applied for and may not be significantly different from it). The next is to determine how it should be managed and in this regard issues of significance and fairness would need to be addressed.

Tendering

The lobbying of councillors by tenderers about the outcome of a tender process is an exception to the principle that lobbying is permissible. In other words, lobbying of councillors by tenderers is normally NOT permissible. The conditions which govern tender processes are based on a request for tender (RFT). RFTs usually contain statements prohibiting proponents from approaching councillors (and council officers not nominated as contact people) during a tender process.

RFTs also contain selection criteria for choosing a successful tenderer. Most selection criteria are based on objective technical and pricing issues and do not involve a 'political' dimension or subjective decisions. Tender processes also typically do not include mechanisms for community feedback. Community views on issues like the decision to undertake a tender process, and in what form, are typically sought prior to the issuing of an RFT.

Further information

Further information can be obtained by contacting the Commission on (02) 8281 5999 or toll free on 1800 463 909 (for callers outside metropolitan Sydney).

Further information can also be obtained from the DLG Model Code of Conduct available from the DLG website at www.dlg.nsw.gov.au.

Endnotes

- ¹ In *Centro Properties Limited v. Hurstville City Council & Anor* (2004) NSW LEC 401, McCellan CJ advised (at 55), "In the absence of the delegation of the decision-making function to an officer, the corporate body must itself consider the issues relevant to the development application before it. It may be informed about those issues by the council officer's report which may not, and often will not, disclose all of the information considered by the officer and his or her complete reasoning processes." There may be cases where councillors need to make some enquiry to discharge their obligation to consider relevant matters and this may entail communicating with affected/interested parties.
- ² Many of the examples referred to in this section also contravene the provisions of the Department of Local Government's Model Code of Conduct.
- ³ Section 352 of the Local Government Act also makes it clear that a member of staff is *not* subject to direction by council or an individual councillor as to the content of any advice or recommendation.

Caveat on use of this brochure

This publication provides readers with advice, guidance and/or recommendations regarding specific governance issues.

The advice relates to what the Commission considers at the time of publication to be best practice in relation to these issues. It does not constitute legal advice and failure to implement the advice, guidance and recommendations contained herein would not necessarily constitute corrupt conduct, which is defined in the *Independent Commission Against Corruption Act 1988*.

Councils are welcome to refer to this publication in their own publications. References to and all quotations from this brochure must be fully referenced.

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