

BUSINESS PAPER



Ulrich Feldhoff, Chairman of the International Canoe Federation presents His Worship the Mayor, Councillor John Thain with a glass canoe sculpture at the Civic Reception for the Canoe Slalom World Championships, held on Wednesday 28th September 2005.

Policy Review Committee Meeting 17 October 2005

15 November, 2005

Dear Councillor,

In pursuance of the provisions of the Local Government Act, 1993 and the Regulations thereunder, notice is hereby given that a **POLICY REVIEW COMMITTEE MEETING** of Penrith City Council is to be held in the Pasadena Room, Civic Centre, 601 High Street, Penrith on Monday 17 October 2005 at 7:00PM.

Attention is directed to the statement accompanying this notice of the business proposed to be transacted at the meeting.

Yours Faithfully

Alan Travers
General Manager

BUSINESS

1. **APOLOGIES**
2. **LEAVE OF ABSENCE**
Leave of absence has been granted to:
Councillor Greenow - 17 October 2005.
Councillor Simat - 22 August 2005 to 25 October 2005 inclusive.
3. **CONFIRMATION OF MINUTES**
Policy Review Committee Meeting - 12 September 2005.
4. **DECLARATIONS OF INTEREST**
Pecuniary Interest (The Act requires Councillors who declare a pecuniary interest in an item to leave the meeting during discussion of that item)
Non-Pecuniary Interest
5. **ADDRESSING THE MEETING**
6. **MAYORAL MINUTES**
7. **NOTICES OF MOTION**
8. **ADOPTION OF REPORTS AND RECOMMENDATION OF COMMITTEES**
9. **MASTER PROGRAM REPORTS**
10. **URGENT REPORTS (to be dealt with in the master program to which the item relates)**
11. **QUESTIONS WITHOUT NOTICE**
12. **COMMITTEE OF THE WHOLE**

POLICY REVIEW COMMITTEE MEETING

MONDAY 17 OCTOBER 2005

TABLE OF CONTENTS

MEETING CALENDAR

CONFIRMATION OF MINUTES

MASTER PROGRAM REPORTS

MEETING CALENDAR

November 2005 - December 2005

	TIME	NOV	DEC
		Mon	Mon
Ordinary Meetings	7.00 pm	21 #	5 12
Policy Review Committee	7.00 pm	14	

Meetings at which the Management Plan quarterly reviews are presented.

- Council has two Ordinary Meetings per month where practicable.
- Extraordinary Meetings are held as required.
- Policy Review Meetings are held monthly where practicable.
- Members of the public are invited to observe meetings of the Council.
Should you wish to address Council, please contact the Executive Officer, Glenn McCarthy on 47327649.

**CONFIRMED MINUTES
OF THE POLICY REVIEW COMMITTEE MEETING OF PENRITH CITY
COUNCIL HELD IN THE PASSADENA ROOM, PENRITH
ON MONDAY 12 SEPTEMBER 2005 AT 07:05PM**

PRESENT

Her Worship the Mayor Councillor Jackie Greenow, Councillors Kaylene Allison, David Bradbury, Lexie Cettolin, Kevin Cramer OAM, Greg Davies, Ross Fowler, Karen McKeown, Susan Page, Pat Sheehy AM, and John Thain.

APOLOGIES

PRC 54 RESOLVED on the MOTION of Councillor Ross Fowler seconded Councillor Lexie Cettolin that apologies be received and accepted from Councillor Mark Davies.

LEAVE OF ABSENCE

Leave of absence was previously granted to Councillor Steve Simat for the period 22 August to 25 October 2005 inclusive, and to Councillor Jim Aitken for the period 16 August to 29 September 2005 inclusive.

Leave of absence has been requested by Councillor Garry Rumble for the period 12 – 26 September 2005 inclusive.

PRC 55 RESOLVED on the MOTION of Councillor Greg Davies seconded Councillor John Thain that leave of absence be granted to Councillor Garry Rumble for the period 12-24 September 2005 inclusive.

CONFIRMATION OF MINUTES

Policy Review Committee Meeting - 22 August 2005

PRC 56 RESOLVED on the MOTION of Councillor Pat Sheehy seconded Councillor Greg Davies that the minutes of the Policy Review Committee Meeting of 22 August 2005 be confirmed.

