His Worship the Mayor, Councillor Ross Fowler OAM and Councillor Robin Cook pictured with the players from the Panthers Premier League Netball Team at the Season Launch hosted by Penrith City Council on 27 March 2019.

Policy Review Committee Meeting
8 April 2019
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 Passadena Room, Civic Centre, 601 High Street, Penrith on Monday 8 April 2019 at 7:00PM.

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

Yours faithfully,

Warwick Winn
General Manager

BUSINESS

1. LEAVE OF ABSENCE
2. APOLOGIES
3. CONFIRMATION OF MINUTES
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 Conflict of Interest – Significant and Less than Significant (The Code of Conduct requires Councillors who declare a significant non-pecuniary conflict of interest in an item to leave the meeting during discussion of that item)
5. ADDRESSING THE MEETING
6. MAYORAL MINUTES
7. NOTICES OF MOTION TO RESCIND A RESOLUTION
8. NOTICES OF MOTION
9. DELIVERY PROGRAM REPORTS
10. REQUESTS FOR REPORTS AND MEMORANDUMS
11. URGENT BUSINESS
12. CONFIDENTIAL BUSINESS

Enquiries regarding this Business Paper should be directed to the Governance Coordinator, Mr Adam Beggs on (02) 4732 7597
MEETING CALENDAR

CONFIRMATION OF MINUTES

DELIVERY PROGRAM REPORTS
# 2019 MEETING CALENDAR

**January 2019 - December 2019**  
(Adopted by Council - 26 November 2018)

<table>
<thead>
<tr>
<th>TIME</th>
<th>JAN</th>
<th>FEB</th>
<th>MAR</th>
<th>APRIL</th>
<th>MAY</th>
<th>JUNE</th>
<th>JULY</th>
<th>AUG</th>
<th>SEPT</th>
<th>OCT</th>
<th>NOV</th>
<th>DEC</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mon</td>
<td>Mon</td>
<td>Mon</td>
<td>Mon</td>
<td>Mon</td>
<td>Mon</td>
<td>Mon</td>
<td>Mon</td>
<td>Mon</td>
<td>Mon</td>
<td>Mon</td>
<td>Mon</td>
</tr>
<tr>
<td>Ordinary Council Meeting</td>
<td>7.00pm</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>25@</td>
<td>25</td>
<td>29❖</td>
<td>27#</td>
<td>24*</td>
<td>22</td>
<td>26@</td>
<td>23✓</td>
<td>28∞</td>
<td>25#</td>
<td>16</td>
<td></td>
</tr>
<tr>
<td>Policy Review Committee</td>
<td>7.00pm</td>
<td>11</td>
<td>11</td>
<td>8</td>
<td>13</td>
<td>17</td>
<td>8</td>
<td>12</td>
<td>9</td>
<td>21</td>
<td>11</td>
<td>9</td>
</tr>
</tbody>
</table>

- Meeting at which the draft corporate planning documents (Delivery Program and Operational Plan) are endorsed for exhibition
- Meeting at which the draft corporate planning documents (Delivery Program and Operational Plan) are adopted
# Meetings at which the Operational Plan quarterly reviews (March and September) are presented
@ Meetings at which the Delivery Program progress reports (including the Operational Plan quarterly reviews for December and June) are presented
✓ Election of Mayor/Deputy Mayor
∞ Meeting at which any comments on the 2018-2019 Annual Statements are adopted
+ Meeting at which the Annual Report is presented
> Briefing to consider Budget, draft fees & charges and corporate documents

- Extraordinary Meetings are held as required;
- Members of the public are invited to observe meetings of the Council (Ordinary and Policy Review Committee).

Should you wish to address Council, please contact Governance Coordinator, Adam Beggs on 4732 7597.
UNCONFIRMED MINUTES
OF THE POLICY REVIEW COMMITTEE MEETING OF PENRITH CITY COUNCIL HELD
IN THE PASSADENA ROOM, PENRITH
ON MONDAY 11 MARCH 2019 AT 7:00PM

PRESENT

His Worship the Mayor, Councillor Ross Fowler OAM, Deputy Mayor, Councillor Greg Davies, and Councillors Jim Aitken OAM, Bernard Bratusa, Brian Cartwright, Robin Cook, Kevin Crameri OAM, Mark Davies, Aaron Duke, Tricia Hitchen, Karen McKeown OAM, Kath Presdee and John Thain.

APOLOGIES

PRC 6 RESOLVED on the MOTION of Councillor Kath Presdee seconded Councillor Brian Cartwright that apologies be accepted for Councillors Todd Carney and Marcus Cornish.

CONFIRMATION OF MINUTES - Policy Review Committee Meeting - 11 February 2019

PRC 7 RESOLVED on the MOTION of Councillor Kath Presdee seconded Councillor Brian Cartwright that the minutes of the Policy Review Committee Meeting of 11 February 2019 be confirmed.

DECLARATIONS OF INTEREST

There were no declarations of interest.

DELIVERY PROGRAM REPORTS

Councillor Jim Aitken OAM left the meeting, the time being 7:05 pm.

OUTCOME 5 - WE CARE ABOUT OUR ENVIRONMENT

3 Hawkesbury River County Council - Biosecurity Act update

Councillor Jim Aitken OAM returned to the meeting, the time being 7:13 pm.

PRC 8 RESOLVED on the MOTION of Councillor Kevin Crameri OAM seconded Councillor Karen McKeown OAM

That:

1. The information contained in the report on Hawkesbury River County Council - Biosecurity Act update be received.

2. A further report be presented to Council considering increasing Council’s annual contribution of $175,000 by $25,000 to total $200,000.
OUTCOME 4 - WE HAVE SAFE, VIBRANT PLACES

1 Pedestrian Lighting Strategy

PRC 9 RESOLVED on the MOTION of Councillor Tricia Hitchen seconded Councillor John Thain

That:

1. The information contained in the report on Pedestrian Lighting Strategy be received.

2. The draft Penrith City Centre Pedestrian Lighting Strategy be adopted.

OUTCOME 5 - WE CARE ABOUT OUR ENVIRONMENT

2 Compliance and Enforcement Policy and Guidelines

Councillor John Thain left the meeting, time being 8:11 pm.
Councillor John Thain returned to the meeting, time being 8:14 pm.

PRC 10 RESOLVED on the MOTION of Councillor Brian Cartwright seconded Councillor Greg Davies

That:

1. The information contained in the report on Compliance and Enforcement Policy and Guidelines be received.

2. Council adopt the attached Compliance and Enforcement Policy, subject to the role of Councillors being further clarified with respect to Clause 19 in the Policy.

Councillor Jim Aitken OAM requested that his name be recorded as having voted against the motion.

(Amended by Council at Minute No. 48 of the Ordinary Meeting of 25 March 2019).

There being no further business the Chairperson declared the meeting closed the time being 8:25 pm.
## DELIVERY PROGRAM REPORTS

### OUTCOME 7 - WE HAVE CONFIDENCE IN OUR COUNCIL

<table>
<thead>
<tr>
<th>Item</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Outdoor Dining Review</td>
<td>1</td>
</tr>
<tr>
<td>3. Code of Meeting Practice</td>
<td>11</td>
</tr>
</tbody>
</table>
OUTCOME 1 - WE CAN WORK CLOSE TO HOME

There were no reports under this Delivery Program when the Business Paper was compiled.
THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY
OUTCOME 2 - WE PLAN FOR OUR FUTURE GROWTH

There were no reports under this Delivery Program when the Business Paper was compiled
OUTCOME 3 - WE CAN GET AROUND THE CITY

There were no reports under this Delivery Program when the Business Paper was compiled
THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY
OUTCOME 4 - WE HAVE SAFE, VIBRANT PLACES

There were no reports under this Delivery Program when the Business Paper was compiled.
THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY
OUTCOME 5 - WE CARE ABOUT OUR ENVIRONMENT

There were no reports under this Delivery Program when the Business Paper was compiled.
There were no reports under this Delivery Program when the Business Paper was compiled
<table>
<thead>
<tr>
<th>Item</th>
<th>OUTCOME 7 - WE HAVE CONFIDENCE IN OUR COUNCIL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Outdoor Dining Review</td>
</tr>
<tr>
<td>2</td>
<td>Model Code of Conduct and Procedures for the Administration of the Code of Conduct</td>
</tr>
<tr>
<td>3</td>
<td>Code of Meeting Practice</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>3</td>
<td>11</td>
</tr>
</tbody>
</table>
1 Outdoor Dining Review

Compiled by: Tara Braithwaite, Property Projects Officer
Authorised by: Nathan Ritchie, Property Development Manager

<table>
<thead>
<tr>
<th>Outcome</th>
<th>We have confidence in our Council</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strategy</td>
<td>Be open and fair in our decisions and our dealings with people</td>
</tr>
<tr>
<td>Service Activity</td>
<td>Respond to community requests for use of Council's land (licences, easements, road closures)</td>
</tr>
</tbody>
</table>

Executive Summary
Penrith City Council encourages the use of public places for outdoor dining as a means of stimulating business growth and to create vibrant local communities that enhance the amenity of public spaces and promotes social activity.

The Outdoor Dining Policy ‘the policy’ and Guidelines establishes a framework under which Council will manage outdoor dining within the City. The Policy and Guidelines apply to all land within the Penrith City Council Local Government Area, that is used as a public footpath, space or park and adjoining an existing approved food related business.

Background
The State Environment Planning Policy (Exempt and Complying Codes) 2008 makes footway dining an exempt development as long as it is not associated with a pub or a small bar and is carried out in accordance with an approval granted under section 125 of the Roads Act 1993 or under section 68 of the Local Government Act 1993.

Property Development currently manages thirty-five (35) outdoor dining permits situated on Public Footpath and issued under the Roads Act.

Council does not have a Policy on Outdoor Dining and permits have historically been issued with reference to the controls set out in Penrith Development Control Plan. These controls do not directly relate to approvals on Council owned land and the adoption of an Outdoor Dining Policy supported by guidelines that establishes a framework for Council to issue and manage these approvals is required.

On Wednesday 8 August 2018 the Access Committee provided their endorsement to the draft Outdoor Dining Policy and Guidelines. Feedback received from the Access Committee was considered and amendments made to the draft Policy and Guidelines as recommended.

Outdoor Dining Policy
The Policy applies to all land within the Penrith City Council Local Government Area that is used as a public footpath, space or park and adjoining an existing approved food related business. The aim of the policy is to provide a framework for determining the suitability of a site and meeting the ongoing operational requirements.
The objectives of the policy are to:

- facilitate the appropriate use of outdoor dining on footways or within public spaces or parks whilst maintaining an equitable and safe thoroughfare around outdoor dining areas for all users.
- ensure the design of the outdoor dining space, furniture, fixtures and day-to-day requirements facilitate improvement to the local character, street vitality, amenity and economic viability.
- ensure outdoor dining activities avoid nuisance, endangerment or inconvenience and residents can continue to enjoy the amenity of their neighbourhood, and
- ensure compliance with relevant legislation, Council’s Policy and Guidelines and insurance requirements.

It is intended that this policy be adopted as an approved local policy under section 161 of the Local Government Act 1993. The Policy will allow outdoor dining to be carried out on Council owned land and includes the footway provided the proposed location is directly related to the operation of an existing approved adjoining food business. It also ensures that the permit requirements set out in the Policy and Guidelines are met.

All Outdoor Dining applications made for the use of Community Land will be notified and exhibited as per section 47A of the Local Government Act 1993.

Council is currently undertaking a review of fees in relation to outdoor dining to ensure that they are streamlined and encourage business to undertake these activities.

Supporting Guidelines

The Guidelines will help food related businesses decide whether outdoor dining is an appropriate and feasible addition to their business. It will also provide a framework for Council to determine the suitability of a site and met the ongoing operational requirements in managing approved permits.

The Guidelines will assist Council and Business Owners by;

1. encouraging restaurants to expand their existing dining activities outdoors onto the public footpath, within a public space or park, adjoining the existing business,
2. determining the suitability of a site and to meet both parties ongoing operational requirements, and
3. best managing outdoor dining within the public domain and the potential impacts on neighbours and pedestrians.

Key external stakeholders have been engaged during the development of the draft policy and guidelines and provided their in-principle support for its endorsement. The stakeholders include Vision Australia, Guide Dogs NSW, Liquor and Gaming NSW, Roads and Maritime Services, St Marys Town Centre and Penrith CBD Corporation.

The Policy and Guidelines ensure compliance with relevant legislation, are in line with the principles of Penrith’s Development Control Plan and are consistent with surrounding Councils Policies.

Location

Under the relevant Australian Standards street furniture must be located on the kerb side of the footpath in order provide a consistent, predictable and obstacle-free path of travel along
the building line. The Pedestrian zone must be a minimum width of 1.8 metres from the building shoreline. In addition to these Australian Standards, footpaths are defined as being part of a premises under the Disability Discrimination Act 1992 and therefore equal and independent access must be provided for all users.

Guide Dogs NSW/ACT Pathways to Inclusion and Vision Australia’s Street Furniture and Items on Footpaths Policy, both describe the importance of creating a liveable, accessible community and environment that include everyone and enable people to move safely and independently being, a ‘fundamental right of all Australians’. The documents conclude that street furniture placed in the path of travel to be a significant barrier to access and present a safety hazard for pedestrian particularly those with vision impairment. In line with the Australian Standards, Guide Dogs NSW & Vision Australia recommend a pedestrian zone along the building line of at least 1.8 metres.

To meet the requirements of the Australian Standards and the Disability Discrimination Act, the preferred location for seating in an outdoor dining area is along the kerbline, to provide unobstructed continuous clearance along the building shoreline.

Council’s Traffic Engineers have reviewed the proposed minimum clearances for outdoor dining areas to ensure appropriate clearances are maintained for the safety of all users and to ensure sufficient room for access to cars parked along the kerb. Council’s Traffic Engineers support and consider kerbside dining with a minimum of 0.6 metre kerb setback acceptable in low speed environments such as town centres and with kerb side parking separating traffic lanes. Clearance alongside RMS classified roads and directly next to traffic moving at 20km/hour requires additional setbacks and will be referred to Council’s Traffic Engineers during the application process to ensure safety of all users.

In circumstances where there is insufficient width to accommodate kerbside dining for instance on the corner of an intersection or directly facing a pedestrian crossing, Council may consider alternative configurations based on their merit and the principles contained in the Outdoor Dining Policy and Guidelines. The merit assessment will take into consideration access and safety for all users of the space (including pedestrians, employees and customers) and other relevant site constraints.

Implementation

Thirty-five (35) permits have been issued by Council, with twenty-four (24) of these currently located along the kerbside. The Property Development Department will work with the remaining eleven (11) permits located along the building shoreline to determine the most appropriate location.

In general, the majority of current permits are consistent with the Policy and Guidelines. It is proposed that a 6-month implementation period be introduced following the adoption of the Policy to allow for the transition. Stakeholder engagement will be undertaken during this time to work with individual business owners to achieve policy compliance.

Outdoor Dining on Private Land

Outdoor dining that is located on private land requires approval under the Environmental Planning and Assessment Act 1979 through the Development Application (DA) process.

Currently there are twenty-one (21) businesses operating outdoor dining on private land adjoining public footpath.

- three (3) of these businesses are located along the kerbside (located on Riley St, Westfield)
• twelve (12) of these businesses are located along the building shoreline (Located on Queen St, St Marys and the GWH, Kingswood), and
• six (6) of these businesses are located along the building shoreline (Riley St, Westfield).

Westfield recently underwent upgrades along Riley Street Penrith. As part of their DA they were required to recreate the shoreline surrounding these areas with the use of tacktiles.

It is proposed that a future review of the Development Control Plan, when referencing Outdoor Dining on private land, consider this Policy.

Conclusion

Penrith City Council encourages outdoor dining to create vibrant local communities and provide additional opportunities for food-based businesses. The draft Outdoor Dining Policy and Guidelines supports business owners of restaurants to decide whether outdoor dining is an appropriate and feasible addition to their business, and provides Council with a framework to issue and manage Outdoor Dining Permits on public footpaths, spaces and parks.

It is recommended that the Policy Review Committee endorse the Policy for Public Exhibition. The results of the exhibition will be reported back to Council with a recommendation for adoption of the Policy.

RECOMMENDATION

That:

1. The information contained in the report on Outdoor Dining Review be received
2. The Outdoor Dining Policy, incorporating any feedback from the Policy Review Committee, be placed on Public Exhibition,
3. A further report be presented following the Public Exhibition to consider any submissions.

ATTACHMENTS/APPENDICES

1. Outdoor Dining Policy 4 Pages Attachments Included
2. Outdoor Dining Guidelines 30 Pages Attachments Included
2 Model Code of Conduct and Procedures for the Administration of the Code of Conduct

Compiled by: Glenn McCarthy, Governance Manager
Authorised by: Stephen Britten, Chief Governance Officer

<table>
<thead>
<tr>
<th>Outcome</th>
<th>We have confidence in our Council</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strategy</td>
<td>Be open and fair in our decisions and our dealings with people</td>
</tr>
<tr>
<td>Service Activity</td>
<td>Support the Councillors in meeting their obligations and roles as community representatives</td>
</tr>
</tbody>
</table>

Executive Summary

The Office of Local Government (OLG) have amended the Model Code of Conduct and Procedures for the Administration of the Code of Conduct. Council will need to adopt the new Code of Conduct by the 14 June 2019.

The amendments to the Model Code of Conduct, form part of a review conducted with regard to the implementation of Phase 1 amendments to the Local Government Act 1993 which see the pecuniary interest provisions and other ethical changes moved into one single statutory instrument.

This report outlines the changes made to the OLG’s Model Code of Conduct, and the implications that this will have for all Council Officials (Councillors, staff, members of council committees and advisers), on adoption.

The Model Code of Conduct prescribes the minimum requirements for all councils. Councils may adopt more onerous requirements in their Code of Conduct but cannot adopt requirements that are inconsistent with the Model Code.

Background

All Councils are required to adopt a code of conduct that incorporates the provisions of the Model Code of Conduct, under s440 of the Local Government Act 1993. Our adopted Code must be consistent with the model code of conduct, although it can be more onerous than the model code if the council so wishes.

Penrith City Council last updated our Code of Conduct when Council adopted the OLG’s Model Code of Conduct and Procedures for the Administration of the Code of Conduct in February 2016. We did this, with one amendment to the Code, which is outlined below:

“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).”

The Code now defines an interest in relation to property is “an estate, interest, right or power, at law or in equity, in or over the property”. As an equitable interest in real property is acquired by the purchaser at exchange of contracts, there does not appear to be a need for the continuation of this additional provision. “Interest” includes an option to purchase.

OLG in October 2017, consulted with all Councils with regard to a draft Model Code of Conduct, in light of the Phase 1 amendments to the Local Government Act. Council responded to this request for feedback in December 2017.
OLG have now produced the final version of the Model Code of Conduct, with subsequent regulatory amendments having been made, which is now presented to Council for endorsement. Council must adopt a Code of Conduct by 14 June 2019.

**Council’s submission on the Model Code of Conduct Consultation Draft**

As indicated above, OLG consulted with councils in late 2017 seeking feedback on a Consultation Draft of a revised Model Code of Conduct. One of the observations made in our submission was that the Model Code of Conduct prescribed for local councils is now a 51-page document while the corresponding Code of Conduct for NSW Members of Parliament is 2 ½ pages. That said, some of the suggestions in our submission have been taken into account in the Model Code of Conduct, including:

- Inclusion of a comprehensive Introduction, omitted from the Consultation Draft
- Requirement that the annual Pecuniary Interest Returns of Councillors and General Manager be published on the council website has not been pursued
- Clarification that attendance by a council official at a work-related event or function is not a gift or benefit for the purposes of the Code (Clause 6.2)
- Clarification that free or subsidised meals and refreshments of token value at council-sponsored or community events, training, education sessions and workshops are not gifts or benefits for the purposes of the Code (Clause 6.2)
- Clarification that gifts and benefits of token value can be accepted (Clause 6.8)

**Changes to the Code of Conduct from our 2015 Code of Conduct**

There have been a number of changes made to the Code of Conduct, some of which clarify previously ambiguous provisions, and others that are completely new. The changes which are new have been outlined below, but should be read in conjunction with the Code of Conduct and Procedures for the Administration of the Code of Conduct:

**General conduct obligations**

- Defines harassment, and what constitutes harassment and discrimination to a greater degree, have also added religious and breastfeeding discrimination to the Code
- Defines bullying behaviour and reasonable management action
- Provides new obligations to comply with Workplace Health and Safety requirements
- Provides new obligations in relation to conduct at meetings, that is, you must not behave in a way that disrupts council meetings or prevents effective function of the meeting.
Pecuniary Interests

- Pecuniary Interests are now outlined in more detail in the Code, defining what is and is not a pecuniary interest, what is a relative, reference to how annual returns are made, and the need for the General Manager to disclose pecuniary interests to Council

- Ongoing disclosure of new interests in returns within three months

- Councillors and designated persons will be required to disclose in their returns of interests whether they are a property developer or a close associate of a property developer

Non-Pecuniary Conflicts of Interest

- Non-Pecuniary Interests are now also outlined in more detail, and religious, cultural or charitable organisations as non-pecuniary interests, have been included. Further, if you disclose a non-pecuniary interest you must disclose this in writing and provide a reason why this interest should not be considered significant

- The GM cannot engage in secondary employment or other business for remuneration without the approval of Council

- Secondary employment provision now captures a broader range of outside interaction by noting ‘other business outside the service of Council’

- New provision that notes that members of staff should not engage in work that would cause or pose a risk, due to fatigue to them or their co-workers

- Personal Dealings – notes that staff should engage with council in a manner consistent with the way other members of the community do

Personal Benefit

- Token gifts are those defined as <$50, and gifts of value >$50

- Now includes the concept of ‘work-related’ and ‘council-sponsored’ events but still limits hospitality to token value

- Noted that you should not receive prizes where eligibility is based on council being in a customer / supplier relationship, or receive reward point programs when purchasing on behalf of council

- New rules governing the acceptance of gifts including mandatory reporting of all gifts

- Lottery tickets are now included as ‘cash-like’ gifts that shouldn’t be accepted
Relationship between Council Officials – inappropriate interactions

- Councillors approaching members of local planning panels about applications that are before or are to come before the panel
- Council staff being overbearing or threatening to councillors
- Councillors making personal attacks on council staff – now specifically refers to social media

Access to information – new clause noting that Councillors should not have access to information where they have a conflict of interest in the matter, other than through normal processes available to the public

- Use and security of confidential information
  - Should only be available to those who are authorised to access
  - Specifically notes that confidential information obtained during council briefings or workshops should also not be released.

- Use of Council Resources
  - You cannot use council resources for private business purposes, this includes council staff
  - You cannot use Council email or Social Media to give the appearance that it is official documentation, when it is for non-official purposes
  - Not to use Council’s computer resources for purposes that might lead to ‘criminal penalty or civil liability and/or damage the council’s reputation’.

- Council record keeping – emphasises that all information is stored on council resources will be treated as relating to the business of council, and therefore a record.

Changes to the Procedures for the Administration of the Code of Conduct

Reference to County Councils and joint organisations has now been included within the Procedures. Further, the OLG have removed the concept of a conduct review committee.

Code of Conduct Complaints

- The OLG provides examples of what is and is not a code of conduct complaint
- Notes that a code of conduct complaint is one that discloses prima facie evidence of conduct that, if proven, would constitute a breach of the code
- Notes that whilst you should make complaints internally, it doesn’t mean you can’t complain to an external agency

Code of Conduct Complaint Management

- Pecuniary interest breaches will go directly to the OLG
- Notes the type of complaints that can be declined at the outset
Code of Conduct Complaints about Councillors or the General Manager

- Where the GM or Mayor (for complaints about the GM) decides not to take further action about a councillor, they must inform the complainant within 21 days

- Provides an additional alternate option to resolving the issue, that is, that a councillor may now give an undertaking not to repeat the offending behaviour or provide a voluntary apology

- If complaints are made about both the Mayor and General Manager, they are obliged to refer these complaints to the Complaints Co-ordinator

Referral of Code of Conduct Complaints to External Agencies - Notes the necessity to report to ICAC on reasonable grounds for matters concerning corrupt conduct.