Her Worship the Mayor, Councillor Jackie Greenow announced that a presentation would be made to former Councillors John Bateman, Akbar Khan and Cathy O'Toole in recognition of their service to Local Government and the Penrith community. All three former Councillors served two consecutive terms and John Bateman served two terms as Mayor.

The certificates were presented by Her Worship the Mayor, Councillor Jackie Greenow on behalf of the Local Government Association of NSW.

MASTER PROGRAM REPORTS

LEADERSHIP AND ORGANISATION

1 2000 - 2005 Strategic Program Performance Review

36/27

Her Worship the Mayor, Councillor Jackie Greenow introduced Council's Director – City Strategy, Mr Alan Stoneham, who provided an introduction to the presentation of the Strategic Program Review 2000 to 2005.

After the introduction, the following Directors made presentations:

Council's Director – City Strategy, Mr Alan Stoneham, gave a presentation on The City in its Region and The City as an Economy.

Councillor Kevin Crameri left the meeting the time being 7.47 pm.

Council's Director – City Planning, Mr Craig Butler, gave a presentation on The City in its Environment.

Councillor Kevin Crameri returned to the meeting the time being 7.53 pm.

Councillor Karen McKeown left the meeting the time being 8.14 pm.

Councillor Karen McKeown returned to the meeting the time being 8.15 pm

Council's Director – City Services, Mr Steve Hackett, gave a presentation on The City as a Social Place.

Council's Acting Director – City Operations, Mr David Burns, gave a presentation on The City Supported by Infrastructure.

Councillor Greg Davies left the meeting the time being 9.00 pm.

Council's Chief Financial Officer gave a presentation on Council's Operating Environment.

Councillor Greg Davies returned to the meeting the time being 9.07 pm.

PRC 57 RESOLVED on the MOTION of Councillor Pat Sheehy seconded Councillor Ross Fowler that the information contained in the report on the 2000 - 2005 Strategic Program Performance Review be received.

2 State Cabinet Visit to Penrith - 28 June, 2005

34/12

PRC 58 RESOLVED on the MOTION of Councillor Ross Fowler seconded Councillor John Thain that the information in the report on the State Cabinet visit on 28 June 2005 and the

deputation to Minister Knowles on 5 July 2005 be received.

CONFIDENTIAL BUSINESS

Her Worship the Mayor, Councillor Jackie Greenow, called for a motion for the Policy Review Committee meeting to move into confidential session, the time being 9.22 pm.

CLOSING THE MEETING TO THE PUBLIC TO CONSIDER CONFIDENTIAL BUSINESS

1 Presence of the Public

PRC 59 RESOLVED on the MOTION of Councillor Pat Sheehy seconded Councillor Kevin Cramer that the press and public be excluded from the meeting while the Policy Review Committee considers the following matter:

Commercial Matter - Sponsorship Proposal - Canoe Slalom World Championships - Request for Financial Assistance

as the report refers to commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it and discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

Councillor Kaylene Allison left the meeting the time being 9.23 pm.

Councillor Susan Page left the meeting the time being 9.24 pm.

Councillor Susan Page returned to the meeting the time being 9.25 pm.

Councillor Kaylene Allison returned to the meeting the time being 9.26 pm.

RESUMPTION OF BUSINESS IN OPEN COMMITTEE

The meeting moved out of confidential session at 9.46 pm and the General Manager reported that after excluding the press and public from the meeting, the Policy Review Committee met in confidential session from 9.22 pm to 9.46 pm to consider a commercial matter involving a sponsorship proposal.

The General Manager reported that while in confidential session, the Committee resolved the confidential business as follows:

THE CITY AS A SOCIAL PLACE

2 Commercial Matter - Sponsorship Proposal - Canoe Slalom World Championships - Request for Financial Assistance

2071/10

PRC 60 RESOLVED on the MOTION of Councillor Pat Sheehy seconded Councillor Greg Davies

That:

1. The information contained in the report on Commercial Matter – Sponsorship Proposal – Canoe Slalom World Championships – Request for

Financial Assistance be received

2. Council agree to the funding arrangements between Penrith Whitewater Stadium Ltd and Australian Canoeing as outlined in this report.

There being no further business the Chairperson declared the meeting closed the time being 9.47 pm.

I certify that these 4 pages are the Confirmed Minutes of the Policy Review Committee Meeting of Penrith City Council held on 12 September 2005.

Chairperson

Date

MASTER PROGRAM REPORTS

Item	Page
LEADERSHIP AND ORGANISATION	
1 Code of Conduct and Promoting Better Practice 754/8 Part 4	1



LEADERSHIP AND ORGANISATION

Item		Page
1	Code of Conduct and Promoting Better Practice 754/8 Part 4	1



Leadership and Organisation

1 Code of Conduct and Promoting Better Practice

**754/8
Part 4**

Compiled by: Glenn Schuil - Internal Auditor

Authorised by: Stephen Britten - Legal Officer

Strategic Program Term Achievement: *Council has reviewed its own role and operations and has adopted contemporary practices to best discharge its charter.*

Critical Action: *Review current structures and procedures supporting Council and Councillors' responsibilities.*

Purpose:

To advise Councillors of the implications of the adopted Model Code of Conduct, particularly in relation to perceived conflicts of interest, and clarification of interests in land, and whether a conflict of interest arises upon exchange of contract or settlement. The report also provides information about the NSW Government's Local Government Reform Program - "Promoting Better Practice". The report recommends that the information be received.

Background

On 28 February 2005 a Report was presented to the Council on the Code of Conduct. While the Council adopted the Model Code of Conduct that was developed by the Department of Local Government, in consultation with other stakeholders, the Council resolved that a further Report be brought back to the Council on:-

- The implications of the Model Code of Conduct for Councillors, particularly in relation to perceived conflicts of interests; and
- Clarification of interests in land and whether a conflict arises upon exchange or settlement.

The Council further resolved that the Council write to the Local Government Association and the Western Sydney Regional Organisation of Councils to express the Council's serious concerns with some aspects of the Model Code of Conduct.

Current Situation

In the "Local Government Weekly" Circular dated 1 April 2005 the Association advised Councils that they were "...seeking to hear of any issues or concerns that councils have in regard to the Model Code of Conduct or the Guidelines for the Model Code of Conduct", and that the Association would then convey this information to the Minister for Local Government. On 1 April 2005, prior to the request being received from the LGSA, the General Manager wrote to the Secretary General, Local Government Association of NSW advising of the Council's concerns with certain sections of the Model Code of Conduct. A copy of the General Manager's letter to Mr B Gillooly, Secretary, Local Government Association of NSW is attached.

In recent discussions with Mr Frank Loveridge, Legal Officer for the Local Government & Shires Associations, advice was provided that all submissions received from Councils were forwarded to the Department of Local Government in June 2005. Mr Loveridge has advised that he has searched the Association's files and that he was unable to find any response that has been received from the Department in regards to this matter.

Contact was made with Mrs Lyn Brown, Senior Investigations Officer of the Department of Local Government as to the current position with the Code of Conduct, as well as what, if any action, was taken as a result of the letter that the Council submitted to the LGSA. Mrs Brown has advised that a letter was signed by the Minister for Local Government, the Hon Kerry Hickey, to the LGSA on 4 October 2005 in reply to the letter received from the LGSA. At the time of writing this Report, Mr Loveridge advised that the letter from the Minister had not been received by the LGSA. This matter will be followed up with Mr Loveridge.

In respect of the issues that the Council raised with the LGSA, Mrs Brown advised that the issue relating to conflicts of interests in clause 6.6 of the Code of Conduct will be clarified shortly by way of a Departmental Circular.

One of the recommendations adopted when the Council adopted the Model Code of Conduct was that "An appropriate communication policy be developed and implemented". In developing an appropriate communication policy the Council's staff are cognisant of the time demands on all staff, and will be engaging a Consultant to undertake a "Train the Trainer" exercise with a number of selected and appropriate staff. After these staff are appropriately trained, it is proposed to have these staff deliver training sessions (tool box talks) to staff at a range of meetings, including Department staff meetings where the major issues within the adopted Code of Conduct will be discussed.