Preliminary assessment of code of conduct complaints about councillors or the general manager

- Notes that the complaints co-ordinator can now terminate the conduct reviewer at any time, and that the complainant and any other affected person should be informed of the engagement of a new conduct reviewer

- Provides criteria as to whether a matter is now sufficiently serious to warrant investigation

Investigations of Code of Conduct Complaints About Councillors or the General Manager

- Terminology has changed so that the subject person, has now become the respondent, who has an obligation to keep the matter confidential

- New timetable for response to allegations, most time periods for response have been reduced from 28 days to 14 days this is presumably to ensure a quicker process

- The new options for recommendations, whilst still including the older options, that a conduct reviewer can now make include:
  - the respondent being removed from a committee of council or any other body,
  - that the respondent give an undertaking not to repeat the same behaviour and
  - that the findings and determination be made public in the minutes of council.

Rights of Review - The OLG may at any time review the consideration of a matter under the code of conduct, where it is concerned that Council have failed to comply with a requirement prescribed.

Confidentiality - If the complainant publicly discloses information, the GM with the consent of the OLG, may determine that the complainant receives no further information. The complainant is to be provided with 14 days to make a submission, as to why their complaint should not be withdrawn. This does not override the GIPA legislation.
Conclusion

The Model Code of Conduct for Local Councils in NSW is prescribed under s440 of the Local Government Act 1993 and the Local Government (General Regulation) 2005. All Councils are required to adopt a Code of Conduct that is as least as onerous as that prescribed in the Model Code of Conduct.

The changes to the Code of Conduct and the Procedures clarify previously ambiguous provisions while others are completely new. It is important for all to familiarise themselves with the Code of Conduct and Procedures, general awareness training will be conducted to facilitate this.


RECOMMENDATION

That:

1. The information contained in the report on Model Code of Conduct and Procedures for the Administration of the Code of Conduct be received

2. Council adopt the Model Code of Conduct for NSW Councils as its Code of Conduct

ATTACHMENTS/APPENDICES

1. Model Code of Conduct 62 Pages Attachments Included
2. Model Code of Conduct Procedures 54 Pages Attachments Included
3 Code of Meeting Practice

Compiled by: Adam Beggs, Governance Coordinator
Authorised by: Glenn McCarthy, Governance Manager

<table>
<thead>
<tr>
<th>Outcome</th>
<th>We have confidence in our Council</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strategy</td>
<td>Be open and fair in our decisions and our dealings with people</td>
</tr>
<tr>
<td>Service Activity</td>
<td>Manage Council’s meeting calendar, meeting process and business papers</td>
</tr>
</tbody>
</table>

Executive Summary

The Office of Local Government (OLG) have produced a new Model Code of Meeting Practice. The Model Code is made under s360 of the Local Government Act 1993 (the Act) and the Local Government (General) Regulation 2005. The model code is to apply to all meetings of council and committees of councils (where the members are all councillors), and it is required that councils incorporate the mandatory provisions of this Code, into their adopted Code of Meeting Practice.

The OLG have noted provisions in the Code that are mandatory and those that are non-mandatory. Our adopted code must not contain less than the mandatory provisions, but may also contain the non-mandatory provisions, where Council sees fit.

Council will have until 14 June 2018 to adopt the Model Code of Meeting Practice.

This report outlines the new mandatory inclusions required to be included in the Council’s Code of Meeting Practice along with also outlining the non-mandatory inclusions that are optional for inclusion.

The attached Code of Meeting Practice provides the final proposed draft of the Code of Meeting Practice and the report seeks endorsement for this to be placed on exhibition.

Background

All Councils are required to adopt a Model Meeting Code of Practice, under s360 of the Local Government Act 1993 and s 232 of the Local Government Regulations 2005. Our adopted Code must incorporate the mandatory provisions of the Model Code of Meeting Practice. Further, Council may also include non-mandatory provisions that the OLG has highlighted in their Code of Meeting Practice.

Penrith City Council last updated its Code of Meeting Practice in February, 2015. The Council’s Code of Meeting Practice incorporated many of the provisions of the Meetings Practice Note 2009 with minor administrative amendments made in 2015, to better reflect and provide clarification on some ambiguities.

Penrith Council first responded to a call for submissions into a proposed Model Code of Practice in January, 2017. Based on feedback from various Councils, the OLG then produced a draft Code of Meeting Practice in December 2017, for comment. Council provided a response to this Draft Code on 14 March, 2018.

The OLG have now released the Model Code of Meeting Practice and prescribed this. Transitional arrangements will apply to Councils; however, the Code must be adopted by the 14 June 2019. Before adopting a new code of meeting practice Council will be required to
exhibit a draft of the Code for at least 28 days and provide members of the community at least 42 days to comment.

The proposed changes and the non–mandatory provisions slated for inclusion were discussed at a recent councillor briefing and have been included in the Code of Meeting Practice document attached to this report.

Current Situation

Council staff wish to highlight the following mandatory and non-mandatory changes:

**Mandatory Changes to the Code of Meeting Practice**

The below changes reflect those practices which are not currently included in the adopted Code of Meeting Practice but are in the new Code of Meeting Practice:

**Webcasting (5.19)**

It will now be mandatory for both Ordinary and committee meetings (where all members are councillors) i.e. Policy Review Committee, to be webcast. Webcasting is defined as ‘a video or audio broadcast of a meeting transmitted across the internet either concurrently with the meeting or at a later time’. This will need to be introduced within 12 months of the prescription of the regulations. Council staff are seeking request for quotations currently. A statement prior to the commencement of the meeting must advise all attendees that they are subject to webcasting.

**Other provisions**

- Outlines meeting principles (2.1)
- Whilst Councillors may ask by way of a motion a question of the general manager about the performance of the council, they cannot ask a question that comprises a complaint against the GM or staff member. (3.15)
- Notice of a meeting can be published on the website, and in a manner that will bring notice of the meeting to the attention of the public – that is, it may not need to be placed in a newspaper (3.5)
- Further clarity around Leave of Absence (5.5)
- Mayoral Minutes should only be used if the matter is urgent and not routine, and this should be decided upon by Council (9.9)
- An amendment to a motion must relate to the matter being dealt with in the original motion, and can’t be a direct negative of the original motion. (10.11)
- Withdrawal of a notice of motion can now occur (10.3)
- Where the Council proposes to close the meeting to the public in circumstances where the matter has not been identified, then the chairperson is to invite representations from the public. (14.16)
- Conflicts of interest – All declarations of conflicts of interest and how the conflict was managed by the person who made the declaration must be recorded in the Minutes of the meeting at which the declaration was made. (16.1)

**Non-Mandatory Provisions**

The Office of Local Government have placed in the Model Code of Meeting Practice provisions that are not mandatory. Therefore, it is at the discretion of Council as to whether these non-mandatory provisions are included in our adopted code of meeting practice. A
number of these provisions Council has already included in its Code for some time and will remain. The other non-mandatory provisions that have been proposed are shown below and were discussed at a recent councillor briefing, as a result of these discussions a number but not all of these are now included in the attached draft model code of meeting practice.

These provisions include:

- Inclusion of Notice of Motion Provisions (3.12 and 3.13)
- Inclusion of pre-briefing sessions for Councillors prior to Ordinary meetings (3.32 – 3.37)
- Introduction of Public forums before each ordinary meeting of council for public submissions to be made (Part 4)
- Modes of Address
- Cancellation of meetings due to a lack of quorum or unsafe circumstances to get to a meeting e.g. natural disaster (5.14 & 5.15)
- Order of business for ordinary meetings (8.1 & 8.2)
- The identification of funding sources must be included in motions that require the expenditure of funds. If this is not included, then the motion or amendment must be deferred until a report from the GM is available. (10.9)
- All voting at council meetings must be recorded in the minutes of the meeting with the names of councillors who voted for or against a motion (11.11 and 20.24 – For Committees)
- Dealing with items by exception – approval en bloc unless councillors wish to speak to an item. (Part 13)
- Expulsion from meetings. (15.14-15.16)
- Notice of Motion to alter or rescind a resolution relating to a DA (17.10)
- Ability to alter or rescind a resolution moved at the same meeting, subject to procedures (17.12) and Recommitting resolutions to correct an error (17.5-17.20)
- Time limits on Council Meetings (Part 18)

Sections in our current Code that are not in the prescribed Model Code

There is nothing prohibiting the Council having provisions that go above and beyond the Model Code of Meeting Practice or further clarify certain elements. The provisions listed below are not included in the Model Code of Meeting Practice that has been prepared but have long been included in Council’s Code of Meeting Practice and it is proposed that they will remain.

- Suspension of standing orders
- Urgent reports
- Liability of Councillors, Employees and other persons and Proceedings in Cases
Next Steps

If the Council adopts the recommendations contained in this report, the Council’s Code of Meeting Practice as attached will be exhibited for at least 28 days and will provide members of the community at least 42 days to comment. After this period, a final report including any feedback received will be presented to an Ordinary Council meeting in May for adoption.

Conclusion

The Model Code of Meeting Practice for Local Councils in NSW is made under s360 of the Local Government Act 1993 and the Local Government (General Regulation) 2005. All Councils are required to adopt a Meeting Code of Practice, by the 14 June 2019, that is as least as onerous as the mandatory provisions set down by the OLG.

RECOMMENDATION

That:

1. The information contained in the report on Code of Meeting Practice be received
2. The Draft Code of Meeting Practice be placed on public exhibition for 28 days.
3. The General Manager be authorised to make any minor administrative changes prior to exhibition.

ATTACHMENTS/APPENDICES

1. Draft Model Code of Meeting Practice 37 Pages Attachments Included
Date of Meeting: Monday 8 April 2019

Report Title: Outdoor Dining Review

Attachments:
- Outdoor Dining Policy
- Outdoor Dining Guidelines
PENRITH CITY COUNCIL

POLICY DOCUMENT

POLICY NAME
Outdoor Dining Policy

DATE ADOPTED
Click here to enter text.

ECM NUMBER
Click here to enter text.

REVIEW DATE
November 2021

RELATED DOCUMENTS
Outdoor Dining Guidelines

Purpose
The purpose of the Policy is to establish a framework under which Council will issue approvals for outdoor dining and to make it easy for restaurants to expand their existing dining activities outdoors onto the public footpath or within a public space or park adjoining an existing business where it is safe and appropriate.

Policy Statement
Penrith City Council encourages the use of public places for outdoor dining as a means of stimulating business growth and to create vibrant local communities that enhance the amenity of public spaces and promotes social activity.

Scope
The Policy applies to all land within the Penrith City Council Local Government Area that is used as a public footpath, space or park.

A well-managed footway promotes both equitable access and supports local business by creating places and streets that are amenable and attractive to all visitors.

The aim of the policy is to provide a framework for determining the suitability of a site and meeting the ongoing operational requirements.

The objectives of the policy are to:

- facilitate the appropriate use of outdoor dining on footways or within public spaces or parks whilst maintaining an equitable and safe thoroughfare around outdoor dining areas for all users.
- ensure the design of the outdoor dining space, furniture, fixtures and day-to-day requirements facilitate improvement to the local character, street vitality, amenity and economic viability.
- ensure outdoor dining activities avoid nuisance, endangerment or inconvenience and residents can continue to enjoy the amenity of their neighbourhood.
• ensure compliance with relevant legislation, Council’s Policy and Guidelines and insurance requirements.

Part 1
Approvals

NSW legislation sets out the following approvals required for a premise to have outdoor dining:

1) outdoor dining on the public footway requires an approval under the Roads Act 1993

2) outdoor dining on community land, such as a park or reserve requires approval under the Local Government Act 1993

3) outdoor dining that is on Crown land requires an approval under the Crown Land Management Act 2016, and

4) outdoor dining on land that is not exempt development under the State Environmental Planning Policy 2008 requires development consent under the Environmental Planning and Assessment Act 1979.

Compliance with legislation and regulations

The State Environment Planning Policy (Exempt and Complying Codes) 2008 Subdivision 20A Footpaths – Outdoor Dining makes footway dining an exempt development if it is:

a) not associated with a pub or a small bar, and

b) carried out in accordance with an approval granted under section 125 of the Roads Act 1993, including in accordance with any hours of operation to which the approval is subject, and

c) carried out in accordance with any approval granted under section 68 of the Local Government Act 1993.

Section 125 of the Roads Act 1993 states that:

1) A council may grant an approval that allows a person who conducts a restaurant adjacent to a footway of a public road (being a public road that is vested in fee simple in the council) to use part of the footway for the purposes of the restaurant.

2) An approval may be granted on such conditions (including conditions as to payments in the nature of rent) as the council determines.

3) An approval may not be granted in respect of a footway of a classified road except with the concurrence of RMS.

4) The term of an approval is to be such period (not exceeding 7 years) as is specified in the approval.

5) An approval lapses at the end of its term or, if the part of the footway the subject of the approval ceases to be used for the purposes of a restaurant, when that use ceases.

The policy is to be adopted as an approved local policy under section 161 of the Local Government Act 1993. In doing so, it will allow outdoor dining to be carried out on community land adjoining an existing business, as well as the footway.
Part 2
Approval Requirements
Outdoor Dining Applications will be assessed against four permit requirements detailed in the supporting guidelines. Applications must demonstrate and meet all four permit requirements before approval will be granted.

The four permit requirements consist of
1. Location
2. Design and functionality
3. Neighbourhood amenity
4. Legal and Compliance

Council has absolute discretion to approve or refuse outdoor dining permits on land owned or controlled by Council.

Part 3
Guidelines
Guidelines for outdoor dining have been prepared to implement the policy objectives. Council has absolute discretion to approve or refuse outdoor dining permits/licences on land owned or controlled by Council.

Variations to the guidelines
The Outdoor Dining Guidelines will be reviewed bi-annually, and variations will be at the Property Development Manager’s discretion.

Responsibility/Accountability
- Council’s Property Development Department is responsible for the provision and management of Outdoor Dining Permits on a road or within a public space, including processing applications.
- Council’s Environmental Health and Compliance Department (Rangers) are responsible for the enforcement of outdoor dining permits.

Consultation and notification
All Outdoor Dining applications made for use of Community Land will be notified and exhibited as per section 47A of the Local Government Act 1993.

Consultation
The policy has been developed following consultation with:
- Liquor & Gaming NSW
- Vision Australia and Guide Dogs NSW
- Roads and Maritime Services (RMS)
- St Marys Town Centre and Penrith CBD Corporation, and
- Council’s Access Committee.
Related Documents and Legislation

- Local Government Act 1993
- Roads Act 1993
- Penrith Local Environmental Plan 2010
- Penrith Development Control Plan 2014
- Disability Discrimination Act 1992
- Australian Standards
- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
- Penrith City Council’s Smoke Free Outdoor Areas Policy

References and acknowledgments

The following documents were reviewed in preparing the policy and attached guidelines:

- North Sydney Council Outdoor Dining and Goods Display Policy 2008 and Outdoor Dining and Goods on Footpath Policy 2013
- City of Parramatta Outdoor Dining Policy 2012
- Blacktown City Council Outdoor Dining Policy 2016
- City of Sydney Outdoor Dining Guidelines and Outdoor Dining Policy 2016
OUTDOOR DINING GUIDELINES
CONTENTS

INTRODUCTION .................................................................................................................. 4
SECTION 1 - PERMIT REQUIREMENTS ........................................................................... 5
LOCATION ......................................................................................................................... 6
PERMIT REQUIREMENTS .................................................................................................. 6
OUTDOOR DINING LOCATION ......................................................................................... 6
MINIMUM CLEARANCES ................................................................................................. 7
LOCATION PLAN ............................................................................................................. 10
EXPANSION ONTO NEIGHBOURING AREAS ................................................................. 11
BOUNDARY MARKERS .................................................................................................. 11
PUBLIC ASSETS ............................................................................................................. 12
SPECIAL PLACES ......................................................................................................... 12
CONSULTATION AND NOTIFICATION ....................................................................... 12
DESIGN AND FUNCTIONALITY ...................................................................................... 13
PERMIT REQUIREMENTS ............................................................................................... 13
FURNITURE .................................................................................................................... 13
BARRIERS ...................................................................................................................... 14
WEATHER PROTECTION ............................................................................................... 15
HEATING ......................................................................................................................... 15
SIGNAGE AND BRANDING ........................................................................................... 16
NEIGHBOURHOOD AMENITY ....................................................................................... 17
PERMIT REQUIREMENTS ............................................................................................... 17
MUSIC ............................................................................................................................ 17
WASTE ........................................................................................................................... 17
HOURS OF OPERATION ................................................................................................. 17
LEGAL & COMPLIANCE ............................................................................................... 18
PERMIT REQUIREMENTS ............................................................................................... 18
LEGISLATION ................................................................................................................ 18
STANDARDS .................................................................................................................. 18
INSURANCE .................................................................................................................. 18
ENFORCEMENT ............................................................................................................ 18
OPERATING WITHOUT APPROVAL ................................................................................ 19
SMOKE-FREE ENVIRONMENTS ....................................................................................... 19
LIQUOR LICENSING ...................................................................................................... 19
SECTION 2 - CONDITIONS OF APPROVAL ................................................................. 20
APPLICATION REQUIREMENTS ............................................................................. 20
OUTDOOR DINING PERMIT ................................................................................. 20
PERMIT PERIOD .................................................................................................. 20
PERMIT DISPLAY .................................................................................................. 21
CHANGE OF BUSINESS OWNER ........................................................................... 21
TERMINATING, SUSPENDING, OR AMENDING AN OUTDOOR DINING PERMIT .... 21
BAD WEATHER ...................................................................................................... 21
FAILING TO REMOVE AND REINSTATE .............................................................. 21
SECTION 3 - SPECIAL PLACES ............................................................................ 22
TRIANGLE PARK .................................................................................................. 22
LINEAR PLAZAS .................................................................................................. 25
SECTION 4 - APPLICATION PROCESS ................................................................ 28
KEY TERMS ......................................................................................................... 29
AMENDMENTS ..................................................................................................... 30
VERSION HISTORY ............................................................................................... 30
INTRODUCTION

Penrith City Council recognises the social and economic benefits outdoor dining can bring. We encourage outdoor dining where appropriate to help create vibrant local communities and provide additional opportunities for food-based businesses to thrive.

However, Council needs to balance the competing needs of different users of our footpaths and other public areas. Safe access for pedestrians, including those who have vision impairment, mobility challenges or may be pushing strollers (for example) is important, as is the safety of customers and staff using the area.

Our Outdoor Dining Policy and Guidelines try to achieve the right balance.

WHAT APPROVALS ARE REQUIRED
To be eligible for an outdoor dining permit your business must operate in conjunction with an approved food or drink premises including hours of operation and meet all four permit requirements outlined in these guidelines.

All outdoor dining on public land requires Council approval. This approval is sought through the completion of an Outdoor Dining Application.

Where outdoor dining is proposed in association with a hotel, pub or small bar, a development application must also be submitted before lodging the outdoor dining application form.

If you are not sure which approvals you require, please contact Council’s Property Development Department before submitting your application.

If the outdoor dining area is located on the footway adjoining a state road, the application will be referred to the Roads and Maritime Service (RMS) as part of the assessment process.

WHERE THESE GUIDELINES APPLY
These guidelines apply to all land within the Penrith City Council Local Government Area that is used as a public footpath, space or park:

These guidelines do not apply to the following land types:

- Outdoor dining that is located on private land requires approval under the Environmental Planning and Assessment Act 1979.

HOW TO USE THESE GUIDELINES
This document contains useful guidelines that will help business owners of restaurants to decide whether outdoor dining is an appropriate and feasible addition to their business.

These guidelines:

- are to be read in conjunction with Council's Outdoor Dining Policy
- provide information for the public and applicants seeking to use footway for the purpose of outdoor dining under the Roads Act 1993 or the Local Government Act 1993 for other public spaces, and
- provide guidance for Council in determining applications for use of public land for outdoor dining.
SECTION 1 - PERMIT REQUIREMENTS

Outdoor Dining Applications will be assessed against four permit requirements outlined in these guidelines. Applications must demonstrate and meet all four permit requirements before approval will be granted.

<table>
<thead>
<tr>
<th>Four Permit Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>3</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>4</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

Further details on the four permit requirements and their objectives are detailed below.
LOCATION

Objective: Ensure the location is appropriate for outdoor dining while maintaining an equitable and safe thoroughfare for all users of the street or public area.

PERMIT REQUIREMENTS
An outdoor dining area is only permitted where:

- the outdoor dining area directly relates to the operation of an existing approved adjoining food business and operates on the same basis
- the applicant is the owner of the business
- the public space is wide enough to accommodate the outdoor dining area while still maintaining a clear pathway of travel for all pedestrians
- the outdoor dining area is not located in the middle of the footpath or public space
- the outdoor dining area does not obstruct pedestrian movement, the function of the public domain, access into buildings or maintenance operations
- the outdoor dining area does not obstruct designated fire exits and fire hydrants or emergency access areas/routes
- the outdoor dining area does not appear to privatise the public domain
- the outdoor dining area is integrated with the existing streetscape, pedestrian circulation and traffic safety
- an equitable and safe thoroughway is maintained for all users, and
- the safety and convenience of road users are not compromised.

OUTDOOR DINING LOCATION
Outdoor dining areas are to provide a safe and enjoyable dining experience for customers, while keeping footways and public spaces safe and accessible for all users.

In considering the size and location of an outdoor dining area, first consideration will be the safe, dignified and equitable movement of pedestrians.

The location and size of an outdoor dining area will depend on:

- the location of adjacent outdoor dining areas
- the space required for outdoor dining furniture and the circulation of customers, and
- nearby infrastructure such as public seats, bins, trees etc.

To meet the requirements of the Australian Standards and the Disability Discrimination Act, the preferred location for seating in an outdoor dining area is along the kerb, away from the building shoreline to provide unobstructed continuous clearance along the building shoreline.

Building shorelines should be clear of obstructions or projections to provide the best possible guidance line for safe and dignified travel for all users. People who are blind or vision impaired often rely on what is known as ‘shorelining,’ using a white cane to detect tactile surfaces and features to maintain a direction of travel and identify hazards.
The most safe and effective location for the shoreline is along the building line for a number of reasons, including that:

- building lines are frequently used to provide a line of direction to access street crossing points at intersections
- kerbsides have obstacles including street signs, rubbish bins, bus stops and bicycle racks
- kerb edges are difficult for even the most skilled cane user to follow and are often interrupted by cuts for access ramps, and
- a straight line of travel in the centre of the footway is difficult to maintain for people who are blind or have significantly low vision.

In circumstances where there is insufficient width to accommodate kerbside dining, Council may consider alternative configurations based on their merit and the principles contained in the Outdoor Dining Policy and Guidelines. The merit assessment will take into consideration access and safety for all users of the space (including pedestrians, employees and customers) and other relevant site constraints.

Should an applicant wish to apply for outdoor dining along the building shoreline, they are required to demonstrate they have provided adequate access and safety for all users by supplying an independent access report with their application.

An outdoor dining area may be restricted where it obstructs the ability for pedestrians to see oncoming traffic and/or the ability of motorists to observe pedestrian movements.

Sufficient space is required around each table to reduce potential congestion, allow safe movement and prevent diners or furniture encroaching into the pedestrian or kerb clearances. Minimum circulation space to cater for diners, tables and chairs is generally set at one square metre per person.