At these meetings staff will be encouraged to ask questions as to avoid any misconceptions or confusion about what is expected under the Code of Conduct. Having said that, it is acknowledged that there may be questions raised by attendees at these training sessions that the trainer may not know and it is planned that these will be recorded, and after an answer is established that this is communicated to all staff.

The Department of Local Government called for expression of interests from a number of Consultants / Training Organisations to deliver training workshops to Council staff (to be funded by the Department) on the new Model Code of Conduct. Local Government Learning Solutions was the successful Training Organisation to deliver this program. This Organisation has provided workshops at a number of locations throughout the State on the Model Code of Conduct. The Council's Internal Auditor and Training & Development Co-ordinator attended a "Model Code of Conduct Training for Facilitators" course on 20 July 2005.

Separate training is being delivered to the Directors, Managers and Supervisors on the Code of Conduct. In this training, in addition to the Code of Conduct, staff will receive training in the draft Protected Disclosures Policy and the procedure when gifts are offered to staff.

While it is proposed to undertake the above training program for all staff, the question that needs to be resolved is what is the best method of training all Councillors of the requirements of the new adopted Code of Conduct. It is proposed to provide contemporary interaction to all Councillors on the Code of Conduct in a briefing session at the earliest possible time. Earlier in the Report it was indicated that a Circular from the Department of Local Government would be issued to clarify an issue relating to disclosure at Meetings. During the Councillor development session proposed the contents of the Circular will be dealt with.

Relevant to this issue is the Local Government Reform Program ~ Promoting Better Practice. The former Minister for Local Government, the Hon Tony Kelly when introducing this

matter into Parliament referred to the Inspectors that would be undertaking reviews of Council's performance as the "flying squad". The current Minister while also keen to promote better management practice amongst local government has not specifically referred to the program as being implemented by the "flying squad".

A Senior Investigations Officer from the Department of Local Government recently gave a presentation to a Local Government Internal Auditors Network Meeting at Penrith City Council. During this presentation he advised that the objectives of the "Promoting Better Practice" program were:-

- A culture of continuous improvement
- Early intervention option
- Good governance
- Ethical practice
- Compliance
- Shared good practice
- Local Government policy development.

The Departmental representative advised that 14 "Promoting Better Practice" reviews with identified Councils were planned to be undertaken during the current financial year. Prior to the reviews occurring, councils are required to complete a self assessment checklist which contain the following five Modules:-

- Governance
- Planning and other Regulatory Functions
- Asset and financial management
- Community and consultation
- Workforce relationships.

It is proposed to undertake an assessment of the Council's compliance with the practices that are seen to be regarded by the Department as "better practice". It is proposed to use the findings as a guide to continuous improvement to Council's policies and systems. One of the issues identified is to ensure that training in the Code of Conduct has been undertaken by all.

When a previous Report was presented to the Council in February 2005 about the Code of Conduct, the Council resolved that "A further report be brought back to Council on the implications of the Model Code of Conduct for Councillors, particularly in relation to perceived conflicts of interests. The report is also to include clarification of interests in land and whether a conflict arises upon exchange of contract or settlement".

In respect of the issues that were raised by Councillors about perceived conflicts of interests, the concerns that were raised at the previous Council Meeting were raised with the Local Government and Shires Associations. No feedback has been received from the LGSA in respect of the Council's letter. It is proposed to follow – up the LGSA in respect of this issue.

In respect of the "dealing with land" issue that the Council resolved to include within our Code of Conduct, as Councillors may recall the following additional obligation is placed on all Councillors and staff *"If you buy or sell property in the Penrith Local Government Area, other than your own home, you must notify the General Manager within a reasonable time*

after the transaction has been completed (settlement)". One of the reasons why it is argued that notification should be made on settlement is that the notification gets onto the public record much quicker than completing an annual pecuniary interest return (for Councillors, designated staff etc). The debate that was raised at the time by the Councillors was whether notification should occur on settlement or on exchange. It is suggested that if the intention is to disclose when any interest comes to hand will necessitate a range of other interests of equitable interests and interests created under options.

It is acknowledged that legal rights are created other than on the day of settlement, for example legal rights can be created upon exchange of contracts, upon an option to purchase a property. It had been argued that the date of settlement was a date of certainty because at this date moneys, keys and access and insurance obligations occur. It is considered that notification upon exchange is a less certain date as this sometimes can be left to a person's Solicitor to organise. If Council were to decide to choose another point than exchange of contracts would be a sound option. It is considered that the position adopted as set out above should remain, that is "*within a reasonable time after the transaction has been completed (settlement)*".

RECOMMENDATION

That the information contained in the report on the Code of Conduct and Promoting Better Practice be received.

ATTACHMENTS/ANNEXURES

1. Code of Conduct for Councillors 7 Pages Attachment
2. Letter to LGSA re: Model Code of Conduct 2 Pages Attachment

ATTACHMENTS



Date of Meeting: Monday 17 October 2005

Master Program: Leadership and Organisation

Issue: Governance

Report Title: Code of Conduct and Promoting Better Practice

Attachments: Code of Conduct for Councillors
Letter to LGSA re: Model Code of Conduct

PENRITH CITY COUNCIL CODE OF CONDUCT FOR COUNCILLORS

Penrith City Council has adopted the Model Code of Conduct which sets out the minimum requirements of behaviour for Council officials in carrying out their functions. The Model Code of Conduct assists Council Officials to understand the standards of conduct that are expected of them. It enables them to fulfil their statutory duty to act honestly and exercise care and also assists them to act in a way that enhances public confidence in the integrity of local government.

KEY PRINCIPLES:

The Model Code of Conduct for Local Councils in NSW is based on the following key principles:

- Integrity
- Selflessness
- Respect
- Honesty
- Leadership
- Accountability
- Objectivity
- Openness

GENERAL CONDUCT OBLIGATIONS:

General Obligations

You must avoid conduct that:

- Is detrimental to the pursuit of the charter of the Council.
- Is improper or unethical.
- Is an abuse of power.
- Causes or involves intimidation, harassment or verbal abuse.
- Causes or involves discrimination, disadvantage or adverse treatment in relation to employment.

You must act lawfully, honestly and exercise diligence.

You must treat others with respect at all times.

Fairness and Equity

You have an obligation to consider issues fairly and consistently. That being, you must take all relevant facts into consideration and you must not take irrelevant matters into consideration when making decisions.

Harassment and discrimination

You must not harass or discriminate against others, or support others who do the same.

Development decisions (Development staff)

It is your duty to ensure that development decisions are properly made and that parties involved are dealt with fairly.

In determining development applications, it is essential that you are highly conscious of the potential for even the slightest impropriety to lead to suspicion of misconduct.

If you are unsure about the ethical issues around an action or decision you are about to take, you should consider these five points:

- Is the decision or conduct lawful?
- Is the decision or conduct consistent with Council's policy and Council's objectives?
- What will the outcome be for the employee or councillor, work colleagues, the Council and any other parties?
- Do these outcomes raise a conflict of interest or lead to private gain or loss at public expense?

- Can the decision or conduct be justified in terms of the public interest and would it withstand public scrutiny?

Remember- you have the right to question any instruction or direction given to you which you think might be unethical. If you are uncertain you can seek advice from your supervisor or the following organisations:

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

CONFLICT OF INTERESTS:

Pecuniary and non-pecuniary conflict of interests

A conflict of interest exists when you could be influenced by a personal interest when carrying out your public duty.

You must appropriately resolve any conflict between your private interests and the impartial performance of your professional duties.

Any conflict between your interests and those of Council must be resolved to the satisfaction of the Council.

It is essential that you properly address conflict of interests issues that may arise.

Perceptions of a conflict of interests are as important as actual conflict of interests.

Where necessary you must disclose an interest promptly, fully and in writing.

If you are in doubt whether a conflict of interests exists, you should seek advice from Council's Legal Department on 7685.

A conflict of interests can be of two types:

- **Pecuniary:** An interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated. (sections 442 and 443 of the *Local Government Act*)
- **Non-Pecuniary:** A private or personal interest the Council Official has that does not amount to a pecuniary interest as defined in the Act .