Table 1: Minimum circulation space

<table>
<thead>
<tr>
<th></th>
<th>Min. width</th>
<th>Min. length</th>
<th>Min. area</th>
</tr>
</thead>
<tbody>
<tr>
<td>2-person table and 2 chairs</td>
<td>1m</td>
<td>2m</td>
<td>2m²</td>
</tr>
<tr>
<td>3-person table and 3 chairs</td>
<td>1.5m</td>
<td>2m</td>
<td>3m²</td>
</tr>
<tr>
<td>4-person table and 4 chairs</td>
<td>2m</td>
<td>2m</td>
<td>4m²</td>
</tr>
</tbody>
</table>

**MINIMUM CLEARANCES**

Table 2: Minimum footway width for outdoor dining (building shoreline to face of the kerb)

<table>
<thead>
<tr>
<th>Minimum footway width</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.4 metres</td>
</tr>
</tbody>
</table>

Table 3: Minimum pedestrian clearances from outdoor dining area

<table>
<thead>
<tr>
<th>Footway width</th>
<th>Pedestrian clearance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 4 metres</td>
<td>1.8 metres</td>
</tr>
<tr>
<td>Between 4 and 6 metres</td>
<td>2 metres</td>
</tr>
<tr>
<td>Above 6 metres</td>
<td>3 metres</td>
</tr>
</tbody>
</table>
Table 4: Minimum clearances from existing street infrastructure

<table>
<thead>
<tr>
<th>Object</th>
<th>Minimum clearance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tree</td>
<td></td>
</tr>
<tr>
<td>Public seat</td>
<td></td>
</tr>
<tr>
<td>Phone Box</td>
<td></td>
</tr>
<tr>
<td>Essential service</td>
<td>0.5 metres</td>
</tr>
<tr>
<td>Rubbish bin</td>
<td></td>
</tr>
<tr>
<td>Other similar objects</td>
<td></td>
</tr>
<tr>
<td>Fire hydrant</td>
<td></td>
</tr>
<tr>
<td>Emergency exit door</td>
<td>1 metre</td>
</tr>
<tr>
<td>Bicycle rack</td>
<td></td>
</tr>
<tr>
<td>Post Box</td>
<td></td>
</tr>
<tr>
<td>Bus stop/zone</td>
<td>1.5 metres</td>
</tr>
<tr>
<td>Taxi stand</td>
<td></td>
</tr>
</tbody>
</table>

When applying for outdoor dining along the kerbside of the footway, it is important to consider the safety of customers from traffic and to allow room for access to cars parked along the kerb.

Table 5: Minimum distance from the face of the kerb

<table>
<thead>
<tr>
<th>Object</th>
<th>Minimum setback</th>
</tr>
</thead>
<tbody>
<tr>
<td>When next to normal parking conditions, or</td>
<td>0.6 metres</td>
</tr>
<tr>
<td>next to traffic moving at 20km/hour or less</td>
<td></td>
</tr>
<tr>
<td>When next to a loading zone</td>
<td>0.9 metres</td>
</tr>
<tr>
<td>When next to an accessible parking bay</td>
<td>1.6 metres</td>
</tr>
<tr>
<td>When next to an RMS classified road, or traffic</td>
<td>2 metres</td>
</tr>
<tr>
<td>moving at 20km/hour or more</td>
<td></td>
</tr>
<tr>
<td>When next to an emergency vehicle bay</td>
<td>2.5 metres</td>
</tr>
</tbody>
</table>

Table 6: Maintaining line of sight at intersections

<table>
<thead>
<tr>
<th>Corner Alignment</th>
<th>Minimum setback</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum distance from the building corner at</td>
<td>2 metres</td>
</tr>
<tr>
<td>an intersection</td>
<td></td>
</tr>
</tbody>
</table>

Table 7: Minimum pedestrian crossing clearances

<table>
<thead>
<tr>
<th>Pedestrian Facility</th>
<th>Minimum setback</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adjacent to a pedestrian crossing</td>
<td>2 metres from the face of the kerb</td>
</tr>
<tr>
<td>Within 7.5m of an approach to a marked pedestrian crossing (including zebra crossing</td>
<td>2 metres from the crossing point</td>
</tr>
<tr>
<td>s and pedestrian refuges)</td>
<td></td>
</tr>
<tr>
<td>Within 2m of an approach to a signalised pedestrian crossing</td>
<td>2 metres from the crossing point</td>
</tr>
</tbody>
</table>
Figure 1: Minimum pedestrian crossing clearances when approaching an unsignalised/zebra pedestrian crossing with a kerb extension.

Figure 2: Minimum pedestrian crossing clearances when approaching an unsignalised/zebra pedestrian crossing without a kerb extension.
Figure 3: Minimum pedestrian crossing clearances when approaching a signalised pedestrian crossing

LOCATION PLAN
Applicants must provide a plan to a scale of either 1:100 or 1:200 on A4 paper. The plan must include:

- the address of the premises
- the boundary line of the premises and the adjoining premises
- the location of doorways and service openings
- the location of the proposed outdoor dining area including the width and length of the area and total square metres
- clearances around the outdoor dining area including from the face of the kerb and the pedestrian clearance
- the total width of the footpath/site
- any existing street infrastructure labelled, including trees, bench seats, bins, street signage or any other fixed structures
- location of taxi and bus stops, parking areas, loading zones, pedestrian crossings and street intersections (if any), and
demonstrated adherence to the minimum clearances, property boundaries and line of sight outlined in these guidelines.
Figure 4: Sample location plan

Outdoor Dining Area
Sample Café, 8 Smith St Sydney
Total Area = 8.4m²

Adjoining Shop
3 Smith St
Sydney

Sample Café
1 Smith St
Sydney

Building Shoreline

4m Footway width

2m Pedestrian clearance

0.5m Front of kerb clearance

6m

2m Intersection clearance

Front of kerb

Sample Street

EXPANSION ONTO NEIGHBOURING AREAS
Expansion onto the public footway of the adjoining premises frontage is permitted if approval is obtained from the adjoining business owner and Council, unless the applicant has an on-premises liquor licence and serves liquor outdoors, in which case the outdoor dining must remain within the business frontage.

BOUNDARY MARKERS
Boundary markers create a visual aid to clearly define the approved outdoor dining area. They assist with easy setup of furniture for business owners and staff and assist Council’s Rangers, who proactively monitor outdoor dining areas.

Council will supply and install boundary markers along the footway to identify the boundary of the approved outdoor dining area. The markers must not be removed, or their position altered without Council’s prior written consent.
PUBLIC ASSETS
The removal or relocation of any Council asset such as rubbish bins or existing street furniture is subject to Council approval and will be at the applicant's cost. The removal/relocation of any other asset, such as RMS Traffic control boxes, Sydney Water drainage/sewage pits and Telstra telephone boxes, will not be permitted unless justification of public benefit can be made, and approvals obtained from the relevant authorities. Works will be at the applicant's cost.

SPECIAL PLACES
Some places have special characteristics that require more detailed guidelines. Applications for outdoor dining in a nominated special precinct are to be consistent with the detailed guidelines supplied in section 3.

CONSULTATION AND NOTIFICATION
Public consultation can help identify problems that could arise during operation of an outdoor dining area.

All Outdoor Dining applications made for use of Community Land will be notified and exhibited as per section 47A of the Local Government Act 1993.

Applications will not be notified or exhibited when they are located on public footway.
DESIGN AND FUNCTIONALITY

Objective: Ensure the design of the outdoor dining space, furniture, fixtures and day-to-day requirements facilitate improvement to the local character, street vitality, amenity and economic viability.

PERMIT REQUIREMENTS

An outdoor dining area is only permitted where:

- a high standard of public safety and amenity is established and maintained
- it is attractive, inviting and contributes to the amenity of the locality
- the outdoor dining area has regard to the existing urban character, cultural significance and street quality
- furniture is of high quality, durable, suitable for outdoor use and satisfies relevant Australian Design Standards
- outdoor furniture makes a positive contribution to the street environment and integrates well within the surrounding streetscape
- the business ensures the area is cleaned and maintained on a regular basis. This includes ensuring tables are promptly cleared and all waste generated by the business and its customers is picked up and disposed of properly, and
- furniture and fixtures are easy to clean and maintain.

FURNITURE

Seating and tables are to:

- be safe for users and not have any sharp edges, hinges or other moving parts that could cause a hazard to users
- allow access for all users, including those who use wheelchairs or mobility aids
- be non-reflective
- be strong, durable, weather resistant and designed for commercial outdoor use
- not damage the footway or Council’s property
- be able to be readily removed and stored within the associated premises, and
- be capable of being easily stacked or folded for storage (unless otherwise permitted).

Applicants should select a colour scheme for outdoor furniture that complements the streetscape character. The use of mismatched tables and chairs is not permitted. Furniture must be of the same “family group” to ensure visual unity and enhancement of the surrounds. Domestic style plastic furniture is not permitted.

All structures including tables, chairs, umbrellas, barriers etc. under these guidelines must be temporary and removed and stored inside the premises at the end of each day. No temporary furniture is to be left outside when the premises is closed.

To install permanent structures in a public space (including but not limited to barriers, planter boxes, shade structures or an anchoring system), the applicant must obtain further approval from Council under section 126 of the Roads Act 1993. For enquiries, contact Council’s Property Development Department.

Council’s street furniture is provided for community use and shall not be used as part of an outdoor dining area.
BARRIERS
The outdoor dining area must be defined by a vertical barrier. Examples of barriers include temporary café style barriers and planter boxes. Barriers must:

- be temporary and of sturdy construction
- be strong, durable, weather resistant and designed for commercial outdoor use
- have a minimum height of 0.6m and a maximum height of 1.0m (this includes plants contained in planter boxes)
- have a maximum gap of 150mm from the pavement top the underside of the barrier
- have no sharp edges or protruding feet that may cause a trip hazard
- be uniform in appearance where there is more than one barrier or planter proposed
- be used horizontally along the kerbside and at each end of the approved area (see figure 5), and
- not be a rope or chain.

Road safety barriers may be permitted where required for safety reasons. Such barriers must meet the Australian Standard AS/NZS3845:1999 – Road Safety Barrier Systems. This may include barricades, safety rails or bollards. The applicant must obtain further approval from Council under section 126 of the Roads Act 1993. For enquiries, contact Council’s Property Development Department.

Figure 5: Location of barriers
WEATHER PROTECTION
Outdoor dining should enrich the pedestrian experience and public life. It is therefore important that the area presents an open, inviting image, which is easily accessible by the public.

Overhead structures for weather protection may be placed in the outdoor dining area as long as they:

- have a minimum clearance height of 2 metres from the ground for pedestrian movement and safety
- have vents at the highest point to reduce wind loading
- are collapsed or removed during high winds to ensure public safety
- are set back a minimum of 0.6m from the face of the kerb
- are uniform in appearance, where there is more than one umbrella
- do not obstruct sight to street signs including regulatory and warning signage
- do not obstruct sight to signal lanterns, and
- are located within the approved outdoor dining area and do not either overhang the boundary or in any way encroach upon adjacent pedestrian or traffic thoroughfares.

Umbrella bases should be safe, simple and compact to avoid causing a trip hazard for pedestrians.

Drop down blinds are permitted on overhead structures as long as they:

- are made of clear, transparent and colourless vinyl panels
- are of a contemporary design, using high quality products
- do not fully enclose the area
- are located on a maximum of three sides of the outdoor dining area
- are installed in accordance with the requirements of the manufacturer
- are only used during bad weather (to avoid rain, cold or wind)
- are replaced if torn or damaged
- are maintained in a clean and clear condition, and
- are raised or removed during fine weather and out of business hours.

If blinds are to be secured to the footway at the base during use, further approval is required by Council under section 126 of the Roads Act 1993. For enquiries, contact Council’s Property Development Department.

HEATING
Outdoor heaters will only be permitted where the safety of people and property is not compromised. Outdoor heaters must:

- comply with the laws and requirements relating to them (including, without limitation, AS 4566-2004 (2017) radiant gas heaters for outdoor and non-residential indoor use and AS/NZS 1596:2014, the storage and handling of LP gas)
- be certified by the Australian Gas Association
- be used in accordance with the manufacturer’s instructions
- be placed clear of all combustible materials and not placed under fabric umbrellas or a fixed canopy unless there is a clear distance above and to the sides of the heater of a minimum of 0.5m or the manufacturer’s specified distance, whichever is the greater
- be placed in the centre of the umbrella (highest point)
- turn off automatically if overturned to prevent injury to people and damage to property
- be turned off when the outdoor dining area is not in use, and
- be stored safely within the premises when not in use.

Table top heaters and open flames are not permitted.

**SIGNAGE AND BRANDING**

The name, logo and other branding of the food or drink premises or an associated product may be placed on an umbrella or barrier only if it:

- involves only one business name or product which is a core part of the business and is supplied by the restaurant to its customers being advertised in each seating area, and
- is a minor and ancillary element of the design, comprising no more than one third of the surface area and does not have an adverse impact on the appearance of the seating area or the streetscape.

No other incidental advertising including banners, a-frame signs or menu boards are permitted. Signage and branding is not permitted on other items of furniture.

For further information regarding signage requirements, see Penrith Development Control Plan 2014, State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 and State Environmental Planning Policy No 64—Advertising and Signage.
NEIGHBOURHOOD AMENITY

Objective: Ensure outdoor dining activities avoid nuisance, endangerment or inconvenience and residents can continue to enjoy the amenity of their neighbourhood.

PERMIT REQUIREMENTS
An outdoor dining area is only permitted where:

- noise is appropriately managed and is not a nuisance to customers, surrounding businesses, pedestrians, motorists and residents and complies with relevant noise pollution regulations.

MUSIC
While premises want to ensure their venue has a vibrant ambience, it is important to make sure that noise is appropriately managed.

Entertainment and amplified music are not permitted in outdoor dining areas.

WASTE
Dining venues generate a lot of rubbish. Not only does cleanliness help with environmental sustainability, it contributes to the overall aesthetic of a business and an inviting environment is always more likely to attract customers.

Waste and litter is to be well managed by:

- removing waste promptly from the outdoor dining area
- disposing of any waste properly (public litter bins are not to be used for the disposal of waste from outdoor dining areas), and
- not using disposable tableware in the outdoor dining area.

HOURS OF OPERATION
The hours of operation for an outdoor dining area cannot exceed the hours permitted under the Development Consent for the operation of the associated business. The hours of operation may be limited, if it is considered that the amenity of the surrounding area or the safety of pedestrians or outdoor diners may be adversely affected.
LEGAL & COMPLIANCE

Objective: Ensure compliance with relevant legislation, Council’s Policy and Guidelines and insurance requirements.

PERMIT REQUIREMENTS

An outdoor dining area is only permitted where:

- the business owner complies with the conditions of Council’s policy, guidelines and all other relevant local, state and federal requirements for food-based businesses.

LEGISLATION

These guidelines have been developed under the following legislation:

- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 – Subdivision 20A Footpaths – outdoor dining
- Sections 125 and 126 of the Roads Act 1993
- Local Government Act 1993
- Penrith Local Environmental Plan 2010
- Disability Discrimination Act 1992
- Smoke-free Environment Act 2000

STANDARDS

These guidelines have been developed under the following standards:

- Disability (Access to Premises — Buildings) Standards 2010
- Australian Standards 2009
  - AS 1428.1 and AS 1428.2 Design for access and mobility
  - AS/NZS 2890.6 Off-street parking for people with disabilities
  - AS 1742.10 Pedestrian control and protection

INSURANCE

The business owner is required to obtain and maintain a public liability insurance policy at all times to indemnify Council against any claims, suits, charges, or whatsoever, for damages or injury in any way arising out of or in connection with the use of the land by the permit holder.

The Public Liability Insurance Policy must have a minimum of $20 million cover and have Penrith City Council listed as an Interested Party.

The policy is to be kept current at all times by the permit holder and produced to Council within 2 business days of a written request.

The operator will need to provide Council with a certificate of currency:

- with their outdoor dining application, and
- at each annual policy renewal.

ENFORCEMENT

In order to ensure a safe and attractive outdoor dining environment, permit holders must comply with all requirements set out in the Outdoor Dining Policy and Guidelines.

Compliance checks will be carried out to ensure businesses are:

- keeping all outdoor furniture within the nominated site area and meeting the location requirements of their approval
- managing the flow of customers, staff and the general public to ensure there are no obstructions of the footway or roadway
- fulfilling the requirements of the permit and ensuring the outdoor dining area makes a positive contribution to the amenity of the surrounding area
- maintaining outdoor dining furniture to ensure it is in safe working order, including chairs, tables, umbrellas, barriers and heating.
- minimising noise at all times, and
- maintaining a current public liability insurance policy.

Authorised Council Officers may order the removal of any items on the footway that are not part of the outdoor dining permit, or otherwise permitted under another approval or policy of Council.

**OPERATING WITHOUT APPROVAL**
The use of an outdoor dining area without approval, or not in accordance with an approval is an offence and may result in the issue of an infringement notice or other regulatory action.

**SMOKE-FREE ENVIRONMENTS**
The Smoke-free Environment Act 2000 makes a number of outdoor public places smoke-free. Smoking is not permitted in a commercial outdoor dining area, being:

- a seated dining area, or
- within 4 metres of a seated dining area on licensed premises, restaurants or cafés

Customers are to be able to consume food and drink in the outdoor dining area at all times. Designated smoking areas are not permitted.

Failure to comply with these requirements may lead to the termination of an outdoor dining permit.

**LIQUOR LICENSING**
Where outdoor dining is proposed in association with a hotel, pub or small bar, a development application must also be submitted before lodging the outdoor dining application form.

If the outdoor dining area relates to an existing licensed premises, an application must be made with Liquor & Gaming NSW to change the licensed boundaries to include the outdoor dining area within the overall licensed boundaries.

It is the applicant/ licensee’s responsibility to hold the appropriate licence to be able to sell and supply liquor in the outdoor dining area as required by Liquor & Gaming NSW.

If the approved outdoor dining area is located within an Alcohol-Free Zone the applicant must demonstrate clear delineation and control of the licensed area from the alcohol-free zone.
SECTION 2 - CONDITIONS OF APPROVAL

Council encourages outdoor dining where appropriate to help create a vibrant city with thriving local businesses. However, we have to consider public safety and the competing needs of different users of our footpaths and public areas. Conditions of approval try to achieve the right balance and make sure that outdoor dining areas are well managed and add to the appeal of the area they are in.

APPLICATION REQUIREMENTS

Submitting the correct documents with the outdoor dining application helps Council assess the application properly and efficiently.

The following documents must be submitted for assessment:

- a completed Outdoor Dining Application Form (available from Council’s website)
- a copy of the Public Liability Insurance Policy for the business with a minimum of $20 million cover and with Penrith City Council listed as an Interested Party
- a location plan (see Section 1 of these guidelines)
- details and images showing any furniture, umbrellas, heaters, barriers etc.
- Outdoor Dining Adjoining Business Permission (if applicable).

OUTDOOR DINING PERMIT

A permit will be issued to each applicant if they satisfy the requirements as detailed in Council’s Policy and Guidelines. The permit will detail additional conditions of approval that apply to the business, its location and the outdoor dining activities.

The permit holder will be responsible for ensuring the outdoor dining area is operated in accordance with the requirements outlined in the Policy, Guidelines and Permit, and complies with the details submitted as part of the application.

Council has absolute discretion to approve or refuse outdoor dining permits on land owned or controlled by Council.

PERMIT PERIOD

An Outdoor Dining Permit is valid for five years from the date of issue, with an option for it to be renewed, subject to negotiation with Council and on completion of a new Outdoor Dining Application Form. If renewal is not made by this date, outdoor dining is to cease until a valid permit is obtained.

In some circumstances Council may grant a trial period of up to 12 months to help determine a location’s suitability for an outdoor dining permit. Following the trial period, Council may vary design, operations and conditions of an approved permit on renewal or revoke the permit if it is deemed by Council to be an unsuitable site.

PERMIT FEE

Relevant fees and charges are outlined in Council’s Schedule of Fees and Charges available on our website. These fees and charges are reviewed each year and the annual permit fee will depend on the location and size of the outdoor dining area.
PERMIT DISPLAY
Permit holders must display their permit sticker in a prominent position on the front window and a copy of the Outdoor Dining Permit and approved location plan must be kept at the business address and made available to authorised Council Officers on request.

CHANGE OF BUSINESS OWNER
Permits are granted to the owner of the business and not the business or property. This means, when the owner of a business with approval for outdoor dining changes, the permit is no longer valid.

The new business owner must apply for a new outdoor dining permit by completing an Outdoor Dining Application Form and submitting it to Council for review.

TERMINATING, SUSPENDING, OR AMENDING AN OUTDOOR DINING PERMIT
The permit holder should be aware that Council can terminate, suspend or amend a permit for outdoor dining if:

- the conditions of the approval/permit are breached
- the use of the area for outdoor dining is causing public safety or public access to be compromised
- the area is needed for works
- the area is needed for a special event, or
- the area is needed to manage an increase in pedestrians.

Where Council needs to terminate, suspend or amend a permit for outdoor dining, the permit holder will be given a minimum of 14 days’ notice of Council’s intention.

If the suspension is temporary due to works or a special event, Council will advise the permit holder of the expected timeframe of the proposed works/event and reduce the outdoor dining permit fee on a pro rata basis during the planned period of works/ event.

BAD WEATHER
Council will not compensate permit holders in instances where an outdoor dining area cannot be used due to bad weather.

Businesses are not permitted to move the outdoor dining furniture out of an approved outdoor dining area into another area, even during bad weather. This is to ensure that pedestrian access and safety is maintained on the footway at all times.

FAILING TO REMOVE AND REINSTATE
If the permit holder fails to remove furniture and/or reinstate the footway to its original condition within 14 days from the date of expiration or cancellation of the outdoor dining permit, Council may carry out the works at the permit holder’s expense.

If the permit holder fails to remove furniture or other property from the outdoor dining area following the expiration or cancellation of their permit, Council may remove and dispose of such property, at its discretion, if not claimed within 28 days of notification.
SECTION 3 - SPECIAL PLACES

Some public areas in the centres of Penrith and St Marys are considered ‘Special Places’. Council recognises the special role these areas play in bringing our night-time economy to life and encouraging people to keep coming back.

More specific guidelines may apply to these areas over and above the general Outdoor Dining Guidelines. The general Guidelines also apply to the Special Place areas except where specifically noted below.

The following guidelines detail the requirements for outdoor dining in Triangle Park and the Linear Plazas in High St, Penrith.

While outdoor dining areas are fixed within the ‘Special Places’, there is a degree of flexibility in the other public spaces between and around the dining areas in the ‘Special Places’. These public spaces may also be programmed to include street vendors, community events, performances etc.

TRIANGLE PARK

Triangle Park is a pedestrian thoroughfare, and outdoor dining should not compromise pedestrian safety, accessibility and comfort. Figure 6 shows indicative maximum areas permitted for outdoor dining within Triangle Park. Business operators may obtain permits to operate in an area less than the maximum. Operating beyond the boundaries into public open space as noted on the map is not permitted. This is to ensure there is an appropriate mix of public use areas within Triangle Park.

COUNCIL OWNED UMBRELLA AND CANOPY REQUIREMENTS

Council has provided one umbrella and a canopy (equivalent to seven umbrellas) in Triangle Park as part of the 2018 High Street upgrade. These are for use by the adjacent businesses for outdoor dining purposes only. They may be used by the general community when outdoor dining is not in operation.

Damage caused to the canopy or umbrellas due to negligence of the business owner or its customers, is to be reimbursed to Council for the full expense of the repair and/or replacement.

The addition of other elements (e.g. fairy lights) or other improvements to the Council owned canopy or umbrella must be assessed and approved by Council, before installation. The business operator is responsible for tagging and testing of the electrical elements. All requests are to be sent in writing to Council’s Property Development Department.

BARRIERS

Barriers are required at the eastern and western edges of all dining areas. Barriers are optional internally when adjacent to other outdoor dining areas however are not permitted along the northern edge of dining areas.
REPAIR AND MAINTENANCE
Council is responsible for the repair and maintenance of the umbrella, canopy structure, associated lighting and blinds detailed below. Business owners are not permitted to carry out any maintenance or repairs. All damages, repair and maintenance requests must be promptly reported to Council’s City Presentation team.