Staff members of Council, must disclose to their supervisor the nature of any pecuniary interest they have in a matter that they are dealing with as soon as practicable.

If a staff member has a non-pecuniary conflict of interests, the person must disclose the nature of the conflict.

Advice about management of a conflict of interest can be obtained by contacting the Governance Unit on 7685.

Other business or employment

A member of staff of Council who is considering outside employment or contract work that relates to the business of the Council must notify and seek the approval of the General Manager in writing.

Political Support

Councillors should note that matters before Council involving campaign donors may give rise to non-pecuniary conflict of interests.

Personal Dealings with Council

You must not expect or request preferential treatment for yourself or your family because of your position.

PERSONAL BENEFIT:

Gifts or benefits

You must not:

- Seek or accept a bribe
- By virtue of your position acquire personal profit

You must not seek or accept any payment, gift or benefit intended or likely to influence you to:

- Act in a particular way or fail to act in a particular circumstance
- Otherwise deviate from the proper exercise of your official duties.

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

Token gifts and benefits

Generally speaking, token gifts and benefits may include:

- Gifts of single bottles of reasonably priced alcohol to individual Council officials at end of year functions, public occasions or in recognition of work done.
- Free or subsidised meals, of a modest nature.
- Refreshments provided at conferences where you are a speaker
- Ties, scarves, coasters, chocolates and small amounts of beverages
- Invitations to appropriate out of hours "cocktail parties".

Gifts of Value

You must never accept an offer of money, regardless of the amount.

You must not accept gifts and benefits that have more than a nominal or token value.

If you receive a gift of more than token value in circumstances where it cannot reasonably be refused or returned, you should accept the gift and disclose this promptly to your supervisor.

You must avoid situations in which the appearance may be created that any person, is through the provision of benefits attempting to secure a favour from you or the Council.

You must take all reasonable steps to ensure that your immediate family members do not receive gifts that could appear to an impartial observer as an attempt to influence or secure a favour.

Councillors and designated persons must, by law disclose a description of any gift or gifts totalling a value exceeding \$500 made by the same person during a 12 month period or less.

Improper or undue influence

You must not take advantage of your position to improperly influence other Council officials to secure a private benefit for yourself or somebody else.

You must not take advantage of your status with Council in order to obtain unfair benefit for yourself or somebody else.

RELATIONSHIPS BETWEEN COUNCIL OFFICIALS:

Obligations of Councillors

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

Councillors must:

- Refrain from directing Council staff other than by giving appropriate direction to the General Manager in the performance of Council's functions by way of Council or committee resolution.
- Refrain from directing or influencing any other member of the staff of Council.
- Refrain from contacting a member of the staff of Council unless in accordance with procedures of interaction between Councillors and Council staff.
- Not contact or issue instructions to any of Council's contractors or tenderers.

Obligations during meetings

You must respect the chair, other council officials and any members of the public present during Council and committee meetings.

Inappropriate interactions

The following interactions are inappropriate:

- Councillors approaching Council staff other than directors or senior staff for information on sensitive matters.
- Councillors approaching Council staff outside the Council building or outside hours of work to discuss Council business.
- Councillors who have lodged a development application with Council, discussing the matter with Council staff in staff-only areas of the Council.
- Councillors being overbearing or threatening to Council staff.
- Councillors directing Council staff in the performance of their work.
- Councillors approaching Council staff organisations in relation to staffing matters that relate to individual staff members.
- Councillors attending on-site inspection meetings unless permitted to do so by the General Manager, or in the case of the Mayor exercising their power under section 226 of the Act.

ACCESS TO INFORMATION AND COUNCIL RESOURCES:

Councillor access to information

The Council must provide access to the documents available under section 12 of the *Local Government Act 1993* to all Councillors. The Council must also provide Councillors with information sufficient to enable them to carry out their civic functions.

Any information that is given to a particular Councillor must also be available to any Councillor who requests it.

Councillors who have a personal interest in a document of Council have the same rights of access as any member of the public.

Councillors have an obligation to properly examine and understand all the information provided to

them relating to matters that they are dealing with.