Table 8: Additional requirements

<table>
<thead>
<tr>
<th>Item</th>
<th>Supply</th>
<th>Details of product</th>
<th>Business operator information/ use</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0</td>
<td>Umbrella structure and canopy</td>
<td>Supplied by Council</td>
<td>Street Umbrellas Australia: Umbrella and Modular canopy</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Drilling of holes into the structure of the canopy/umbrellas is not allowed.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>No attachments are to be placed on the umbrella/canopy structure without Council’s written consent.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>No advertising to be placed on the umbrella, canopy or structure</td>
</tr>
<tr>
<td>2.0</td>
<td>Umbrella lighting</td>
<td>Supplied by Council &amp; privately connected</td>
<td>2 x LED floodlights per post, mounted to underside of umbrellas. Rated IP66 (waterproof); 80 degree wide beam, warm LED.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Council owned lights are to be turned on at night time only and must be switched off every day at close of business.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>The business operator is responsible for all power costs.</td>
</tr>
<tr>
<td>4.0</td>
<td>Blinds</td>
<td>Supplied by Council to the canopy structure only.</td>
<td>Clear PVC roll down blinds</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>It is the responsibility of the business operator to ensure blinds remain clean and presentable to allow clear vision through them at all times.</td>
</tr>
</tbody>
</table>

PERMISSIBLE OUTDOOR DINING OPERATING AREA
Figure 8 shows indicative maximum areas permitted for outdoor dining within Triangle Park. Operating beyond the boundaries into public open space is not permitted. This is to ensure there is an appropriate balance of public use areas within the Triangle Park.
Figure 6: Approved outdoor dining areas in Triangle Park

Legend
- Outdoor Dining Permitted
- Underground provisions for permanent umbrella
- Outdoor Dining Permitted
- Council owned umbrellas
- Outdoor Dining not permitted
- Public Space
- Outdoor Dining Permitted
LINEAR PLAZAS

There are two Linear Plazas located on the south side of High Street, between Memory Park and Triangle Park, Penrith. One is referred to as ‘West’ and the other is ‘East’.

Located in the retail core, the Linear Plazas are a central point of interest as well as a destination, and they help connect other destinations in the city centre. They are public spaces that encourage people to stay longer in the city centre, building a sense of community and local ownership, and increase diversity of experiences attracting visitors from further afield.

The Linear Plazas are areas of footpath extended into the roadway, in which outdoor dining can occur. They are also spaces for use by the public for sitting, resting, socialising etc.

Key characteristics/aims of the Linear Plazas include:

- accessible for all
- reinforce the café and restaurant precinct to provide a strong draw for customers
- attract new business and development and foster a night time economy
- green the street and city centre
- consistent high quality and well-designed unique place
- expand outdoor dining to nominated areas, while maintaining spaces with a sense of flexibility and openness for community and public use.

Key elements of Linear Plazas to contribute to the busy, high quality and attractive atmosphere of the street include:

- umbrellas with lighting – for outdoor dining areas
- high quality granite paving – robust and hard wearing, locally derived ‘Juxtapoems’ engraved into the stone at key locations
- trees, hedges and garden beds – deciduous trees provide shade in summer, sun in winter; greening and cooling of the city; separate customers from the roadway and create attractive and comfortable conditions
- public art – artist designed poles with feature lighting incorporating stylised motifs contribute to the unique identity of these special places in the city centre
- seats and bins – located appropriately
- pedestrian crossings – well lit, highlighted with trees and garden beds.

COUNCIL OWNED UMBRELLA REQUIREMENTS

Council has provided umbrella structures with up-lights in Linear Plaza for businesses trading with outdoor dining approvals at the time of the 2018 street upgrade. Umbrellas are to be used for approved outdoor dining purposes and the space beneath the umbrella canopies may be used by the general community when outdoor dining is not in operation.

Damage caused to the umbrellas due to negligence of the business owner or its customers, including but not limited to, is to be reimbursed to Council for the full expense of the repair and/or replacement.

The addition of other elements (e.g. fairy lights) or other improvements to Council owned umbrellas must be assessed and approved by Council, before installation. The business
operator is responsible for tagging and testing of the electrical elements. All requests are to be sent in writing to Council’s Property Development Department.

PRIVATLEY OWNED UMBRELLAS
Temporary umbrellas are suitable in permissible outdoor dining areas where permanent umbrellas have not been supplied. The umbrellas must not compromise the form or growth of any of the trees. Umbrellas must match the colour of the existing Council umbrella.

REPAIR AND MAINTENANCE
Council is responsible for the repair and maintenance of the umbrellas and associated lighting detailed below. Business owners are not permitted to carry out any maintenance or repairs. All damages, repair and maintenance requests must be promptly reported to Councils City Presentation team.

Table 9: Additional requirements

<table>
<thead>
<tr>
<th>Item</th>
<th>Supply</th>
<th>Details of product:</th>
<th>Business operator information/ use</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0 Umbrella</td>
<td>Supplied by Council</td>
<td>Street Umbrellas Australia (Mak Max Australia):</td>
<td>Drilling of holes into the structure of the canopy/umbrellas is not allowed.</td>
</tr>
<tr>
<td>structure</td>
<td></td>
<td>Monaco Linear (4m x 3m) and Linked Monaco Linear (8m x 3m)</td>
<td>No attachments are to be placed on the umbrella/canopy, structure without Council’s written consent.</td>
</tr>
<tr>
<td>and canopy</td>
<td></td>
<td></td>
<td>No advertising to be placed on the umbrella, canopy or structure</td>
</tr>
<tr>
<td>2.0 Umbrella</td>
<td>Supplied by Council &amp; privately connected</td>
<td>2 x LED floodlights per post, mounted to underside of umbrellas.</td>
<td>Council owned lights are to be turned on at night time only and must be switched off every day at close of business.</td>
</tr>
<tr>
<td>lighting</td>
<td></td>
<td>Rated IP68 (waterproof); 80-degree wide beam, warm LED.</td>
<td>The business operator is responsible for all power costs.</td>
</tr>
<tr>
<td>4.0 Blinds</td>
<td>Optional supplied by business operator</td>
<td>Approval to be obtained from Council before installation</td>
<td>Blinds must match the dimensions of the umbrella and be fixed such that they do not damage or compromise the structural or visual integrity of the umbrella.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Blinds must not interfere with garden beds and trees.</td>
</tr>
</tbody>
</table>

PERMISSIBLE OUTDOOR DINING OPERATING AREA
Figure 7 shows indicative maximum areas permitted for outdoor dining within the Linear Plazas. Operating beyond the boundaries into public open space as noted on the map is not permitted. This is to ensure there is an appropriate balance of public use areas within the Linear Plazas.

---

Page 26
Figure 7: Approved outdoor dining areas in the Linear Plazas

Linear Plaza East
- Cottage Lane
- Shop 2, 444 High St
- Shop 1, 444 High St
- Shop 3, 446-452 High St
- NK Business Arcade
- Shop 2, 446-452 High St
- Shop 3, 446-452 High St

Linear Plaza West
- Parker Arcade
- 476 High St
- Shop 1, 478-482 High St
- Shop 2, 478-482 High St
- Shop 1, 484-486 High St
- Shop 2, 484-486 High St
- Shop 3, 484-486 High St
- Shop 1, 488 High St
- Calokerinos Arcade

Legend
- Outdoor Dining Permitted
- Under ground provisions for permanent umbrella
- Outdoor Dining Permitted
- Council owned umbrellas
- Outdoor Dining not permitted
- Public Space
- Outdoor Dining Permitted
SECTION 4 - APPLICATION PROCESS

Applicant reads Council’s Outdoor Dining Policy and Guidelines.

Applicant downloads and completes the Outdoor Dining Application form from Council’s website.

Applicant prepares all supporting documentation as per the application.

Applicant submits their completed Outdoor Dining Application Form and pays their application fee.

Council Officers assess the Outdoor Dining Application.

Assessment under the Local Government Act / Roads Act *

Outdoor Dining Application Determination.

* If the outdoor dining area is located on a State road, the application will be referred to the RMS as part of the assessment process.
## KEY TERMS

<table>
<thead>
<tr>
<th>Term</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant</td>
<td>The owner of the business.</td>
</tr>
<tr>
<td>Building Shoreline</td>
<td>The property or natural building line where the building recedes.</td>
</tr>
<tr>
<td>Exempt Development</td>
<td>Development that does not need development consent under the Environmental Planning and Assessment Act 1979, but which may still need some other approval. At the time of adoption, the State Environmental Planning Policy (Exempt and Complying Codes) 2008 makes footway dining exempt development if it is:</td>
</tr>
<tr>
<td></td>
<td>a) not associated with a pub or a small bar, and</td>
</tr>
<tr>
<td></td>
<td>b) carried out in accordance with an approval granted under section 125 of the Roads Act 1993, including in</td>
</tr>
<tr>
<td></td>
<td>accordance with any hours of operation to which the approval is subject, and</td>
</tr>
<tr>
<td></td>
<td>c) carried out in accordance with any approval granted under section 68 of the Local Government Act 1993.</td>
</tr>
<tr>
<td>Footway</td>
<td>That part of a road that is set aside or formed as a path or way for pedestrian traffic, whether or not it may also be used by</td>
</tr>
<tr>
<td></td>
<td>bicycle traffic.</td>
</tr>
<tr>
<td>Outdoor dining</td>
<td>The provision of suitable seating and tables and the performance of other activities directed at the consumption of</td>
</tr>
<tr>
<td></td>
<td>food and beverages in an outdoor dining area.</td>
</tr>
<tr>
<td>Pedestrians</td>
<td>a person who goes or travels on foot, walker.</td>
</tr>
<tr>
<td>Permanent structures</td>
<td>Any outdoor structure fixed to the footway.</td>
</tr>
<tr>
<td>Permit holder</td>
<td>Means the owner of the business who holds Outdoor Dining Approval.</td>
</tr>
<tr>
<td>Permit</td>
<td>a document giving the holder approval for outdoor dining.</td>
</tr>
<tr>
<td>Public Road</td>
<td>Public road means:</td>
</tr>
<tr>
<td></td>
<td>a. any road that is opened or dedicated as a public road, whether under the Roads Act 1993 or any other Act or law, and</td>
</tr>
<tr>
<td></td>
<td>b. any road that is declared to be a public road for the purposes of the Roads Act 1993.</td>
</tr>
<tr>
<td>Restaurant</td>
<td>Restaurant means premises in which food is regularly supplied on sale to the public for consumption on the premises.</td>
</tr>
<tr>
<td>Shorelining</td>
<td>The process of using a long white cane to sweep in a sideways arc to detect tactile surfaces and features to maintain a direction of travel and/or to identify hazards.</td>
</tr>
<tr>
<td>State Roads</td>
<td>State Roads are the major arterial links throughout NSW and within major urban areas.</td>
</tr>
<tr>
<td>Temporary structures</td>
<td>Any outdoor structures which is removed from an outdoor dining area when the area is not in use.</td>
</tr>
</tbody>
</table>
AMENDMENTS

The Outdoor Dining Guidelines will be reviewed bi-annually or as required, and variations will be at the Property Development Manager’s discretion.

VERSION HISTORY

<table>
<thead>
<tr>
<th>Version</th>
<th>Date</th>
<th>Amended by</th>
<th>Summary of changes made</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0</td>
<td>TBC</td>
<td>Nathan Ritchie</td>
<td>Original adoption</td>
</tr>
</tbody>
</table>
ATTACHMENTS

Date of Meeting: Monday 8 April 2019

Report Title: Model Code of Conduct and Procedures for the Administration of the Code of Conduct

Attachments: Model Code of Conduct
Model Code of Conduct Procedures
Model Code of Conduct
for Local Councils in NSW
2018
MODEL CODE OF CONDUCT FOR LOCAL COUNCILS IN NSW
2018

ACCESS TO SERVICES
The Office of Local Government is located at:
Street Address: Levels 1 & 2, 5 O’Keefe Avenue, NOWRA NSW 2541
Postal Address: Locked Bag 3015, Nowra, NSW 2541
Phone: 02 4428 4100
Fax: 02 4428 4199
TTY: 02 4428 4209
Email: olg@olg.nsw.gov.au
Website: www.olg.nsw.gov.au

OFFICE HOURS
Monday to Friday
9.00am to 5.00pm
(Special arrangements may be made if these hours are unsuitable)
All offices are wheelchair accessible.

ALTERNATIVE MEDIA PUBLICATIONS
Special arrangements can be made for our publications to be provided in large print or an alternative media format. If you need this service, please contact us on 02 4428 4100.

DISCLAIMER
While every effort has been made to ensure the accuracy of the information in this publication, the Office of Local Government expressly disclaims any liability to any person in respect of anything done or not done as a result of the contents of the publication or the data provided.

© NSW Office of Local Government, Department of Planning and Environment 2018
Produced by the NSW Office of Local Government, Department of Planning and Environment
Contents

Part 1: Introduction 4
Part 2: Definitions 6
Part 3: General Conduct Obligations 10
Part 4: Pecuniary Interests 14
Part 5: Non-Pecuniary Conflicts of Interest 22
Part 6: Personal Benefit 28
Part 7: Relationships Between Council Officials 32
Part 8: Access to Information and Council Resources 36
Part 9: Maintaining the Integrity of this Code 42
Schedule 1: Disclosures of Interest and Other Matters in Written Returns Submitted Under Clause 4.21 46
Schedule 2: Form of Written Return of Interests Submitted Under Clause 4.21 54
Schedule 3: Form of Special Disclosure of Pecuniary Interest Submitted Under Clause 4.37 58
Part 1: Introduction
This Model Code of Conduct for Local Councils in NSW ("the Model Code of Conduct") is made under section 440 of the Local Government Act 1993 ("LGA") and the Local Government (General) Regulation 2005 ("the Regulation").

The Model Code of Conduct sets the minimum standards of conduct for council officials. It is prescribed by regulation to assist council officials to:

- understand and comply with 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 local government.

Section 440 of the LGA requires every council (including county councils) and joint organisation to adopt a code of conduct that incorporates the provisions of the Model Code of Conduct. A council's or joint organisation's adopted code of conduct may also include provisions that supplement the Model Code of Conduct and that extend its application to persons that are not "council officials" for the purposes of the Model Code of Conduct (eg volunteers, contractors and members of wholly advisory committees).

A council's or joint organisation's adopted code of conduct has no effect to the extent that it is inconsistent with the Model Code of Conduct. However, a council's or joint organisation's adopted code of conduct may prescribe requirements that are more onerous than those prescribed in the Model Code of Conduct.

Councillors, administrators, members of staff of councils, delegates of councils, (including members of council committees that are delegates of a council) and any other person a council's adopted code of conduct applies to, must comply with the applicable provisions of their council's code of conduct. It is the personal responsibility of council officials to comply with the standards in the code and to regularly review their personal circumstances and conduct 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 LGA. The LGA 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 a council's code of conduct may give rise to disciplinary action.

Note: References in the Model Code of Conduct to councils are also to be taken as references to county councils and joint organisations.

Note: In adopting the Model Code of Conduct, joint organisations should adapt it to substitute the terms "board" for "council", "chairperson" for "mayor", "voting representative" for "councillor" and "executive officer" for "general manager".

Note: In adopting the Model Code of Conduct, county councils should adapt it to substitute the term "chairperson" for "mayor" and "member" for "councillor".
Part 2: Definitions
In this code the following terms have the following meanings:

**administrator**

A council appointed under the LGA other than an administrator appointed under section 66.

**committee**

See the definition of "council committee".

**complaint**

A code of conduct complaint made for the purposes of clauses 4.1 and 4.2 of the Procedures.

**council**

Includes county councils and joint organisations.

**council committee**

A committee established by a council comprising of councillors, staff or other persons that the council has delegated functions to.

**council committee member**

A person other than a councillor or member of staff of a council who is a member of a council committee other than a wholly advisory committee.

**council official**

Includes councillors, members of staff of a council, administrators, council committee members, delegates of council and, for the purposes of clause 4.16, council advisers.

**councillor**

Any person elected or appointed to a civic office, including the mayor and includes members and chairpersons of county councils and voting representatives of the boards of joint organisations and chairpersons of joint organisations.

**conduct**

includes acts and omissions.

**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**

A person referred to in clause 4.8.

**election campaign**

Includes council, state and federal election campaigns.

**environmental planning instrument**

Has the same meaning as it has in the *Environmental Planning and Assessment Act 1979*.

**general manager**

Includes the executive officer of a joint organisation.

**joint organisation**

A joint organisation established under section 4000 of the LGA.

**LGA**

The *Local Government Act 1993*.

**local planning panel**

A local planning panel constituted under the *Environmental Planning and Assessment Act 1979*.

**mayor**

Includes the chairperson of a county council or a joint organisation.
members of staff of a council includes members of staff of county councils and joint organisations

the Office Office of Local Government

personal information information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion

the Procedures the Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW prescribed under the Regulation

the Regulation the Local Government (General) Regulation 2005

voting representative a voting representative of the board of a joint organisation

wholly advisory committee a council committee that the council has not delegated any functions to
General conduct

3.1 You must not conduct yourself in a manner that:
   a) is likely to bring the council or other council officials into disrepute
   b) is contrary to statutory requirements or the council's administrative requirements or policies
   c) is improper or unethical
   d) is an abuse of power
   e) causes, compromises or involves intimidation or verbal abuse
   f) involves the misuse of your position to obtain a private benefit
   g) constitutes harassment or bullying behaviour under this code, or is unlawfully discriminatory.

3.2 You must act lawfully and honestly, and exercise a reasonable degree of care and diligence in carrying out your functions under the LGA or any other Act (section 439).

Fairness and equity

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

3.4 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.

3.5 An act or omission in good faith, whether or not it involves error, will not constitute a breach of clauses 3.3 or 3.4.

Harassment and discrimination

3.6 You must not harass or unlawfully discriminate against others, or support others who harass or unlawfully discriminate against others, on the grounds of sex, pregnancy, breastfeeding, race, age, marital or domestic status, homosexuality, disability, transgender status, infectious disease, carer's responsibilities or political, religious or other affiliation.

3.7 For the purposes of this code, "harassment" is any form of behaviour towards a person that:
   a) is not wanted by the person
   b) offends, humiliates or intimidates the person, and
   c) creates a hostile environment.

Bullying

3.8 You must not engage in bullying behaviour towards others.

3.9 For the purposes of this code, "bullying behaviour" is any behaviour in which:
   a) a person or a group of people repeatedly behaves unreasonably towards another person or a group of persons, and
   b) the behaviour creates a risk to health and safety.

3.10 Bullying behaviour may involve, but is not limited to, any of the following types of behaviour:
   a) aggressive, threatening or intimidating conduct
   b) belittling or humiliating comments
   c) spreading malicious rumours
   d) teasing, practical jokes or 'initiation ceremonies'
c) exclusion from work-related events
f) unreasonable work expectations, including too much or too little work, or work below or beyond a worker’s skill level

g) displaying offensive material
h) pressure to behave in an inappropriate manner.

3.11 Reasonable management action carried out in a reasonable manner does not constitute bullying behaviour for the purposes of this code. Examples of reasonable management action may include, but are not limited to:

a) performance management processes
b) disciplinary action for misconduct
c) informing a worker about unsatisfactory work performance or inappropriate work behaviour
d) directing a worker to perform duties in keeping with their job
e) maintaining reasonable workplace goals and standards
f) legitimately exercising a regulatory function
g) legitimately implementing a council policy or administrative processes.

Work health and safety

3.12 All council officials, including councillors, owe statutory duties under the Work Health and Safety Act 2011 (WH&S Act). You must comply with your duties under the WH&S Act and your responsibilities under any policies or procedures adopted by the council to ensure workplace health and safety. Specifically, you must:

a) take reasonable care for your own health and safety
b) take reasonable care that your acts or omissions do not adversely affect the health and safety of other persons
c) comply, so far as you are reasonably able, with any reasonable instruction that is given to ensure compliance with the WH&S Act and any policies or procedures adopted by the council to ensure workplace health and safety
d) cooperate with any reasonable policy or procedure of the council relating to workplace health or safety that has been notified to council staff
e) report accidents, incidents, near misses, to the general manager or such other staff member nominated by the general manager, and take part in any incident investigations
f) so far as is reasonably practicable, consult, co-operate and coordinate with all others who have a duty under the WH&S Act in relation to the same matter.

Land use planning, development assessment and other regulatory functions

3.13 You must ensure that land use planning, development assessment and other regulatory decisions are properly made, and that all parties are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the exercise of land use planning, development assessment and other regulatory functions.
3.14 In exercising land use planning, development assessment and other regulatory functions, you must ensure that no action, statement or communication between yourself and others conveys any suggestion of willingness to improperly provide concessions or preferential or unduly unfavourable treatment.

**Binding caucus votes**

3.15 You must not participate in binding caucus votes in relation to matters to be considered at a council or committee meeting.

3.16 For the purposes of clause 3.15, 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.

3.17 Clause 3.15 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.

3.18 Clause 3.15 does not apply to a decision to elect the mayor or deputy mayor, or to nominate a person to be a member of a council committee or a representative of the council on an external body.

---

**Obligations in relation to meetings**

3.19 You must comply with rulings by the chair at council and committee meetings or other proceedings of the council unless a motion dissenting from the ruling is passed.

3.20 You must not engage in bullying behaviour (as defined under this Part) towards the chair, other council officials or any members of the public present during council or committee meetings or other proceedings of the council (such as, but not limited to, workshops and briefing sessions).

3.21 You must not engage in conduct that disrupts council or committee meetings or other proceedings of the council (such as, but not limited to, workshops and briefing sessions), or that would otherwise be inconsistent with the orderly conduct of meetings.

3.22 If you are a councillor, you must not engage in any acts of disorder or other conduct that is intended to prevent the proper or effective functioning of the council, or of a committee of the council. Without limiting this clause, you must not:

a) leave a meeting of the council or a committee for the purposes of depriving the meeting of a quorum, or

b) submit a rescission motion with respect to a decision for the purposes of voting against it to prevent another councillor from submitting a rescission motion with respect to the same decision, or

c) deliberately seek to impede the consideration of business at a meeting.
Part 4:

Pecuniary Interests
What is a pecuniary interest?

4.1 A pecuniary interest is an interest that you have in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to you or a person referred to in clause 4.3.

4.2 You will not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision you might make in relation to the matter, or if the interest is of a kind specified in clause 4.6.

4.3 For the purposes of this Part, you will have a pecuniary interest in a matter if the pecuniary interest is:

a) your interest, or

b) the interest of your spouse or de facto partner, your relative, or your partner or employer, or

c) a company or other body of which you, or your nominee, partner or employer, is a shareholder or member.

4.4 For the purposes of clause 4.3:

a) Your "relative" is any of the following:

i) your parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child

ii) your spouse’s or de facto partner’s parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child

iii) the spouse or de facto partner of a person referred to in paragraphs (i) and (ii).

b) “de facto partner” has the same meaning as defined in section 21C of the Interpretation Act 1987.

4.5 You will not have a pecuniary interest in relation to a person referred to in subsections 4.3(b) or (c):

a) if you are unaware of the relevant pecuniary interest of your spouse, de facto partner, relative, partner, employer or company or other body, or

b) just because the person is a member of, or is employed by, a council or a statutory body, or is employed by the Crown, or

c) just because the person is a member of, or a delegate of a council or, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.

What interests do not have to be disclosed?

4.6 You do not have to disclose the following interests for the purposes of this Part:

a) your interest as an elector

b) your interest as a ratepayer or person liable to pay a charge

c) an interest you have in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to the public generally, or to a section of the public that includes persons who are not subject to this code

d) an interest you have in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to your relative by the council in the same manner and subject to the same conditions as apply to persons who are not subject to this code.
Policy Review Committee Meeting  
Attachment 1 - Model Code of Conduct  
8 April 2019

Model Code of Conduct for Local Councils in NSW

e) an interest you have as a member of a club or other organisation or association, unless the interest is as the holder of an office in the club or organisation (whether remunerated or not)

f) if you are a council committee member, an interest you have as a person chosen to represent the community, or as a member of a non-profit organisation or other community or special interest group, if you have been appointed to represent the organisation or group on the council committee

g) an interest you have relating to a contract, proposed contract or other matter, if the interest arises only because of a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company

h) an interest you have arising from the proposed making by the council of an agreement between the council and a corporation, association or partnership, being a corporation, association or partnership that has more than 25 members, if the interest arises because your relative is a shareholder (but not a director) of the corporation, or is a member (but not a member of the committee) of the association, or is a partner of the partnership

i) an interest you have arising from the making by the council of a contract or agreement with your relative for, or in relation to, any of the following, but only if the proposed contract or agreement is similar in terms and conditions to such contracts and agreements as have been made, or as are proposed to be made, by the council in respect of similar matters with other residents of the area:

i) the performance by the council at the expense of your relative of any work or service in connection with roads or sanitation

ii) security for damage to footpaths or roads

iii) any other service to be rendered, or act to be done, by the council by or under any Act conferring functions on the council, or by or under any contract

j) an interest relating to the payment of fees to councillors (including the mayor and deputy mayor)

k) an interest relating to the payment of expenses and the provision of facilities to councillors (including the mayor and deputy mayor) in accordance with a policy under section 252 of the LGA

l) an interest relating to an election to the office of mayor arising from the fact that a fee for the following 12 months has been determined for the office of mayor

m) an interest of a person arising from the passing for payment of a regular account for the wages or salary of an employee who is a relative of the person

n) an interest arising from being covered by, or a proposal to be covered by, indemnity insurance as a councillor or a council committee member

o) an interest arising from the appointment of a councillor to a body as a representative or delegate of the council, whether or not a fee or other recompense is payable to the representative or delegate.

4.7 For the purposes of clause 4.6, "relative" has the same meaning as in clause 4.4, but includes your spouse or de facto partner.
What disclosures must be made by a designated person?

4.8 Designated persons include:

a) the general manager

b) other senior staff of the council for the purposes of section 332 of the LGA

c) a person (other than a member of the senior staff of the council) who is a member of staff of the council or a delegate of the council and who holds a position identified by the council as the position of a designated person because it involves the exercise of functions (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the person's duty as a member of staff or delegate and the person's private interest

d) a person (other than a member of the senior staff of the council) who is a member of a committee of the council identified by the council as a committee whose members are designated persons because the functions of the committee involve the exercise of the council's functions (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the member's duty as a member of the committee and the member's private interest.

4.9 A designated person:

a) must prepare and submit written returns of interests in accordance with clauses 4.21, and

b) must disclose pecuniary interests in accordance with clause 4.10.

4.10 A designated person must disclose in writing to the general manager (or if the person is the general manager, to the council) the nature of any pecuniary interest the person has in any council matter with which the person is dealing as soon as practicable after becoming aware of the interest.

4.11 Clause 4.10 does not require a designated person who is a member of staff of the council to disclose a pecuniary interest if the interest relates only to the person's salary as a member of staff, or to their other conditions of employment.

4.12 The general manager must, on receiving a disclosure from a designated person, deal with the matter to which the disclosure relates or refer it to another person to deal with.

4.13 A disclosure by the general manager must, as soon as practicable after the disclosure is made, be laid on the table at a meeting of the council and the council must deal with the matter to which the disclosure relates or refer it to another person to deal with.

What disclosures must be made by council staff other than designated persons?

4.14 A member of staff of council, other than a designated person, must disclose in writing to their manager or the general manager the nature of any pecuniary interest they have in a matter they are dealing with as soon as practicable after becoming aware of the interest.

4.15 The staff member's manager or the general manager must, on receiving a disclosure under clause 4.14, deal with the matter to which the disclosure relates or refer it to another person to deal with.
What disclosures must be made by council advisers?

4.16 A person, who, at the request or with the consent of the council or a council committee, gives advice on any matter at any meeting of the council or committee, must disclose the nature of any pecuniary interest the person has in the matter to the meeting at the time the advice is given. The person is not required to disclose the person's interest as an adviser.

4.17 A person does not breach clause 4.16 if the person did not know, and could not reasonably be expected to have known, that the matter under consideration at the meeting was a matter in which they had a pecuniary interest.

What disclosures must be made by a council committee member?

4.18 A council committee member must disclose pecuniary interests in accordance with clause 4.28 and comply with clause 4.29.

4.19 For the purposes of clause 4.18, a "council committee member" includes a member of staff of council who is a member of the committee.

What disclosures must be made by a councillor?

4.20 A councillor:

a) must prepare and submit returns of interests in accordance with clause 4.21, and

b) must disclose pecuniary interests in accordance with clause 4.26 and comply with clause 4.29 where it is applicable.

Disclosure of interests in written returns

4.21 A councillor or designated person must make and lodge with the general manager a return in the form set out in schedule 2 to this code, disclosing the councillor's or designated person's interests as specified in schedule 1 to this code within 3 months after:

a) becoming a councillor or designated person, and

b) 30 June of each year, and

c) the councillor or designated person becoming aware of an interest they are required to disclose under schedule 1 that has not been previously disclosed in a return lodged under paragraphs (a) or (b).

4.22 A person need not make and lodge a return under clause 4.21, paragraphs (a) and (b) if:

a) they made and lodged a return under that clause in the preceding 3 months, or

b) they have ceased to be a councillor or designated person in the preceding 3 months.

4.23 A person must not make and lodge a return that the person knows or ought reasonably to know is false or misleading in a material particular.

4.24 The general manager must keep a register of returns required to be made and lodged with the general manager.
4.25 Returns required to be lodged with the general manager under clause 4.21(a) and (b) must be tabled at the first meeting of the council after the last day the return is required to be lodged.

4.26 Returns required to be lodged with the general manager under clause 4.21(c) must be tabled at the next council meeting after the return is lodged.

4.27 Information contained in returns made and lodged under clause 4.21 is to be made publicly available in accordance with the requirements of the Government Information (Public Access) Act 2009, the Government Information (Public Access) Regulation 2009 and any guidelines issued by the Information Commissioner.

Disclosure of pecuniary interests at meetings

4.28 A councillor or a council committee member who has a pecuniary interest in any matter with which the council is concerned, and who is present at a meeting of the council or committee at which the matter is being considered, must disclose the nature of the interest to the meeting as soon as practicable.

4.29 The councillor or council committee member must not be present at, or in sight of, the meeting of the council or committee:

a) at any time during which the matter is being considered or discussed by the council or committee, or

b) at any time during which the council or committee is voting on any question in relation to the matter.

4.30 In the case of a meeting of a board of a joint organisation, a voting representative is taken to be present at the meeting for the purposes of clauses 4.28 and 4.29 where they participate in the meeting by telephone or other electronic means.

4.31 A disclosure made at a meeting of a council or council committee must be recorded in the minutes of the meeting.

4.32 A general notice may be given to the general manager in writing by a councillor or a council committee member to the effect that the councillor or council committee member, or the councillor’s or council committee member’s spouse, de facto partner or relative, is:

a) a member of, or in the employment of, a specified company or other body, or

b) a partner of, or in the employment of, a specified person.

Such a notice is, unless and until the notice is withdrawn or until the end of the term of the council in which it is given (whichever is the sooner), sufficient disclosure of the councillor’s or council committee member’s interest in a matter relating to the specified company, body or person that may be the subject of consideration by the council or council committee after the date of the notice.

4.33 A councillor or a council committee member is not prevented from being present at and taking part in a meeting at which a matter is being considered, or from voting on the matter, merely because the councillor or council committee member has an interest in the matter of a kind referred to in clause 4.6.

4.34 A person does not breach clauses 4.28 or 4.29 if the person did not know, and could not reasonably be expected to have known, that the matter under consideration at the meeting was a matter in which they had a pecuniary interest.
4.35 Despite clause 4.29, a councillor who has a pecuniary interest in a matter may participate in a decision to delegate consideration of the matter in question to another body or person.

4.36 Clause 4.29 does not apply to a councillor who has a pecuniary interest in a matter that is being considered at a meeting 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 portion of the council’s area, or

ii) the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant portion of the council’s area, and

b) the pecuniary interest arises only because of an interest of the councillor in the councillor’s principal place of residence or an interest of another person (whose interests are relevant under clause 4.3) in that person’s principal place of residence, and

c) the councillor made a special disclosure under clause 4.37 in relation to the interest before the commencement of the meeting.

4.37 A special disclosure of a pecuniary interest made for the purposes of clause 4.36(c) must:

a) be in the form set out in schedule 3 of this code and contain the information required by that form, and

b) be laid on the table at a meeting of the council as soon as practicable after the disclosure is made, and the information contained in the special disclosure is to be recorded in the minutes of the meeting.

4.38 The Minister for Local Government may, conditionally or unconditionally, allow a councillor or a council committee member who has a pecuniary interest in a matter with which the council is concerned to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion:

a) that the number of councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business, or

b) that it is in the interests of the electors for the area to do so.

4.39 A councillor or a council committee member with a pecuniary interest in a matter who is permitted to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter under clause 4.38, must still disclose the interest they have in the matter in accordance with clause 4.28.
Part 5:
Non-Pecuniary Conflicts of Interest
What is a non-pecuniary conflict of interest?

5.1 Non-pecuniary interests are private or personal interests a council official has that do not amount to a pecuniary interest as defined in clause 4.1 of this code. These commonly arise out of family or personal relationships, or out of involvement in sporting, social, religious or other cultural groups and associations, and may include an interest of a financial nature.

5.2 A non-pecuniary 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 official functions in relation to a matter.

5.3 The personal or political views of a council official do not constitute a private interest for the purposes of clause 5.2.

5.4 Non-pecuniary conflicts of interest must be identified and appropriately managed to uphold community confidence in the probity of council decision-making. The onus is on you to identify any non-pecuniary conflict of interest you may have in matters that you deal with, to disclose the interest fully and in writing, and to take appropriate action to manage the conflict in accordance with this code.

5.5 When considering whether or not you have a non-pecuniary conflict of interest in a matter you are dealing with, it is always important to think about how others would view your situation.

Managing non-pecuniary conflicts of interest

5.6 Where you have a non-pecuniary conflict of interest in a matter for the purposes of clause 5.2, you must disclose the relevant private interest you have in relation to the matter fully and in writing as soon as practicable after becoming aware of the non-pecuniary conflict of interest and on each occasion on which the non-pecuniary conflict of interest arises in relation to the matter. In the case of members of council staff other than the general manager, such a disclosure is to be made to the staff member’s manager. In the case of the general manager, such a disclosure is to be made to the mayor.

5.7 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 on each occasion on which the non-pecuniary conflict of interest arises. This disclosure constitutes disclosure in writing for the purposes of clause 5.6.

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

5.9 As a general rule, a non-pecuniary conflict of interest will be significant where it does not involve a pecuniary interest for the purposes of clause 4.1, but it involves:

a) a relationship between a council official and another person who is affected by a decision or a matter under consideration that is particularly close, such as a current or former spouse or de facto partner, a relative for the purposes of clause 4.4 or another person from the council official’s extended family that the council official has a close personal relationship with, or another person living in the same household

b) other relationships with persons who are affected by a decision or a matter under consideration 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 (such as a sporting body, club, religious, cultural or charitable organisation, corporation or association) that is affected by a decision or a matter under consideration in a way that is particularly strong. The strength of the council official's affiliation with an organisation is to be determined by the extent to which they actively participate in the management, administration or other activities of the organisation.

5.10 Significant non-pecuniary conflicts of interest must be managed in one of two ways:

a) by not participating in consideration of, or decision making in relation to, the matter in which you have the significant non-pecuniary conflict of interest and the matter being allocated to another person for consideration or determination, or

b) if the significant non-pecuniary conflict of interest arises in relation to a matter under consideration at a council or committee meeting, by managing the conflict of interest as

If you had a pecuniary interest in the matter by complying with clauses 4.28 and 4.29.

5.11 If you determine that you have a non-pecuniary conflict of interest in a matter that is not significant and does not require further action, when disclosing the interest you must also explain in writing why you consider that the non-pecuniary conflict of interest is not significant and does not require further action in the circumstances.

5.12 If you are a member of staff of council other than the general manager, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with and at the direction of your manager. In the case of the general manager, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with and at the direction of the mayor.

5.13 Despite clause 5.10(b), a councillor who has a significant non-pecuniary conflict of interest in a matter, may participate in a decision to delegate consideration of the matter in question to another body or person.

5.14 Council committee members are not required to declare and manage a non-pecuniary conflict of interest in accordance with the requirements of this Part where it arises from an interest they have as a person chosen to represent the community, or as a member of a non-profit organisation or other community or special interest group, if they have been appointed to represent the organisation or group on the council committee.
Political donations

5.15 Councillors should be aware that matters before council or committee meetings involving their political donors may also give rise to a non-pecuniary conflict of interest.

5.16 Where you are a councillor and have received or knowingly benefitted from a reportable political donation:

a) made by a major political donor in the previous four years, and

b) the major political donor has a matter before council,

you must declare a non-pecuniary conflict of interest in the matter, disclose the nature of the interest and manage the conflict of interest as if you had a pecuniary interest in the matter by complying with clauses 4.28 and 4.29. A disclosure made under this clause must be recorded in the minutes of the meeting.

5.17 For the purposes of this Part:

a) “reportable political donation” has the same meaning as it has in section 6 of the Electoral Funding Act 2018

b) “major political donor” has the same meaning as it has in the Electoral Funding Act 2018.

5.18 Councillors should note that political donations that are not a “reportable political donation”, 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 interest. Councillors should determine whether or not such conflicts are significant for the purposes of clause 5.9 and take the appropriate action to manage them.

5.19 Despite clause 5.16, a councillor who has received or knowingly benefitted from a reportable political donation of the kind referred to in that clause, may participate in a decision to delegate consideration of the matter in question to another body or person.

Loss of quorum as a result of compliance with this Part

5.20 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 interest 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 portion of the council’s area, or

   ii) the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant portion of the council’s area, and

b) the non-pecuniary conflict of interest arises only because of an interest that a person has in that person’s principal place of residence, and

c) the councillor discloses the interest they have in the matter that would otherwise have precluded their participation in consideration of the matter under this Part in accordance with clause 5.6.

5.21 The Minister for Local Government may, conditionally or unconditionally, allow a councillor or a council committee member who is precluded under this Part from participating in the consideration of a matter to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion:
a) that the number of councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business, or
b) that it is in the interests of the electors for the area to do so.

5.22 Where the Minister exempts a councillor or committee member from complying with a requirement under this Part, under clause 5.21, the councillor or committee member must still disclose any interests they have in the matter the exemption applies to, in accordance with clause 5.6.

Other business or employment

5.23 The general manager must not engage, for remuneration, in private employment, contract work or other business outside the service of the council without the approval of the council.

5.24 A member of staff must not engage, for remuneration, in private employment, contract work or other business outside the service of the council that relates to the business of the council or that might conflict with the staff member’s council duties unless they have notified the general manager in writing of the employment, work or business and the general manager has given their written approval for the staff member to engage in the employment, work or business.

5.25 The general manager may at any time prohibit a member of staff from engaging, for remuneration, in private employment, contract work or other business outside the service of the council that relates to the business of the council, or that might conflict with the staff member’s council duties.

5.26 A member of staff must not engage, for remuneration, in private employment, contract work or other business outside the service of the council if prohibited from doing so.

5.27 Members of staff must ensure that any outside employment, work or business they engage in will not:

a) conflict with their official duties
b) involve using confidential information or council resources obtained through their work with the council including where private use is permitted
c) require them to work while on council duty
d) discredit or disadvantage the council
e) pose, due to fatigue, a risk to their health or safety, or to the health and safety of their co-workers.

Personal dealings with council

5.28 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 development 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.

5.29 You must undertake any personal dealings you have with the council in a manner that is consistent with the way other members of the community deal with the council. You must also ensure that you disclose and appropriately manage any conflict of interest you may have in any matter in accordance with the requirements of this code.
Part 6:
Personal Benefit
6.1 For the purposes of this Part, a gift or a benefit is something offered to or received by a council official or someone personally associated with them for their personal use and enjoyment.

6.2 A reference to a gift or benefit in this Part does not include:

a) a political donation for the purposes of the Electoral Funding Act 2018

b) a gift provided to the council as part of a cultural exchange or sister-city relationship that is not converted for the personal use or enjoyment of any individual council official or someone personally associated with them

c) attendance by a council official at a work-related event or function for the purposes of performing their official duties, or

d) free or subsidised meals, beverages or refreshments of token value provided to council officials in conjunction with the performance of their official duties such as, but not limited to:

i) the discussion of official business

ii) work-related events such as council-sponsored or community events, training, education sessions or workshops

iii) conferences

iv) council functions or events

v) social functions organised by groups, such as council committees and community organisations.

Gifts and benefits

6.3 You must avoid situations that would give rise to the appearance that a person or body is attempting to secure favourable treatment from you or from the council, through the provision of gifts, benefits or hospitality of any kind to you or someone personally associated with you.

6.4 A gift or benefit is deemed to have been accepted by you for the purposes of this Part, where it is received by you or someone personally associated with you.

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

6.5 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) subject to clause 6.7, accept any gift or benefit of more than token value as defined by clause 6.9

e) accept an offer of cash or a cash-like gift as defined by clause 6.13, regardless of the amount

f) participate in competitions for prizes where eligibility is based on the council being in or entering into a customer-supplier relationship with the competition organiser

g) personally benefit from reward points programs when purchasing on behalf of the council.
6.6 Where you receive a gift or benefit of any value other than one referred to in clause 6.2, you must disclose this promptly to your manager or the general manager in writing. The recipient, manager, or general manager must ensure that, at a minimum, the following details are recorded in the council’s gift register:

a) the nature of the gift or benefit
b) the estimated monetary value of the gift or benefit
c) the name of the person who provided the gift or benefit, and
d) the date on which the gift or benefit was received.

6.7 Where you receive a gift or benefit of more than token value that cannot reasonably be refused or returned, the gift or benefit must be surrendered to the council, unless the nature of the gift or benefit makes this impractical.

Gifts and benefits of token value

6.8 You may accept gifts and benefits of token value. Gifts and benefits of token value are one or more gifts or benefits received from a person or organisation over a 12-month period that, when aggregated, do not exceed a value of $50. They include, but are not limited to:

a) invitations to and attendance at local social, cultural or sporting events with a ticket value that does not exceed $50
b) gifts of alcohol that do not exceed a value of $50
c) ties, scarves, coasters, tie pins, diaries, chocolates or flowers or the like
d) prizes or awards that do not exceed $50 in value.

Gifts and benefits of more than token value

6.9 Gifts or benefits that exceed $50 in value are gifts or benefits of more than token value for the purposes of clause 6.5(d) and, subject to clause 6.7, must not be accepted.

6.10 Gifts and benefits of more than token value include, but are not limited to, tickets to major sporting events (such as international matches or matches in national sporting codes) with a ticket value that exceeds $50, corporate hospitality at a corporate facility at major sporting events, free or discounted products or services for personal use provided on terms that are not available to the general public or a broad class of persons, the use of holiday homes, artworks, free or discounted travel.

6.11 Where you have accepted a gift or benefit of token value from a person or organisation, you must not accept a further gift or benefit from the same person or organisation or another person associated with that person or organisation within a single 12-month period where the value of the gift, added to the value of earlier gifts received from the same person or organisation, or a person associated with that person or organisation, during the same 12-month period would exceed $50 in value.

6.12 For the purposes of this Part, the value of a gift or benefit is the monetary value of the gift or benefit inclusive of GST.
"Cash-like gifts"

6.13 For the purposes of clause 6.5(e), “cash-like gifts” include but are not limited to, gift vouchers, credit cards, debit cards with credit on them, prepayments such as phone or internet credit, lottery tickets, memberships or entitlements to discounts that are not available to the general public or a broad class of persons.

Improper and undue influence

6.14 You must not use your position to influence other council officials in the performance of their official functions 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 proper exercise of their role as prescribed under the LGA.

6.15 You must not take advantage (or seek to take advantage) of your status or position with council, or of functions you perform for council, in order to obtain a private benefit for yourself or for any other person or body.
Part 7: Relationships Between Council Officials
Obligations of councillors and administrators

7.1 Each council is a body politic. The councillors or administrator/s are the governing body of the council. Under section 223 of the LGA, the role of the governing body of the council includes the development and endorsement of the strategic plans, programs, strategies and policies of the council, including those relating to workforce policy, and to keep the performance of the council under review.

7.2 Councillors or administrators must not:

   a) direct council staff other than by giving appropriate direction to the general manager by way of council or committee resolution, or by the mayor or administrator exercising their functions under section 226 of the LGA

   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 staff member or delegate

   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 general manager

   d) contact or issue instructions to any of the council’s contractors, including the council’s legal advisors, unless by the mayor or administrator exercising their functions under section 226 of the LGA.

7.3 Despite clause 7.2, councillors may contact the council’s external auditor or the chair of the council’s audit risk and improvement committee to provide information reasonably necessary for the external auditor or the audit, risk and improvement committee to effectively perform their functions.

Obligations of staff

7.4 Under section 335 of the LGA, the role of the general manager includes conducting the day-to-day management of the council in accordance with the strategic plans, programs, strategies and policies of the council, implementing without undue delay, lawful decisions of the council and ensuring that the mayor and other councillors are given timely information and advice and the administrative and professional support necessary to effectively discharge their official functions.

7.5 Members of staff of council must:

   a) give their attention to the business of the council while on duty

   b) ensure that their work is carried out ethically, efficiently, economically and effectively

   c) carry out reasonable and 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 interfere with the performance of their official duties.
Inappropriate interactions

7.6 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
   matters relating to broader workforce
   policy), grievances, workplace
   investigations and disciplinary matters

b) council staff approaching councillors
   and administrators to discuss individual
   or operational staff matters (other than
   matters relating to broader workforce
   policy), grievances, workplace
   investigations and disciplinary matters

c) subject to clause 8.6, council staff
   refusing to give information that is
   available to other councillors to a
   particular councillor

d) councillors and administrators who
   have lodged an application with the
   council, discussing the matter with
   council staff in staff-only areas of the
   council

e) councillors and administrators
   approaching members of local planning
   panels or discussing any application
   that is either before the panel or that
   will come before the panel at some
   future time, except during a panel
   meeting where the application forms
   part of the agenda and the councillor
   has a right to be heard by the panel at
   the meeting

f) councillors and administrators being
   overbearing or threatening to council
   staff

g) council staff being overbearing
   or threatening to councillors or
   administrators

h) councillors and administrators making
   personal attacks on council staff or
   engaging in conduct towards staff
   that would be contrary to the general
   conduct provisions in Part 3 of this
   code in public forums including social
   media

i) councillors and administrators
   directing or pressuring council staff
   in the performance of their work, or
   recommendations they should make

j) 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

k) council staff meeting with applicants
   or objectors alone AND outside office
   hours to discuss planning applications
   or proposals

l) councillors attending on-site
   inspection meetings with lawyers
   and/or consultants engaged by the
   council associated with current or
   proposed legal proceedings unless
   permitted to do so by the council's
   general manager or, in the case of the
   mayor or administrator, unless they
   are exercising their functions under
   section 226 of the LGA.
Part 8:
Access to Information and Council Resources
Councillor and administrator access to information

8.1 The general manager is responsible for ensuring that councillors and administrators can access information necessary for the performance of their official functions. The general manager and public officer are also responsible for ensuring that members of the public can access publicly available council information under the Government Information (Public Access) Act 2009 (the GIPA Act).