Use of Council Information:

You must:

- Protect confidential information.
- Only access information needed for Council business.
- Not use confidential information for any non-official purpose.
- Only release confidential information if you have authority to do so.
- Only use confidential information for the purpose it is intended.
- Only release other information in accordance with established Council policies and procedures and in compliance with relevant legislation.
- Not use council information for personal purposes.
- Not disclose any information discussed during a confidential session of a council meeting.

You must carry out your duties in a manner that allows council officials and the public to remain informed about local government activities and practices.

You must not use confidential information gained in your position for personal benefit.

You must not seek any financial benefit for yourself from any information to which you had access in the exercise of your official functions or duties by virtue of your office or position.

You must not use confidential information with the intention to improperly cause harm to the Council or any other person.

You must be scrupulous in your use of Council property and should not permit misuse by any other person or body.

You must avoid any action which could create the impression that Council property and services are being improperly used for your own gain.

The interests of a Councillor in their re-election is considered to be a personal interest and as such the reimbursement of travel expenses incurred on election matters is not appropriate.

You must not covert any property of the Council to your own use unless properly authorised.

You must not use Councils computer resources to search for, download, access or communicate any material of an offensive, obscene, pornographic, threatening or abusive nature.

Councillor access to Council buildings

Councillors are entitled to have access to the Council Chamber, committee room, Mayor's office (subject to availability), Councillor's rooms and public areas of Council's buildings during normal business hours for meetings.

Councillors must not enter staff-only areas of Council buildings without approval of the General Manager.

Councillors must ensure that when they are within a staff area they are cognisant of potential conflict or pecuniary interest matters.

REPORTING BREACHES, COMPLAINT HANDLING PROCEDURES AND

SANCTIONS:

Corrupt conduct, maladministration and waste of public resources

You have an obligation to act honestly. You should report any instances of the above in accordance with Council's internal reporting policy.

Reporting breaches of the code of conduct

You should report suspected breaches of the code of conduct to the General Manager, preferably in writing.

Where you believe that the General Manager has failed to comply with this code, you should report the matter to the Mayor, preferably in writing.

Complaint handling procedures- Councillor and General Manager conduct

Council will establish a conduct committee that will consist of the Mayor, the General Manager and at least one person independent of Council.

Councillors should report all suspected breaches of the code of conduct to the General Manager, preferably in writing, in the first instance and refrain from making allegations at Council meetings. Where appropriate, the General Manager will report the matter to the conduct committee.

Where the General Manager has determined not to report to the conduct committee, the General Manager will give the complainant the reason/s in writing.

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

- Determine not to make enquiries into the allegation and give reason/s in writing.
- Make enquiries into the alleged breach.
- Engage an independent person to make enquiries.

Enquiries made by the General Manager or the conduct committee will follow the rules of procedural fairness. The enquirer must:

- Inform the person/s against whose interests a decision may be made of any allegations against them.
- Provide the person/s with a reasonable opportunity to put their case.
- Hear all parties to a matter and consider submissions.
- Make reasonable enquiries before making a recommendation.
- Ensure that no person is involved in enquiries in which they have a direct interest.
- Act fairly and without bias.
- Conduct the enquiries without undue delay.

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

The conduct committee may recommend that Council take any actions the committee considers reasonable in the circumstances.

Sanctions

Where Council finds that a Councillor has breached the code, it may decide by resolution to:

- Censure the Councillor for misbehaviour in accordance with section 440G of the Act.
- Require the Councillor to apologise to any person affected by the breach.

- Counsel the Councillor.
- Make public findings of inappropriate conduct.
- Refer the matter to an appropriate investigative body if the matter is serious.
- Prosecute for any breach of law.

COUNCILLOR MISBEHAVIOUR

Failure by a Councillor to comply with an applicable requirement of this code constitutes misbehaviour.

The Council may by resolution at a meeting formally censure a Councillor for misbehaviour.

The process for the suspension of a Councillor from civic office can be initiated by a request made by Council to the Department of Local Government.

The first ground on which a Councillor may be suspended from civic office is where the Councillor's behaviour has been disruptive over a period.