8.2 The general manager must provide councillors and administrators with the information necessary to effectively discharge their official functions.

8.3 Members of staff of council must provide full and timely information to councillors and administrators sufficient to enable them to exercise their official functions and in accordance with council procedures.

8.4 Members of staff of council who provide any information to a particular councillor in the performance of their official functions must also make it available to any other councillor who requests it and in accordance with council procedures.

8.5 Councillors and administrators who have a private interest only in council information have the same rights of access as any member of the public.

8.6 Despite clause 8.4, councillors and administrators who are precluded from participating in the consideration of a matter under this code because they have a conflict of interest in the matter, are not entitled to request access to council information in relation to the matter unless the information is otherwise available to members of the public, or the council has determined to make the information available under the GIPA Act.

Councillors and administrators to properly examine and consider information

8.7 Councillors and administrators must ensure that they comply with their duty under section 439 of the LGA to act honestly and exercise a reasonable degree of care and diligence by properly examining and considering all the information provided to them relating to matters that they are required to make a decision on.

Refusal of access to information

8.8 Where the general manager or public officer determine to refuse access to information requested by a councillor or administrator, they must act reasonably. In reaching this decision they must take into account whether or not the information requested is necessary for the councillor or administrator to perform their official functions (see clause 8.2) and whether they have disclosed a conflict of interest in the matter the information relates to that would preclude their participation in consideration of the matter (see clause 8.6). The general manager or public officer must state the reasons for the decision if access is refused.
Use of certain council information

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

a) subject to clause 8.14, 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 access 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

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

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

a) only access confidential information that you have been authorised to access and only do so for the purposes of exercising your official functions

b) protect confidential information

c) only release confidential information if you have authority to do so

d) only use confidential information for the purpose for which it is intended to be used

e) not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person

f) not use confidential information with the intention to cause harm or detriment to the council or any other person or body

g) not disclose any confidential information discussed during a confidential session of a council or committee meeting or any other confidential forum (such as, but not limited to, workshops or briefing sessions).

Personal information

8.12 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) the council's privacy management plan

e) the Privacy Code of Practice for Local Government

Use of council resources

8.13 You must use council resources ethically, effectively, efficiently and carefully in exercising your official functions, and must not use them for private purposes, except when supplied as part of a contract of employment (but not for private business purposes), unless this use is lawfully authorised and proper payment is made where appropriate.
8.14 Union delegates and consultative committee members may have reasonable access to council resources and information 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 local consultative committee.

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

8.16 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.

8.17 You must not use council resources (including council staff), property or facilities for the purpose of assisting your election campaign or the election campaigns 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.

8.18 You must not use the council letterhead, council crests, council email or social media or other information that could give the appearance it is official council material:

a) for the purpose of assisting your election campaign or the election campaign of others, or

b) for other non-official purposes.

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

**Internet access**

8.20 You must not use council’s computer resources or mobile or other devices to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature, or that could otherwise lead to criminal penalty or civil liability and/or damage the council’s reputation.

**Council record keeping**

8.21 You must comply with the requirements of the State Records Act 1998 and the council’s records management policy.

8.22 All information created, sent and received in your official capacity is a council record and must be managed in accordance with the requirements of the State Records Act 1998 and the council’s approved records management policies and practices.

8.23 All information stored in either soft or hard copy on council supplied resources (including technology devices and email accounts) is deemed to be related to the business of the council and will be treated as council records, regardless of whether the original intention was to create the information for personal purposes.

8.24 You must not destroy, alter, or dispose of council information or records, unless authorised to do so. If you need to alter or dispose of council information or records, you must do so in consultation with the council’s records manager and comply with the requirements of the State Records Act 1998.
Councillor access to council buildings

8.25 Councillors and administrators are entitled to have access to the council chamber, committee room, mayor's office (subject to availability), councillors' rooms, and public areas of council's buildings during normal business hours and for meetings. Councillors and administrators needing access to these facilities at other times must obtain authority from the general manager.

8.26 Councillors and administrators must not enter staff-only areas of council buildings without the approval of the general manager (or their delegate) or as provided for in the procedures governing the interaction of councillors and council staff.

8.27 Councillors and administrators must ensure that when they are within a staff only area they refrain from conduct that could be perceived to improperly influence council staff decisions.
Part 9: Maintaining the Integrity of this Code
Complaints made for an improper purpose

9.1 You must not make or threaten to make a complaint or cause a complaint to be made alleging a breach of this code for an improper purpose.

9.2 For the purposes of clause 9.1, 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 bully, 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 the Procedures
   g) to take reprisal action against a person for making a complaint alleging a breach of this code
   h) to take reprisal action against a person for exercising a function prescribed under the Procedures
   i) to prevent or disrupt the effective administration of this code under the Procedures.

Detrimental action

9.3 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 alleging a breach of this code.

9.4 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 the Procedures.

9.5 For the purposes of clauses 9.3 and 9.4, a 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 employment
   d) dismissal from, or prejudice in, employment
   e) disciplinary proceedings.

Compliance with requirements under the Procedures

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

9.7 You must comply with a reasonable and lawful request made by a person exercising a function under the Procedures. A failure to make a written or oral submission invited under the Procedures will not constitute a breach of this clause.
9.8 You must comply with a practice ruling made by the Office under the Procedures.

9.9 Where you are a councillor or the general manager, 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 the Procedures

9.10 All allegations of breaches of this code must be dealt with under and in accordance with the Procedures.

9.11 You must not allege breaches of this code other than by way of a complaint made or initiated under the Procedures.

9.12 You must not make allegations about, or disclose information about, suspected breaches of this code at council, committee or other meetings, whether open to the public or not, or in any other forum, whether public or not.

9.13 You must not disclose information about a complaint you have made alleging a breach of this code or a matter being considered under the Procedures except for the purposes of seeking legal advice, unless the disclosure is otherwise permitted under the Procedures.

9.14 Nothing under this Part prevents a person from making a public interest disclosure to an appropriate public authority or investigative authority under the Public Interest Disclosures Act 1994.

---

### Complaints alleging a breach of this Part

9.15 Complaints alleging a breach of this Part by a councillor, the general manager or an administrator are to be managed by the Office. This clause does not prevent the Office from referring an alleged breach of this Part back to the council for consideration in accordance with the Procedures.

9.16 Complaints alleging a breach of this Part by other council officials are to be managed by the general manager in accordance with the Procedures.
Schedule 1:
Disclosures of Interest and Other Matters in Written Returns Submitted Under Clause 4.21
Part 1: Preliminary

Definitions

1. For the purposes of the schedules to this code, the following definitions apply:

   a) in relation to a person other than a corporation, the last residential or
      business address of the person known to the councillor or designated person
      disclosing the address, or

   b) in relation to a corporation, the
      address of the registered office of the
      corporation in New South Wales or, if
      there is no such office, the address of
      the principal office of the corporation
      in the place where it is registered, or

   c) in relation to any real property, the
      street address of the property.

   de facto partner has the same meaning as
defined in section 21C of the Interpretation

disposition of property means a
conveyance, transfer, assignment,
sale, settlement, delivery, payment or other
alienation of property, including the
following:

   a) the allotment of shares in a company

   b) the creation of a trust in respect of
      property

   c) the grant or creation of a lease,
mortgage, charge, easement, licence,
power, partnership or interest in
respect of property

   d) the release, discharge, surrender,
forfeiture or abandonment, at law or
in equity, of a debt, contract or chose
in action, or of an interest in respect of
property

c) the exercise by a person of a general
power of appointment over property
in favour of another person

f) a transaction entered into by a person
who intends by the transaction to
diminish, directly or indirectly, the
value of the person's own property
and to increase the value of the
property of another person.

gift means a disposition of property
made otherwise than by will (whether
or not by instrument in writing) without
consideration, or with inadequate
consideration, in money or money's
worth passing from the person to whom
the disposition was made to the person
who made the disposition, but does not
include a financial or other contribution to
travel.

interest means:

   a) in relation to property, an estate,
      interest, right or power, at law or in
      equity, in or over the property, or

   b) in relation to a corporation, a relevant
      interest (within the meaning of section
      9 of the Corporations Act 2001 of the
      Commonwealth) in securities issued or
      made available by the corporation.

tested company means a company that
is listed within the meaning of section
9 of the Corporations Act 2001 of the
Commonwealth.

occupation includes trade, profession and
vocation.

professional or business association
means an incorporated or unincorporated
body or organisation having as one of its
objects or activities the promotion of the
economic interests of its members in any
occupation.

property includes money.

return date means:
Matters relating to the interests that must be included in returns

2. **Interests etc. outside New South Wales**: A reference in this schedule or in schedule 2 to a disclosure concerning a corporation or other thing includes any reference to a disclosure concerning a corporation registered, or other thing arising or received, outside New South Wales.

3. **References to interests in real property**: A reference in this schedule or in schedule 2 to real property in which a councillor or designated person has an interest includes a reference to any real property situated in Australia in which the councillor or designated person has an interest.

4. **Gifts, loans etc. from related corporations**: For the purposes of this schedule and schedule 2, gifts or contributions to travel given, loans made, or goods or services supplied, to a councillor or designated person by two or more corporations that are related to each other for the purposes of section 50 of the Corporations Act 2001 of the Commonwealth are all given, made or supplied by a single corporation.
Part 2: Pecuniary interests to be disclosed in returns

Real property
5. A person making a return under clause 4.21 of this code must disclose:
   a) the street address of each parcel of real property in which they had an interest on the return date, and
   b) the street address of each parcel of real property in which they had an interest in the period since 30 June of the previous financial year, and
   c) the nature of the interest.
6. An interest in a parcel of real property need not be disclosed in a return if the person making the return had the interest only:
   a) as executor of the will, or administrator of the estate, of a deceased person and not as a beneficiary under the will or intestacy, or
   b) as a trustee, if the interest was acquired in the ordinary course of an occupation not related to their duties as the holder of a position required to make a return.
7. An interest in a parcel of real property need not be disclosed in a return if the person ceased to hold the interest prior to becoming a councillor or designated person.
8. For the purposes of clause 5 of this schedule, "interest" includes an option to purchase.

Gifts
9. A person making a return under clause 4.21 of this code must disclose:
   a) a description of each gift received in the period since 30 June of the previous financial year, and
   b) the name and address of the donor of each of the gifts.
10. A gift need not be included in a return if:
    a) it did not exceed $500, unless it was among gifts totalling more than $500 made by the same person during a period of 12 months or less, or
    b) it was a political donation disclosed, or required to be disclosed, under Part 3 of the Electoral Funding Act 2018, or
    c) the donor was a relative of the donee, or
    d) subject to paragraph (a), it was received prior to the person becoming a councillor or designated person.
11. For the purposes of clause 10 of this schedule, the amount of a gift other than money is an amount equal to the value of the property given.

Contributions to travel
12. A person making a return under clause 4.21 of this code must disclose:
    a) the name and address of each person who made any financial or other contribution to the expenses of any travel undertaken by the person in the period since 30 June of the previous financial year, and
    b) the dates on which the travel was undertaken, and
    c) the names of the states and territories, and of the overseas countries, in which the travel was undertaken.
13. A financial or other contribution to any travel need not be disclosed under this clause if it:
   a) was made from public funds (including a contribution arising from travel on free passes issued under an Act or from travel in government or council vehicles), or
   b) was made by a relative of the traveller, or
   c) was made in the ordinary course of an occupation of the traveller that is not related to their functions as the holder of a position requiring the making of a return, or
   d) did not exceed $250, unless it was among gifts totalling more than $250 made by the same person during a 12-month period or less, or
   e) was a political donation disclosed, or required to be disclosed, under Part 3 of the Electoral Funding Act 2018, or
   f) was made by a political party of which the traveller was a member and the travel was undertaken for the purpose of political activity of the party in New South Wales, or to enable the traveller to represent the party within Australia, or
   g) subject to paragraph (d) it was received prior to the person becoming a councillor or designated person.

14. For the purposes of clause 13 of this schedule, the amount of a contribution (other than a financial contribution) is an amount equal to the value of the contribution.

15. A person making a return under clause 4.21 of this code must disclose:
   a) the name and address of each corporation in which they had an interest or held a position (whether remunerated or not) on the return date, and
   b) the name and address of each corporation in which they had an interest or held a position in the period since 30 June of the previous financial year, and
   c) the nature of the interest, or the position held, in each of the corporations, and
   d) a description of the principal objects (if any) of each of the corporations, except in the case of a listed company.

16. An interest in, or a position held in, a corporation need not be disclosed if the corporation is:
   a) formed for the purpose of providing recreation or amusement, or for promoting commerce, industry, art, science, religion or charity, or for any other community purpose, and
   b) required to apply its profits or other income in promoting its objects, and
   c) prohibited from paying any dividend to its members.

17. An interest in a corporation need not be disclosed if the interest is a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company.

18. An interest or a position in a corporation need not be disclosed if the person ceased to hold the interest or position prior to becoming a councillor or designated person.
Interests as a property developer or a close associate of a property developer

19. A person making a return under clause 4.21 of this code must disclose whether they were a property developer, or a close associate of a corporation that, or an individual who, is a property developer, on the return date.

20. For the purposes of clause 19 of this schedule:

   close associate, in relation to a corporation or an individual, has the same meaning as it has in section 5.3 of the Electoral Funding Act 2018.

   property developer has the same meaning as it has in Division 7 of Part 3 of the Electoral Funding Act 2018.

Positions in trade unions and professional or business associations

21. A person making a return under clause 4.21 of the code must disclose:

   a) the name of each trade union, and of each professional or business association, in which they held any position (whether remunerated or not) on the return date, and

   b) the name of each trade union, and of each professional or business association, in which they have held any position (whether remunerated or not) in the period since 30 June of the previous financial year, and

   c) a description of the position held in each of the unions and associations.

22. A position held in a trade union or a professional or business association need not be disclosed if the person ceased to hold the position prior to becoming a councillor or designated person.

Dispositions of real property

23. A person making a return under clause 4.21 of this code must disclose particulars of each disposition of real property by the person (including the street address of the affected property) in the period since 30 June of the previous financial year, under which they wholly or partly retained the use and benefit of the property or the right to re-acquire the property.

24. A person making a return under clause 4.21 of this code must disclose particulars of each disposition of real property to another person (including the street address of the affected property) in the period since 30 June of the previous financial year, that is made under arrangements with, but is not made by, the person making the return, being a disposition under which the person making the return obtained wholly or partly the use of the property.

25. A disposition of real property need not be disclosed if it was made prior to a person becoming a councillor or designated person.
26. A person making a return under clause 4.21 of this code must disclose:

a) each source of income that the person reasonably expects to receive in the period commencing on the first day after the return date and ending on the following 30 June, and

b) each source of income received by the person in the period since 30 June of the previous financial year.

27. A reference in clause 26 of this schedule to each source of income received, or reasonably expected to be received, by a person is a reference to:

a) in relation to income from an occupation of the person:
   i) a description of the occupation, and
   ii) if the person is employed or the holder of an office, the name and address of their employer, or a description of the office, and
   iii) if the person has entered into a partnership with other persons, the name (if any) under which the partnership is conducted, or

b) in relation to income from a trust, the name and address of the settlor and the trustee, or

c) in relation to any other income, a description sufficient to identify the person from whom, or the circumstances in which, the income was, or is reasonably expected to be, received.

28. The source of any income need not be disclosed by a person in a return if the amount of the income received, or reasonably expected to be received, by the person from that source did not exceed $500, or is not reasonably expected to exceed $500, as the case may be.

29. The source of any income received by the person that they ceased to receive prior to becoming a councillor or designated person need not be disclosed.

30. A fee paid to a councillor or to the mayor or deputy mayor under sections 248 or 249 of the LGA need not be disclosed.

Debts

31. A person making a return under clause 4.21 of this code must disclose the name and address of each person to whom the person was liable to pay any debt:

a) on the return date, and

b) at any time in the period since 30 June of the previous financial year.

32. A liability to pay a debt must be disclosed by a person in a return made under clause 4.21 whether or not the amount, or any part of the amount, to be paid was due and payable on the return date or at any time in the period since 30 June of the previous financial year, as the case may be.

33. A liability to pay a debt need not be disclosed by a person in a return if:

a) the amount to be paid did not exceed $500 on the return date or in the period since 30 June of the previous financial year, as the case may be, unless:
i) the debt was one of two or more debts that the person was liable to pay to one person on the return date, or at any time in the period since 30 June of the previous financial year, as the case may be, and

ii) the amounts to be paid exceeded, in the aggregate, $500, or

b) the person was liable to pay the debt to a relative, or

c) in the case of a debt arising from a loan of money the person was liable to pay the debt to an authorised deposit-taking institution or other person whose ordinary business includes the lending of money, and the loan was made in the ordinary course of business of the lender, or

d) in the case of a debt arising from the supply of goods or services:

i) the goods or services were supplied in the period of 12 months immediately preceding the return date, or were supplied in the period since 30 June of the previous financial year, as the case may be, or

ii) the goods or services were supplied in the ordinary course of any occupation of the person that is not related to their duties as the holder of a position required to make a return, or

e) subject to paragraph (g), the debt was discharged prior to the person becoming a councillor or designated person.

Discretionary disclosures

34. A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision of this Schedule.
Schedule 2:
Form of Written Return of Interests Submitted Under
Clause 4.21
‘Disclosures by councillors and designated persons’ return

1. The pecuniary interests and other matters to be disclosed in this return are prescribed by Schedule 1 of the Model Code of Conduct for Local Councils in NSW (the Model Code of Conduct).

2. If this is the first return you have been required to lodge with the general manager after becoming a councillor or designated person, do not complete Parts C, D and I of the return. All other parts of the return should be completed with appropriate information based on your circumstances at the return date, that is, the date on which you became a councillor or designated person.

3. If you have previously lodged a return with the general manager and you are completing this return for the purposes of disclosing a new interest that was not disclosed in the last return you lodged with the general manager, you must complete all parts of the return with appropriate information for the period from 30 June of the previous financial year or the date on which you became a councillor or designated person, (whichever is the later date), to the return date which is the date you became aware of the new interest to be disclosed in your updated return.

4. If you have previously lodged a return with the general manager and are submitting a new return for the new financial year, you must complete all parts of the return with appropriate information for the 12-month period commencing on 30 June of the previous year to 30 June this year.

5. This form must be completed using block letters or typed.

6. If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.

7. If there are no pecuniary interests or other matters of the kind required to be disclosed under a heading in this form, the word “NIL” is to be placed in an appropriate space under that heading.

Important information

This information is being collected for the purpose of complying with clause 4.21 of the Model Code of Conduct.

You must not lodge a return that you know or ought reasonably to know is false or misleading in a material particular (see clause 4.23 of the Model Code of Conduct). Complaints about breaches of these requirements are to be referred to the Office of Local Government and may result in disciplinary action by the council, the Chief Executive of the Office of Local Government or the NSW Civil and Administrative Tribunal.

The information collected on this form will be kept by the general manager in a register of returns. The general manager is required to table all returns at a council meeting.

Information contained in returns made and lodged under clause 4.21 is to be made publicly available in accordance with the requirements of the Government Information (Public Access) Act 2009, the Government Information (Public Access) Regulation 2009 and any guidelines issued by the Information Commissioner.

You have an obligation to keep the information contained in this return up to date. If you become aware of a new interest that must be disclosed in this return, or an interest that you have previously failed to disclose, you must submit an updated return within three months of becoming aware of the previously undisclosed interest.
Disclosure of pecuniary interests and other matters by [Full name of councillor or designated person] as at [return date]

in respect of the period from [date] to [date]

[councillor’s or designated person’s signature]

[date]

A. Real Property

<table>
<thead>
<tr>
<th>Description of real property</th>
<th>Nature of interest</th>
</tr>
</thead>
</table>

B. Sources of income

1. Sources of income I reasonably expect to receive from an occupation in the period commencing on the first day after the return date and ending on the following 30 June

<table>
<thead>
<tr>
<th>Description of occupation</th>
<th>Name and address of employer or description of office held (if applicable)</th>
<th>Name under which partnership conducted (if applicable)</th>
</tr>
</thead>
</table>

2. Sources of income I received from a trust since 30 June

<table>
<thead>
<tr>
<th>Description of occupation</th>
<th>Name and address of settlor</th>
<th>Name and address of trustee</th>
</tr>
</thead>
</table>

3. Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June

<table>
<thead>
<tr>
<th>Description of occupation</th>
<th>Name and address of donor</th>
</tr>
</thead>
</table>

[Include description sufficient to identify the person from whom, or the circumstances in which, that income was received]
D. Contributions to travel

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time since 30 June

Dates on which travel was undertaken

Name of States, Territories of the Commonwealth and overseas countries in which travel was undertaken

E. Interests and positions in corporations

Name and address of each corporation in which I had an interest or held a position at the return date/at any time since 30 June (if any)

Nature of interest (if any)

Description of position (if any)

Description of principal objects (if any) of corporation (except in case of listed company)

F. Were you a property developer or a close associate of a property developer on the return date? (Y/N)

G. Positions in trade unions and professional or business associations

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at the return date/at any time since 30 June

Description of position

H. Debts

Name and address of each person to whom I was liable to pay any debt at the return date/at any time since 30 June

I. Dispositions of property

1. Particulars of each disposition of real property by me (including the street address of the affected property) at any time since 30 June as a result of which I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time

2. Particulars of each disposition of property to a person by any other person under arrangements made by me (including the street address of the affected property), being dispositions made at any time since 30 June, as a result of which I obtained, either wholly or in part, the use and benefit of the property

J. Discretionary disclosures
Schedule 3:
Form of Special Disclosure of
Pecuniary Interest Submitted
Under Clause 4.37
1. This form must be completed using block letters or typed.

2. If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.

**Important information**

This information is being collected for the purpose of making a special disclosure of pecuniary interests under clause 4.36(c) of the Model Code of Conduct for Local Councils in NSW (the Model Code of Conduct).

The special disclosure must relate only to a pecuniary interest that a councillor has in the councillor’s principal place of residence, or an interest another person (whose interests are relevant under clause 4.3 of the Model Code of Conduct) has in that person’s principal place of residence.

Clause 4.3 of the Model Code of Conduct states that you will have a pecuniary interest in a matter because of the pecuniary interest of your spouse or your de facto partner or your relative or because your business partner or employer has a pecuniary interest. You will also have a pecuniary interest in a matter because you, your nominee, your business partner or your employer is a member of a company or other body that has a pecuniary interest in the matter.

“Relative” is defined by clause 4.4 of the Model Code of Conduct as meaning your, your spouse’s or your de facto partner’s parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child and the spouse or de facto partner of any of those persons.

You must not make a special disclosure that you know or ought reasonably to know is false or misleading in a material particular. Complaints about breaches of these requirements are to be referred to the Office of Local Government and may result in disciplinary action by the Chief Executive of the Office of Local Government or the NSW Civil and Administrative Tribunal.

This form must be completed by you before the commencement of the council or council committee meeting at which the special disclosure is being made. The completed form must be tabled at the meeting. Everyone is entitled to inspect it. The special disclosure must be recorded in the minutes of the meeting.
Special disclosure of pecuniary interests by [full name of councillor]

in the matter of [insert name of environmental planning instrument]

which is to be considered at a meeting of the [name of council or council committee (as the case requires)]

to be held on the day of 20 .

### Pecuniary Interest

<table>
<thead>
<tr>
<th>Relationship of identified land to councillor</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Tick or cross one box]</td>
</tr>
</tbody>
</table>

- The councillor has an interest in the land (e.g. is the owner or has another interest arising out of a mortgage, lease, trust, option or contract, or otherwise).
- An associated person of the councillor has an interest in the land.
- An associated company or body of the councillor has an interest in the land.

### Matter giving rise to pecuniary interest‡

<table>
<thead>
<tr>
<th>Nature of the land that is subject to a change in zone/planning control by the proposed LEP (the subject land)‡</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Tick or cross one box]</td>
</tr>
</tbody>
</table>

- The identified land.
- Land that adjoins or is adjacent to or is in proximity to the identified land.