Council cannot request suspension on this ground unless during the period concerned the Councillor has been:

- Formally censured for incidents of misbehaviour on two or more occasions.
- Expelled from a meeting of the Council or a committee of the Council for an incident of misbehaviour on at least one occasion.

The second ground on which a Councillor may be suspended is where the Councillor's behaviour has involved one incident of misbehaviour.

Council cannot request suspension on this ground unless the Councillor has been:

- Formally censured for the incident of misbehaviour concerned, or
- Expelled from a meeting of the Council for the incident of misbehaviour concerned.

Under Section 440H, the process for the suspension of a Councillor can also be initiated by the Department of Local Government, the Independent Commission Against Corruption or the NSW Ombudsman.

Ref: GS:SM:750/23 Part 4
Contact: Glenn Schuil
Telephone: (02) 4732 7625

16 March 2005

Mr B. Gillooly
Secretary General
Local Government Association of NSW
GPO BOX 7003
SYDNEY NSW 2001

Dear Mr Gillooly

Model Code of Conduct

As you will be aware, the Local Government Amendment (Discipline) Act 2004 has been proclaimed and commenced on 1 January 2005. On 28 February 2005 the Council's Policy Review Meeting considered a Report on the Code of Conduct, and during the discussion of the Report the Councillors raised a number of issues about the Model Code of Conduct that is mandatory to be adopted by councils, including:-

- Concern over the length of the document, as the Council's current Code is 4 pages in length. In this regard, when the Department of Local Government called for submissions from councils in September 2004 the Council sent a letter to the Department indicating its concerns over the length of the document. In this letter it was suggested that to reduce the size of the Model Code of Conduct that some of the material should be transferred to the Guidelines. It would appear that the Department did not take up this suggestion.
- Another issue raised at the Council Meeting was the complexity raised within the Code (section 6.5) dealing with perceived, actual or real conflicts of interests. Councillors were of the opinion that the variety of expressions to describe a conflict of interest confuses the issue rather than making it easier for Councillors to gain a thorough understanding of the issue.
- Councillors also raised that in the Legislation one can determine the outer limits as to whether an interest is a pecuniary interest or not. In respect of non-pecuniary interests, the statements within the Model Code are so broad that Councillors found it difficult in determining if they had a conflict of interest or not. A good example of this is that Councillors may shop at Coles or Woolworths and would at times consider applications in respect of Coles & Woolworths. The wording in the Code taken literally would potentially bring a Councillor to conclude that they should declare a non-pecuniary conflict of interest. Surely this is taking this issue too far. It would be an unsatisfactory situation for Councillors or staff to find themselves as having an interest in these circumstances. Further to this, the choices within 6.12 do not give clear guidance to Councillors or staff as to what they should do.
- In respect of conflicts of interest it is unclear what you must do. Clause 6.6 starts out with the words "Where necessary.." and then says you must disclose your interests promptly, fully and in writing. It then goes on to say that if a disclosure is made at a Council or Committee Meeting, both the disclosure and the nature must be recorded in the Minutes.

Does this mean that in addition to disclosures at a Meeting one must follow this up by a disclosure in writing. Also, there is a suggestion in the Clause that a Councillor must disclose a non-pecuniary interest at some other time other than at a Committee or a Council Meeting. Given that the section 6.6 in the Model Code above talks about perceived interests, does this mean one must disclose outside a Council or Committee Meeting even if there is a perceived conflict of interest. If this is the case, it would seem that the requirements under the Model Code are stricter than under the Local Government Act for pecuniary interest.

- The removal of the word ‘culpable’ from section 435 (2) (a) of the Act appears to have extended the power of a Departmental Representative to use the surcharge provisions. While I have read the reasoning that was outlined in the second reading speech, I consider that there does not appear to be justification for the removal of the word “culpable”.

I have noted item 25 in the *Local Government Weekly* (10/05) that if councils register significant concerns with the Model Code of Conduct that the Presidents will be happy to raise the issues with the Minister for Local Government.

I would appreciate if the Association could consider the issues raised within this letter, take a position on the issues and make submissions to both the Minister for Local Government, the Hon. Tony Kelly MLC and the Department of Local Government.

I would also request that you seek comments from other councils on this issue.

Yours faithfully

Alan Travers
General Manager