---

1. Clause 4.1 of the Model Code of Conduct provides that a pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter, or if the interest is of a kind specified in clause 4.6 of the Model Code of Conduct.

2. A pecuniary interest may arise by way of a change of permissible use of land adjoining, adjacent to or in proximity to land in which a councillor or a person, company or body referred to in clause 4.3 of the Model Code of Conduct has a proprietary interest.
<table>
<thead>
<tr>
<th>Proposed change of zone/planning control</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Insert name of proposed LEP and identify</td>
</tr>
<tr>
<td>proposed change of zone/planning control</td>
</tr>
<tr>
<td>applying to the subject land]</td>
</tr>
<tr>
<td>Effect of proposed change of zone/planning</td>
</tr>
<tr>
<td>control on councillor or associated person</td>
</tr>
<tr>
<td>[Insert one of the following: “Appreciable</td>
</tr>
<tr>
<td>financial gain” or “Appreciable financial loss”]</td>
</tr>
<tr>
<td>[If more than one pecuniary interest is to be declared, reprint the above box and fill in for each</td>
</tr>
<tr>
<td>additional interest.]</td>
</tr>
<tr>
<td>Councillor’s signature</td>
</tr>
<tr>
<td>Date</td>
</tr>
<tr>
<td>[This form is to be retained by the council’s general manager and included in full in the minutes of</td>
</tr>
<tr>
<td>the meeting]</td>
</tr>
</tbody>
</table>
Procedures for the Administration of

The Model Code of Conduct
for Local Councils in NSW

2018
PROCEDURES FOR THE ADMINISTRATION OF THE MODEL CODE OF CONDUCT FOR LOCAL COUNCILS IN NSW
2018

ACCESS TO SERVICES
The Office of Local Government is located at:
Street Address:  Levels 1 & 2, 5 O’Keefe Avenue, NOWRA NSW 2541
Postal Address:  Locked Bag 3015, Nowra, NSW 2541
Phone:  02 4428 4100
Fax:  02 4428 4199
TTY:  02 4428 4209
Email:  olg@olg.nsw.gov.au
Website:  www.olg.nsw.gov.au

OFFICE HOURS
Monday to Friday
9.00am to 5.00pm
(Special arrangements may be made if these hours are unsuitable)
All offices are wheelchair accessible.

ALTERNATIVE MEDIA PUBLICATIONS
Special arrangements can be made for our publications to be provided in large print or an alternative media format. If you need this service, please contact us on 02 4428 4100.

DISCLAIMER
While every effort has been made to ensure the accuracy of the information in this publication, the Office of Local Government expressly disclaims any liability to any person in respect of anything done or not done as a result of the contents of the publication or the data provided.

© NSW Office of Local Government, Department of Planning and Environment 2018
Produced by the NSW Office of Local Government, Department of Planning and Environment
# Contents

<table>
<thead>
<tr>
<th>Part</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part 1</td>
<td>Introduction</td>
<td>4</td>
</tr>
<tr>
<td>Part 2</td>
<td>Definitions</td>
<td>6</td>
</tr>
<tr>
<td>Part 3</td>
<td>Administrative Framework</td>
<td>10</td>
</tr>
<tr>
<td>Part 4</td>
<td>How May Code of Conduct Complaints be Made?</td>
<td>14</td>
</tr>
<tr>
<td>Part 5</td>
<td>How are Code of Conduct Complaints to be Managed?</td>
<td>18</td>
</tr>
<tr>
<td>Part 6</td>
<td>Preliminary Assessment of Code of Conduct Complaints About Councillors or the General Manager by Conduct Reviewers</td>
<td>26</td>
</tr>
<tr>
<td>Part 7</td>
<td>Investigations of Code of Conduct Complaints About Councillors or the General Manager</td>
<td>32</td>
</tr>
<tr>
<td>Part 8</td>
<td>Oversight and Rights of Review</td>
<td>42</td>
</tr>
<tr>
<td>Part 9</td>
<td>Procedural Irregularities</td>
<td>46</td>
</tr>
<tr>
<td>Part 10</td>
<td>Practice Directions</td>
<td>48</td>
</tr>
<tr>
<td>Part 11</td>
<td>Reporting Statistics on Code of Conduct Complaints About Councillors and the General Manager</td>
<td>50</td>
</tr>
<tr>
<td>Part 12</td>
<td>Confidentiality</td>
<td>52</td>
</tr>
</tbody>
</table>
Part 1:
Introduction
These procedures ("the Model Code Procedures") are prescribed for the administration of the Model Code of Conduct for Local Councils in NSW ("the Model Code of Conduct").

The Model Code of Conduct is made under section 440 of the Local Government Act 1993 ("the LGA") and the Local Government (General) Regulation 2005 ("the Regulation"). Section 440 of the LGA requires every council (including county councils) and joint organisation to adopt a code of conduct that incorporates the provisions of the Model Code of Conduct.

The Model Code Procedures are made under section 440AA of the LGA and the Regulation. Section 440AA of the LGA requires every council (including county councils) and joint organisation to adopt procedures for the administration of their code of conduct that incorporate the provisions of the Model Code Procedures.

In adopting procedures for the administration of their adopted codes of conduct, councils and joint organisations may supplement the Model Code Procedures. However, provisions that are not consistent with those prescribed under the Model Code Procedures will have no effect.

Note: References in these procedures to councils are also to be taken as references to county councils and joint organisations.

Note: In adopting the Model Code Procedures, joint organisations should adapt them to substitute the terms "board" for "council", "chairperson" for "mayor", "voting representative" for "councillor" and "executive officer" for "general manager".

Note: In adopting the Model Code Procedures, county councils should adapt them to substitute the term "chairperson" for "mayor" and "member" for "councillor".

Note: Parts 6, 7, 8 and 11 of these procedures apply only to the management of code of conduct complaints about councillors (including the mayor) or the general manager.
Part 2: Definitions
In these procedures the following terms have the following meanings:

administrator: an administrator of a council appointed under the LGA other than an administrator appointed under section 66

code of conduct: a code of conduct adopted under section 440 of the LGA

code of conduct complaint: a complaint that is a code of conduct complaint for the purposes of clauses 4.1 and 4.2 of these procedures

complainant: a person who makes a code of conduct complaint

complainant councillor: a councillor who makes a code of conduct complaint

complaints coordinator: a person appointed by the general manager under these procedures as a complaints coordinator

conduct reviewer: a person appointed under these procedures to review allegations of breaches of the code of conduct by councillors or the general manager

council: includes county councils and joint organisations

council committee: a committee established by a council comprising of councillors, staff or other persons that the council has delegated functions to

council committee member: a person other than a councillor or member of staff of a council who is a member of a council committee other than a wholly advisory committee

councillor: any person elected or appointed to civic office, including the mayor, and includes members and chairpersons of county councils and voting representatives of the boards of joint organisations and chairpersons of joint organisations

council official: any councillor, member of staff of council, administrator, council committee member, delegate of council and, for the purposes of clause 4.16 of the Model Code of Conduct, council adviser

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

external agency: a state government agency such as, but not limited to, the Office, the ICAC, the NSW Ombudsman or the police

general manager: includes the executive officer of a joint organisation

ICAC: the Independent Commission Against Corruption

investigator: a conduct reviewer

joint organisation: a joint organisation established under section 4000 of the LGA
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>LGA</td>
<td>the <em>Local Government Act 1993</em></td>
</tr>
<tr>
<td>mayor</td>
<td>includes the chairperson of a county council or a joint organisation</td>
</tr>
<tr>
<td>members of staff of a council</td>
<td>includes members of staff of county councils and joint organisations</td>
</tr>
<tr>
<td>the Office</td>
<td>the Office of Local Government</td>
</tr>
<tr>
<td>the Regulation</td>
<td>the <em>Local Government (General) Regulation 2005</em></td>
</tr>
<tr>
<td>respondent</td>
<td>a person whose conduct is the subject of investigation by a conduct reviewer under those procedures</td>
</tr>
<tr>
<td>wholly advisory committee</td>
<td>a council committee that the council has not delegated any functions to</td>
</tr>
</tbody>
</table>
Part 3:
Administrative Framework
The establishment of a panel of conduct reviewers

3.1 The council must by resolution establish a panel of conduct reviewers.

3.2 The council may by resolution enter into an arrangement with one or more other councils to share a panel of conduct reviewers including through a joint organisation or another regional body associated with the councils.

3.3 The panel of conduct reviewers is to be established following a public expression of interest process.

3.4 An expression of interest for members of the council's panel of conduct reviewers must, at a minimum, be advertised locally and in the Sydney metropolitan area.

3.5 To be eligible to be a conduct reviewer, a person must, at a minimum, meet the following requirements:

a) an understanding of local government, and

b) knowledge of investigative processes including but not limited to procedural fairness requirements and the requirements of the Public Interest Disclosures Act 1994, and

c) knowledge and experience of one or more of the following:

i) investigations

ii) law

iii) public administration

iv) public sector ethics

v) alternative dispute resolution, and

d) meet the eligibility requirements for membership of a panel of conduct reviewers under clause 3.6.

3.6 A person is not eligible to be a conduct reviewer if they are:

a) a councillor, or

b) a nominee for election as a councillor, or

c) an administrator, or

d) an employee of a council, or

e) a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or

f) a nominee for election as a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or

g) a person who has a conviction for an indictable offence that is not an expired conviction.

3.7 A person is not precluded from being a member of the council's panel of conduct reviewers if they are a member of another council's panel of conduct reviewers.

3.8 An incorporated or other entity may be appointed to a council's panel of conduct reviewers where the council is satisfied that all the persons who will be undertaking the functions of a conduct reviewer on behalf of the entity meet the selection and eligibility criteria prescribed under this Part.

3.9 A panel of conduct reviewers established under this Part is to have a term of up to four years.

3.10 The council may terminate the panel of conduct reviewers at any time by resolution. Where a panel of conduct reviewers has been terminated, conduct reviewers who were members of the panel may continue to deal with any matter referred to them under these procedures prior to the termination of the panel until they have finalised their consideration of the matter.
The appointment of an internal ombudsman to a panel of conduct reviewers

3.13 Despite clause 3.6(d), an employee of a council who is the nominated internal ombudsman of one or more councils may be appointed to a council’s panel of conduct reviewers with the Office’s consent.

3.14 To be appointed to a council’s panel of conduct reviewers, an internal ombudsman must meet the qualification requirements for conduct reviewers prescribed under clause 3.5 as modified by the operation of clause 3.13.

3.15 An internal ombudsman appointed to a council’s panel of conduct reviewers may also exercise the functions of the council’s complaints coordinator. For the purposes of clause 6.1, an internal ombudsman who is a council’s complaints coordinator and has been appointed to the council’s panel of conduct reviewers, may either undertake a preliminary assessment and investigation of a matter referred to them under clauses 5.26 or 5.33 or refer the matter to another conduct reviewer in accordance with clause 6.2.

3.16 Clause 6.4(c) does not apply to an internal ombudsman appointed to a council’s panel of conduct reviewers.

The appointment of complaints coordinators

3.17 The general manager must appoint a member of staff of the council or another person (such as, but not limited to, a member of staff of another council or a member of staff of a joint organisation or other regional body associated with the council), to act as a complaints coordinator. Where the complaints coordinator is a member of staff of the council, the complaints coordinator should be a senior and suitably qualified member of staff.

3.18 The general manager may appoint other members of staff of the council or other persons (such as, but not limited to, members of staff of another council or members of staff of a joint organisation or other regional body associated with the council), to act as alternates to the complaints coordinator.

3.19 The general manager must not undertake the role of complaints coordinator.

3.20 The person appointed as complaints coordinator or alternate complaints coordinator must also be a nominated disclosures coordinator appointed for the purpose of receiving and managing reports of wrongdoing under the Public Interest Disclosures Act 1994.

3.21 The role of the complaints coordinator is to:

a) coordinate the management of complaints made under the council’s code of conduct

b) liaise with and provide administrative support to a conduct reviewer

c) liaise with the Office and

d) arrange the annual reporting of code of conduct complaints statistics.
Part 4:

How May Code of Conduct Complaints be Made?
What is a code of conduct complaint?

4.1 For the purpose of these procedures, a code of conduct complaint is a complaint that shows or tends to show conduct on the part of a council official in connection with their role as a council official or the exercise of their functions as a council official that would constitute a breach of the standards of conduct prescribed under the council's code of conduct if proven.

4.2 The following are not “code of conduct complaints” for the purposes of these procedures:

a) complaints about the standard or level of service provided by the council or a council official

b) complaints that relate solely to the merits of a decision made by the council or a council official or the exercise of a discretion by the council or a council official

c) complaints about the policies or procedures of the council

d) complaints about the conduct of a council official arising from the exercise of their functions in good faith, whether or not involving error, that would not otherwise constitute a breach of the standards of conduct prescribed under the council's code of conduct.

4.3 Only code of conduct complaints are to be dealt with under these procedures. Complaints that do not satisfy the definition of a code of conduct complaint are to be dealt with under the council's routine complaints management processes.

When must a code of conduct complaint be made?

4.4 A code of conduct complaint must be made within three months of the alleged conduct occurring or within three months of the complainant becoming aware of the alleged conduct.

4.5 A complaint made after 3 months may only be accepted if the general manager or their delegate, or, in the case of a complaint about the general manager, the mayor or their delegate, is satisfied that the allegations are serious and compelling grounds exist for the matter to be dealt with under the code of conduct.
How may a code of conduct complaint about a council official other than the general manager be made?

4.6 All code of conduct complaints other than those relating to the general manager are to be made to the general manager in writing. This clause does not operate to prevent a person from making a complaint to an external agency.

4.7 Where a code of conduct complaint about a council official other than the general manager cannot be made in writing, the complaint must be confirmed with the complainant in writing as soon as possible after the receipt of the complaint.

4.8 In making a code of conduct complaint about a council official other than the general manager, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.

4.9 The general manager or their delegate, or, where the complaint is referred to a conduct reviewer, the conduct reviewer, must consider the complainant's preferences in deciding how to deal with the complaint.

4.10 Notwithstanding clauses 4.6 and 4.7, where the general manager becomes aware of a possible breach of the council's code of conduct, they may initiate the process for the consideration of the matter under these procedures without a written complaint.

How may a code of conduct complaint about the general manager be made?

4.11 Code of conduct complaints about the general manager are to be made to the mayor in writing. This clause does not operate to prevent a person from making a complaint about the general manager to an external agency.

4.12 Where a code of conduct complaint about the general manager cannot be made in writing, the complaint must be confirmed with the complainant in writing as soon as possible after the receipt of the complaint.

4.13 In making a code of conduct complaint about the general manager, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.

4.14 The mayor or their delegate, or, where the complaint is referred to a conduct reviewer, the conduct reviewer, must consider the complainant's preferences in deciding how to deal with the complaint.

4.15 Notwithstanding clauses 4.11 and 4.12, where the mayor becomes aware of a possible breach of the council's code of conduct by the general manager, they may initiate the process for the consideration of the matter under these procedures without a written complaint.
Part 5:
How are Code of Conduct Complaints to be Managed?
Delegation by general managers and mayors of their functions under this Part

5.1 A general manager or mayor may delegate their functions under this Part to a member of staff of the council or to a person or persons external to the council other than an external agency. References in this Part to the general manager or mayor are also to be taken to be references to their delegates.

Consideration of complaints by general managers and mayors

5.2 In exercising their functions under this Part, general managers and mayors may consider the complaint assessment criteria prescribed under clause 6.31.

What complaints may be declined at the outset?

5.3 Without limiting any other provision in these procedures, the general manager or, in the case of a complaint about the general manager, the mayor, may decline to deal with a complaint under these procedures where they are satisfied that the complaint:

a) is not a code of conduct complaint, or

b) subject to clause 4.5, is not made within 3 months of the alleged conduct occurring or the complainant becoming aware of the alleged conduct, or

c) is trivial, frivolous, vexatious or not made in good faith, or

d) relates to a matter the substance of which has previously been considered and addressed by the council and does not warrant further action, or

e) is not made in a way that would allow the alleged conduct and any alleged breaches of the council's code of conduct to be readily identified.

How are code of conduct complaints about staff (other than the general manager) to be dealt with?

5.4 The general manager is responsible for the management of code of conduct complaints about members of staff of council (other than complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct) and for determining the outcome of such complaints.

5.5 The general manager must refer code of conduct complaints about members of staff of council alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct to the Office.

5.6 The general manager may decide to take no action in relation to a code of conduct complaint about a member of staff of council other than one requiring referral to the Office under clause 5.5 where they consider that no action is warranted in relation to the complaint.

5.7 Where the general manager decides to take no action in relation to a code of conduct complaint about a member of staff of council, the general manager must give the complainant reasons in writing for their decision and this shall finalise the consideration of the matter under these procedures.
5.8 Code of conduct complaints about members of staff of council must be managed in accordance with the relevant industrial instrument or employment contract and make provision for procedural fairness including the right of an employee to be represented by their union.

5.9 Sanctions for breaches of the code of conduct by staff depend on the severity, scale and importance of the breach and must be determined in accordance with any relevant industrial instruments or contracts.

---

How are code of conduct complaints about delegates of council, council advisers and council committee members to be dealt with?

5.10 The general manager is responsible for the management of code of conduct complaints about delegates of council and council committee members other than complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct and for determining the outcome of such complaints.

5.11 The general manager must refer code of conduct complaints about council advisers, delegates of council and council committee members alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct to the Office.

5.12 The general manager may decide to take no action in relation to a code of conduct complaint about a delegate of council or a council committee member other than one requiring referral to the Office under clause 5.11 where they consider that no action is warranted in relation to the complaint.

5.13 Where the general manager decides to take no action in relation to a code of conduct complaint about a delegate of council or a council committee member, the general manager must give the complainant reasons in writing for their decision and this shall finalise the consideration of the matter under these procedures.

5.14 Where the general manager considers it to be practicable and appropriate to do so, the general manager may seek to resolve code of conduct complaints about delegates of council or council committee members, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour. The resolution of a code of conduct complaint under this clause is not to be taken as a determination that there has been a breach of the council’s code of conduct.

5.15 Where the general manager resolves a code of conduct complaint under clause 5.14 to the general manager’s satisfaction, the general manager must notify the complainant in writing of the steps taken to resolve the complaint and this shall finalise the consideration of the matter under these procedures.

5.16 Sanctions for breaches of the code of conduct by delegates of council and/or council committee members depend on the severity, scale and importance of the breach and may include one or more of the following:

a) censure
b) requiring the person to apologise to any person or organisation adversely affected by the breach in such a time and form specified by the general manager

c) prosecution for any breach of the law

d) removing or restricting the person’s delegation

e) removing the person from membership of the relevant council committee.

5.17 Prior to imposing a sanction against a delegate of council or a council committee member under clause 5.18, the general manager or any person making enquiries on behalf of the general manager must comply with the requirements of procedural fairness. In particular:

a) the substance of the allegation (including the relevant provision/s of the council’s code of conduct that the alleged conduct is in breach of) must be put to the person who is the subject of the allegation, and

b) the person must be given an opportunity to respond to the allegation, and

c) the general manager must consider the person’s response in deciding whether to impose a sanction under clause 5.18.

5.19 The general manager must notify the complainant of the referral of their complaint in writing.

How are code of conduct complaints about councillors to be dealt with?

5.20 The general manager must refer the following code of conduct complaints about councillors to the Office:

a) complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct

b) complaints alleging a failure to comply with a requirement under the code of conduct to disclose and appropriately manage conflicts of interest arising from political donations (see section 328B of the LGA)

c) complaints alleging a breach of the provisions relating to the maintenance of the integrity of the code of conduct contained in Part 9 of the code of conduct

d) complaints that are the subject of a special complaints management arrangement with the Office under clause 5.49.

5.21 Where the general manager refers a complaint to the Office under clause 5.20, the general manager must notify the complainant of the referral in writing.

5.22 The general manager may decide to take no action in relation to a code of conduct complaint about a councillor, other than one requiring referral to the Office under clause 5.20, where they consider that no action is warranted in relation to the complaint.
5.23 Where the general manager decides to take no action in relation to a code of conduct complaint about a councillor, the general manager must give the complainant reasons in writing for their decision within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these procedures.

5.24 Where the general manager considers it to be practicable and appropriate to do so, the general manager may seek to resolve code of conduct complaints about councillors, other than those requiring referral to the Office under clause 5.20, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour. The resolution of a code of conduct complaint under this clause is not to be taken as a determination that there has been a breach of the council’s code of conduct.

5.25 Where the general manager resolves a code of conduct complaint under clause 5.24 to the general manager’s satisfaction, the general manager must notify the complainant in writing of the steps taken to resolve the complaint within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these procedures.

5.26 The general manager must refer all code of conduct complaints about councillors, other than those referred to the Office under clause 5.20 or finalised under clause 5.25 or resolved under clause 5.24, to the complaints coordinator.

How are code of conduct complaints about the general manager to be dealt with?

5.27 The mayor must refer the following code of conduct complaints about the general manager to the Office:

a) complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct;

b) complaints alleging a breach of the provisions relating to the maintenance of the integrity of the code of conduct contained in Part 9 of the code of conduct;

c) complaints that are the subject of a special complaints management arrangement with the Office under clause 5.49.

5.28 Where the mayor refers a complaint to the Office under clause 5.27, the mayor must notify the complainant of the referral in writing.

5.29 The mayor may decide to take no action in relation to a code of conduct complaint about the general manager, other than one requiring referral to the Office under clause 5.27, where they consider that no action is warranted in relation to the complaint.

5.30 Where the mayor decides to take no action in relation to a code of conduct complaint about the general manager, the mayor must give the complainant reasons in writing for their decision within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these procedures.
5.31 Where the mayor considers it to be practicable and appropriate to do so, the mayor may seek to resolve code of conduct complaints about the general manager, other than those requiring referral to the Office under clause 5.27, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour. The resolution of a code of conduct complaint under this clause is not to be taken as a determination that there has been a breach of the council’s code of conduct.

5.32 Where the mayor resolves a code of conduct complaint under clause 5.31 to the mayor’s satisfaction, the mayor must notify the complainant in writing of the steps taken to resolve the complaint within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these procedures.

5.33 The mayor must refer all code of conduct complaints about the general manager, other than those referred to the Office under clause 5.27 or finalised under clause 5.30 or resolved under clause 5.31, to the complaints coordinator.

How are complaints about both the general manager and the mayor to be dealt with?

5.34 Where the general manager or mayor receives a code of conduct complaint that alleges a breach of the code of conduct by both the general manager and the mayor, the general manager or mayor must either:

a) delegate their functions under this part with respect to the complaint to a member of staff of the council other than the general manager where the allegation is not serious, or to a person external to the council, or

b) refer the matter to the complaints coordinator under clause 5.26 and clause 5.33.

Referral of code of conduct complaints to external agencies

5.35 The general manager, mayor or a conduct reviewer may, at any time, refer a code of conduct complaint to an external agency for its consideration, where they consider such a referral is warranted.

5.36 The general manager, mayor or a conduct reviewer must report to the ICAC any matter that they suspect on reasonable grounds concerns or may concern corrupt conduct.

5.37 Where the general manager, mayor or conduct reviewer refers a complaint to an external agency under clause 5.35, they must notify the complainant of the referral in writing unless they form the view, on the advice of the relevant agency, that it would not be appropriate for them to do so.
5.38 Referral of a matter to an external agency shall finalize consideration of the matter under these procedures unless the council is subsequently advised otherwise by the referral agency.

Disclosure of the identity of complainants

5.39 In dealing with matters under these procedures, information that identifies or tends to identify complainants is not to be disclosed unless:

a) the complainant consents in writing to the disclosure, or

b) it is generally known that the complainant has made the complaint as a result of the complainant having voluntarily identified themselves as the person who made the complaint, or

c) it is essential, having regard to procedural fairness requirements, that the identifying information be disclosed, or

d) a conduct reviewer is of the opinion that disclosure of the information is necessary to investigate the matter effectively, or

e) it is otherwise in the public interest to do so.

5.40 Clause 5.39 does not apply to code of conduct complaints made by councillors about other councillors or the general manager.

5.41 Where a councillor makes a code of conduct complaint about another councillor or the general manager, and the complainant councillor considers that compelling grounds exist that would warrant information that identifies or tends to identify them as the complainant not to be disclosed, they may request in writing that such information not be disclosed.

5.42 A request made by a complainant councillor under clause 5.41 must be made at the time they make a code of conduct complaint and must state the grounds upon which the request is made.

5.43 The general manager or mayor, and where the matter is referred to a conduct reviewer, the conduct reviewer, must consider a request made under clause 5.41 before disclosing information that identifies or tends to identify the complainant councillor, but they are not obliged to comply with the request.

5.44 Where a complainant councillor makes a request under clause 5.41, the general manager or mayor or, where the matter is referred to a conduct reviewer, the conduct reviewer, shall notify the councillor in writing of their intention to disclose information that identifies or tends to identify them prior to disclosing the information.

Code of conduct complaints made as public interest disclosures

5.45 These procedures do not override the provisions of the Public Interest Disclosures Act 1994. Code of conduct complaints that are made as public interest disclosures under that Act are to be managed in accordance with the requirements of that Act, the council’s internal reporting policy, and any guidelines issued by the NSW Ombudsman that relate to the management of public interest disclosures.

5.46 Where a councillor makes a code of conduct complaint about another councillor or the general manager as a public interest disclosure, before the matter may be dealt with under these
5.47 Where a complainant councillor declines to consent to the disclosure of their identity as the complainant under clause 5.46, the general manager or the mayor must refer the complaint to the Office for consideration. Such a referral must be made under section 26 of the Public Interest Disclosures Act 1994.

Special complaints management arrangements

5.48 The general manager may request in writing that the Office enter into a special complaints management arrangement with the council in relation to code of conduct complaints made by or about a person or persons.

5.49 Where the Office receives a request under clause 5.48, it may agree to enter into a special complaints management arrangement if it is satisfied that the number or nature of code of conduct complaints made by or about a person or persons has:

a) imposed an undue and disproportionate cost burden on the council’s administration of its code of conduct, or

b) impeded or disrupted the effective administration by the council of its code of conduct, or

c) impeded or disrupted the effective functioning of the council.

5.50 A special complaints management arrangement must be in writing and must specify the following:

a) the code of conduct complaints the arrangement relates to, and

b) the period that the arrangement will be in force.

5.51 The Office may, by notice in writing, amend or terminate a special complaints management arrangement at any time.

5.52 While a special complaints management arrangement is in force, an officer of the Office (the assessing OLG officer) must undertake the preliminary assessment of the code of conduct complaints specified in the arrangement in accordance with the requirements of Part 6 of these procedures.

5.53 Where, following a preliminary assessment, the assessing OLG officer determines that a code of conduct complaint warrants investigation by a conduct reviewer, the assessing OLG officer shall notify the complaints coordinator in writing of their determination and the reasons for their determination. The complaints coordinator must comply with the recommendation of the assessing OLG officer.

5.54 Prior to the expiry of a special complaints management arrangement, the Office may, at the request of the general manager, review the arrangement to determine whether it should be renewed or amended.

5.55 A special complaints management arrangement shall expire on the date specified in the arrangement unless renewed under clause 5.54.
Part 6:
Preliminary Assessment of Code of Conduct Complaints About Councillors or the General Manager by Conduct Reviewers
Referral of code of conduct complaints about councillors or the general manager to conduct reviewers

6.1 The complaints coordinator must refer all code of conduct complaints about councillors or the general manager that have not been referred to an external agency or declined or resolved by the general manager, mayor or their delegate and that have been referred to them under clauses 5.26 or 5.33, to a conduct reviewer within 21 days of receipt of the complaint by the general manager or the mayor.

6.2 For the purposes of clause 6.1, the complaints coordinator will refer a complaint to a conduct reviewer selected from:

a) a panel of conduct reviewers established by the council, or

b) a panel of conduct reviewers established by an organisation approved by the Chief Executive of the Office.

6.3 In selecting a suitable conduct reviewer, the complaints coordinator may have regard to the qualifications and experience of members of the panel of conduct reviewers. Where the conduct reviewer is an incorporated or other entity, the complaints coordinator must also ensure that the person assigned to receive the referral on behalf of the entity meets the selection and eligibility criteria for conduct reviewers prescribed under Part 3 of these procedures.

6.4 A conduct reviewer must not accept the referral of a code of conduct complaint where:

a) they have a conflict of interest in relation to the matter referred to them, or

b) a reasonable apprehension of bias arises in relation to their consideration of the matter, or

c) they or their employer has entered into one or more contracts with the council (other than contracts relating to the exercise of their functions as a conduct reviewer) in the 2 years preceding the referral, and they or their employer have received or expect to receive payments under the contract or contracts of a value that, when aggregated, exceeds $100,000, or

d) at the time of the referral, they or their employer are the council’s legal service provider or are a member of a panel of legal service providers appointed by the council.

6.5 For the purposes of clause 6.4(a), a conduct reviewer will have a conflict of interest in a matter where a reasonable and informed person would perceive that they could be influenced by a private interest when carrying out their public duty (see clause 5.2 of the Model Code of Conduct).

6.6 For the purposes of clause 6.4(b), a reasonable apprehension of bias arises where a fair-minded observer might reasonably apprehend that the conduct reviewer might not bring an impartial and unprejudiced mind to the matter referred to the conduct reviewer.

6.7 Where the complaints coordinator refers a matter to a conduct reviewer, they will provide the conduct reviewer with a copy of the code of conduct complaint and any other information relevant to the matter held by the council, including any information about previous proven
breaches and any information that would indicate that the alleged conduct forms part of an ongoing pattern of behaviour.

6.8 The complaints coordinator must notify the complainant in writing that the matter has been referred to a conduct reviewer, and advise which conduct reviewer the matter has been referred to.

6.9 Conduct reviewers must comply with these procedures in their consideration of matters that have been referred to them and exercise their functions in a diligent and timely manner.

6.10 The complaints coordinator may at any time terminate the referral of a matter to a conduct reviewer and refer the matter to another conduct reviewer where the complaints coordinator is satisfied that the conduct reviewer has failed to:

a) comply with these procedures in their consideration of the matter, or

b) comply with a lawful and reasonable request by the complaints coordinator, or

c) exercise their functions in a timely or satisfactory manner.

6.11 Where the complaints coordinator terminates a referral to a conduct reviewer under clause 6.10, they must notify the complainant and any other affected person in writing of their decision and the reasons for it and advise them which conduct reviewer the matter has been referred to instead.

---

Preliminary assessment of code of conduct complaints about councillors or the general manager by a conduct reviewer

6.12 The conduct reviewer is to undertake a preliminary assessment of a complaint referred to them by the complaints coordinator for the purposes of determining how the complaint is to be managed.

6.13 The conduct reviewer may determine to do one or more of the following in relation to a complaint referred to them by the complaints coordinator:

a) to take no action

b) to resolve the complaint by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour

c) to refer the matter back to the general manager or, in the case of a complaint about the general manager, the mayor, for resolution by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour

d) to refer the matter to an external agency

e) to investigate the matter.

6.14 In determining how to deal with a matter under clause 6.13, the conduct reviewer must have regard to the complaint assessment criteria prescribed under clause 6.31.
6.15 The conduct reviewer may make such enquiries the conduct reviewer considers to be reasonably necessary to determine what options to exercise under clause 6.13.

6.16 The conduct reviewer may request the complaints coordinator to provide such additional information the conduct reviewer considers to be reasonably necessary to determine what options to exercise in relation to the matter under clause 6.13. The complaints coordinator will, as far as is reasonably practicable, supply any information requested by the conduct reviewer.

6.17 The conduct reviewer must refer to the Office any complaints referred to them that should have been referred to the Office under clauses 5.20 and 5.27.

6.18 The conduct reviewer must determine to take no action on a complaint that is not a code of conduct complaint for the purposes of these procedures.

6.19 The resolution of a code of conduct complaint under clause 6.13, paragraphs (b) or (c) is not to be taken as a determination that there has been a breach of the council's code of conduct.

6.20 Where the conduct reviewer completes their preliminary assessment of a complaint by determining to exercise an option under clause 6.13, paragraphs (a), (b) or (c), they must provide the complainant with written notice of their determination and provide reasons for it, and this will finalise consideration of the matter under these procedures.

6.21 Where the conduct reviewer refers a complaint to an external agency, they must notify the complainant of the referral in writing unless they form the view, on the advice of the relevant agency, that it would not be appropriate for them to do so.

6.22 The conduct reviewer may only determine to investigate a matter where they are satisfied as to the following:

a) that the complaint is a code of conduct complaint for the purposes of these procedures, and

b) that the alleged conduct is sufficiently serious to warrant investigation, and

c) that the matter is one that could not or should not be resolved by alternative means.

6.23 In determining whether a matter is sufficiently serious to warrant investigation, the conduct reviewer is to consider the following:

a) the harm or cost that the alleged conduct has caused to any affected individuals and/or the council

b) the likely impact of the alleged conduct on the reputation of the council and public confidence in it

c) whether the alleged conduct was deliberate or undertaken with reckless intent or negligence

d) any previous proven breaches by the person whose alleged conduct is the subject of the complaint and/or whether the alleged conduct forms part of an ongoing pattern of behaviour.

6.24 The conduct reviewer must complete their preliminary assessment of the complaint within 28 days of referral of the matter to them by the complaints coordinator and notify the complaints coordinator in writing of the outcome of their assessment.

6.25 The conduct reviewer is not obliged to give prior notice to or to consult with any person before making a determination in relation to their preliminary assessment of a complaint, except as may be specifically required under these procedures.
Referral back to the general manager or mayor for resolution

6.26 Where the conduct reviewer determines to refer a matter back to the general manager or to the mayor to be resolved by alternative and appropriate means, they must write to the general manager or, in the case of a complaint about the general manager, to the mayor, recommending the means by which the complaint may be resolved.

6.27 The conduct reviewer must consult with the general manager or mayor prior to referring a matter back to them under clause 6.13(c).

6.28 The general manager or mayor may decline to accept the conduct reviewer’s recommendation. In such cases, the conduct reviewer may determine to deal with the complaint by other means under clause 6.13.

6.29 Where the conduct reviewer refers a matter back to the general manager or mayor under clause 6.13(c), the general manager or, in the case of a complaint about the general manager, the mayor, is responsible for implementing or overseeing the implementation of the conduct reviewer’s recommendation.

6.30 Where the conduct reviewer refers a matter back to the general manager or mayor under clause 6.13(c), the general manager, or, in the case of a complaint about the general manager, the mayor, must advise the complainant in writing of the steps taken to implement the conduct reviewer’s recommendation once these steps have been completed.

Complaints assessment criteria

6.31 In undertaking the preliminary assessment of a complaint, the conduct reviewer must have regard to the following considerations:

a) whether the complaint is a code of conduct complaint for the purpose of these procedures

b) whether the complaint has been made in a timely manner in accordance with clause 4.4, and if not, whether the allegations are sufficiently serious for compelling grounds to exist for the matter to be dealt with under the council’s code of conduct

c) whether the complaint is trivial, frivolous, vexatious or not made in good faith

d) whether the complaint discloses prima facie evidence of conduct that, if proven, would constitute a breach of the code of conduct

e) whether the complaint raises issues that would be more appropriately dealt with by an external agency

f) whether there is or was an alternative and satisfactory means of redress available in relation to the conduct complained of

g) whether the complaint is one that can be resolved by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour

h) whether the issue/s giving rise to the complaint have previously been addressed or resolved
i) any previous proven breaches of the
council's code of conduct

j) whether the conduct complained
of forms part of an ongoing pattern
of behaviour

k) whether there were mitigating
circumstances giving rise to the
conduct complained of

l) the seriousness of the alleged conduct
(having regard to the criteria specified
in clause 6.23)

m) the significance of the conduct or the
impact of the conduct for the council

n) how much time has passed since the
alleged conduct occurred

c) such other considerations that the
conduct reviewer considers may
be relevant to the assessment of
the complaint.
Part 7:
Investigations of Code of Conduct Complaints About Councillors or the General Manager
What matters may a conduct reviewer investigate?

7.1 A conduct reviewer (hereafter referred to as an "investigator") may investigate a code of conduct complaint that has been referred to them by the complaints coordinator and any matters related to or arising from that complaint.

7.2 Where an investigator identifies further separate possible breaches of the code of conduct that are not related to or arise from the code of conduct complaint that has been referred to them, they are to report the matters separately in writing to the general manager, or, in the case of alleged conduct on the part of the general manager, to the mayor.

7.3 The general manager or the mayor or their delegate is to deal with a matter reported to them by an investigator under clause 7.2 as if it were a new code of conduct complaint in accordance with these procedures.

How are investigations to be commenced?

7.4 The investigator must at the outset of their investigation provide a written notice of investigation to the respondent. The notice of investigation must:

a) disclose the substance of the allegations against the respondent, and

b) advise of the relevant provisions of the code of conduct that apply to the alleged conduct, and

c) advise of the process to be followed in investigating the matter, and
d) advise the respondent of the requirement to maintain confidentiality, and

e) invite the respondent to make a written submission in relation to the matter within at least 14 days or such other period specified by the investigator in the notice, and

f) provide the respondent the opportunity to address the investigator on the matter within such reasonable time specified in the notice.

7.5 The respondent may, within 7 days of receipt of the notice of investigation, request in writing that the investigator provide them with such further information they consider necessary to assist them to identify the substance of the allegation against them. An investigator will only be obliged to provide such information that the investigator considers reasonably necessary for the respondent to identify the substance of the allegation against them.

7.6 An investigator may at any time prior to issuing a draft report, issue an amended notice of investigation to the respondent in relation to the matter referred to them.

7.7 Where an investigator issues an amended notice of investigation, they must provide the respondent with a further opportunity to make a written submission in response to the amended notice of investigation within at least 14 days or such other period specified by the investigator in the amended notice.

7.8 The investigator must also, at the outset of their investigation, provide written notice of the investigation to the complainant, the complaints coordinator and the general manager, or in the case of a complaint about the general manager, to the complainant, the complaints coordinator and the mayor. The notice must:
a) advise them of the matter the investigator is investigating, and

b) in the case of the notice to the complainant, advise them of the requirement to maintain confidentiality, and

c) invite the complainant to make a written submission in relation to the matter within at least 14 days or such other period specified by the investigator in the notice.

7.10 The investigator may accept written submissions received outside the period specified in the notice of investigation or amended notice of investigation.

7.11 Prior to preparing a draft report, the investigator must give the respondent an opportunity to address the investigator on the matter being investigated. The respondent may do so in person or by telephone or other electronic means.

7.12 Where the respondent fails to accept the opportunity to address the investigator within the period specified by the investigator in the notice of investigation, the investigator may proceed to prepare a draft report without hearing from the respondent.

7.13 Where the respondent accepts the opportunity to address the investigator in person, they may have a support person or legal adviser in attendance. The support person or legal adviser will act in an advisory or support role to the respondent only. They must not speak on behalf of the respondent or otherwise interfere with or disrupt proceedings.

7.14 The investigator must consider all written and oral submissions made to them in relation to the matter.

How are investigations to be conducted?

7.15 Investigations are to be undertaken without undue delay.

7.16 Investigations are to be undertaken in the absence of the public and in confidence.

7.17 Investigators must make any such enquiries that may be reasonably necessary to establish the facts of the matter.

7.18 Investigators may seek such advice or expert guidance that may be reasonably necessary to assist them with their investigation or the conduct of their investigation.

7.19 An investigator may request that the complaints coordinator provide such further information that the investigator considers may be reasonably necessary for them to establish the facts of the matter. The complaints coordinator will, as far as is reasonably practicable, provide the information requested by the investigator.
Referral or resolution of a matter after the commencement of an investigation

7.20 At any time after an investigator has issued a notice of investigation and before they have issued a draft report, an investigator may determine to:

a) resolve the matter by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour, or

b) refer the matter to the general manager, or, in the case of a complaint about the general manager, to the mayor, for resolution by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour, or

c) refer the matter to an external agency.

7.21 Where an investigator determines to exercise any of the options under clause 7.20 after the commencement of an investigation, they must do so in accordance with the requirements of Part 6 of these procedures relating to the exercise of these options at the preliminary assessment stage.

7.22 The resolution of a code of conduct complaint under clause 7.20, paragraphs (a) or (b), is not to be taken as a determination that there has been a breach of the council’s code of conduct.

7.23 Where an investigator determines to exercise any of the options under clause 7.20 after the commencement of an investigation, they may by written notice to the respondent, the complainant, the complaints coordinator and the general manager, or in the case of a complaint about the general manager, to the respondent, the complainant, the complaints coordinator and the mayor, discontinue their investigation of the matter.

7.24 Where the investigator discontinues their investigation of a matter under clause 7.23, this shall finalise the consideration of the matter under these procedures.

7.25 An investigator is not obliged to give prior notice to or to consult with any person before making a determination to exercise any of the options under clause 7.20 or to discontinue their investigation except as may be specifically required under these procedures.

Draft investigation reports

7.26 When an investigator has completed their enquiries and considered any written or oral submissions made to them in relation to a matter, they must prepare a draft of their proposed report.

7.27 The investigator must provide their draft report to the respondent and invite them to make a written submission in relation to it within at least 14 days or such other period specified by the investigator.

7.28 Where the investigator proposes to make adverse comment about any other person (an affected person) in their report, they must also provide the affected person with relevant extracts of their draft report containing such comment and invite the affected person to make a written submission in relation to it within at least 14 days or such other period specified by the investigator.
7.29 The investigator must consider written submissions received in relation to the draft report prior to finalising their report in relation to the matter.

7.30 The investigator may, after consideration of all written submissions received in relation to their draft report, make further enquiries into the matter. If, as a result of making further enquiries, the investigator makes any material change to their proposed report that makes new adverse comment about the respondent or an affected person, they must provide the respondent or affected person as the case may be with a further opportunity to make a written submission in relation to the new adverse comment.

7.31 Where the respondent or an affected person fails to make a written submission in relation to the draft report within the period specified by the investigator, the investigator may proceed to prepare and issue their final report without receiving such submissions.

7.32 The investigator may accept written submissions in relation to the draft report received outside the period specified by the investigator at any time prior to issuing their final report.

---

**Final investigation reports**

7.33 Where an investigator issues a notice of investigation they must prepare a final report in relation to the matter unless the investigation is discontinued under clause 7.23.

7.34 An investigator must not prepare a final report in relation to the matter at any time before they have finalised their consideration of the matter in accordance with the requirements of these procedures.

7.35 The investigator’s final report must:

- make findings of fact in relation to the matter investigated, and,
- make a determination that the conduct investigated either,
  - constitutes a breach of the code of conduct, or
  - does not constitute a breach of the code of conduct, and,
- provide reasons for the determination.

7.36 Where the investigator determines that the conduct investigated constitutes a breach of the code of conduct, the investigator may make one or more of the following recommendations:

- that the council revise any of its policies, practices or procedures
- that the respondent undertake any training or other education relevant to the conduct giving rise to the breach
- that the respondent be counselled for their conduct
- that the respondent be removed from membership of a committee of the council or any other body or organisation that the respondent serves or as a council’s representative
- that the respondent gives an undertaking not to repeat the offending behaviour in such time and form specified by the recommendation
- that the respondent apologise to any person or organisation affected by the breach in such a time and form specified by the recommendation
- that findings of inappropriate conduct be made public by publishing the investigator’s findings and determination in the minutes of the council meeting at which the matter is considered
h) in the case of a breach by the general manager, that action be taken under the general manager's contract

i) in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the LGA

j) in the case of a breach by a councillor, that the council resolves as follows:

i) that the councillor be formally censured for the breach under section 440G of the LGA, and

ii) that the matter be referred to the Office for further action under the misconduct provisions of the LGA.

7.37 Where the investigator determines that the conduct investigated does not constitute a breach of the code of conduct, the investigator may make one or more of the following recommendations:

a) that the council revise any of its policies, practices or procedures

b) that a person or persons undertake any training or other education.

7.38 In making a recommendation under clause 7.36, the investigator may have regard to the following:

a) the seriousness of the breach

b) whether the breach can be easily remedied or rectified

c) whether the respondent has remedied or rectified their conduct

d) whether the respondent has expressed contrition

e) whether there were any mitigating circumstances

f) the age, physical or mental health or special infirmity of the respondent

g) whether the breach is technical or trivial only

h) any previous proven breaches

i) whether the breach forms part of an ongoing pattern of behaviour

j) the degree of reckless intention or negligence of the respondent

k) the extent to which the breach has affected other parties or the council as a whole

l) the harm or potential harm to the reputation of the council or local government in general arising from the conduct

m) whether the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny

n) whether an educative approach would be more appropriate than a punitive one

o) the relative costs and benefits of taking formal disciplinary action as opposed to taking no action or taking informal action

p) what action or remedy would be in the public interest.

7.39 Where the investigator proposes to make a recommendation under clause 7.36(j), the investigator must first consult with the Office on their proposed findings, determination and recommendation prior to finalising their report, and must take any comments by the Office into consideration when finalising their report.

7.40 At a minimum, the investigator's final report must contain the following information:

a) a description of the allegations against the respondent
b) the relevant provisions of the code of conduct that apply to the alleged conduct investigated

c) a statement of reasons as to why the matter warranted investigation (having regard to the criteria specified in clause 6.23)

d) a statement of reasons as to why the matter was one that could not or should not be resolved by alternative means

e) a description of any attempts made to resolve the matter by use of alternative means

f) the steps taken to investigate the matter

g) the facts of the matter

h) the investigator’s findings in relation to the facts of the matter and the reasons for those findings

i) the investigator’s determination and the reasons for that determination

j) any recommendations.

7.41 The investigator must provide a copy of their report to the complaints coordinator and the respondent.

7.42 At the time the investigator provides a copy of their report to the complaints coordinator and the respondent, the investigator must provide the complainant with a written statement containing the following information:

a) the investigator’s findings in relation to the facts of the matter and the reasons for those findings

b) the investigator’s determination and the reasons for that determination

c) any recommendations, and

d) such other additional information that the investigator considers may be relevant.

7.43 Where the investigator has determined that there has not been a breach of the code of conduct, the complaints coordinator must provide a copy of the investigator’s report to the general manager or, where the report relates to the general manager’s conduct, to the mayor, and this will finalise consideration of the matter under these procedures.

7.44 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 7.36, paragraph (a) only, the complaints coordinator must provide a copy of the investigator’s report to the general manager. Where the general manager agrees with the recommendation/s, the general manager is responsible for implementing the recommendation/s.

7.45 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 7.36, paragraphs (b) or (c) only, the complaints coordinator must provide a copy of the investigator’s report to the general manager or, where the report relates to the general manager’s conduct, to the mayor. The general manager is responsible for arranging the implementation of the recommendation/s where the report relates to a councillor’s conduct. The mayor is responsible for arranging the implementation of the recommendation/s where the report relates to the general manager’s conduct.

7.46 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 7.36, paragraphs (d) to (l) (whether or not in conjunction with recommendations made under clause 7.36, paragraphs (a) to (g)).
the complaints coordinator must, where practicable, arrange for the investigator’s report to be reported to the next ordinary council meeting for the council’s consideration, unless the meeting is to be held within the 4 weeks prior to an ordinary local government election, in which case the report must be reported to the first ordinary council meeting following the election.

**Consideration of the final investigation report by council**

7.47 The role of the council in relation to a final investigation report is to impose a sanction if the investigator has determined that there has been a breach of the code of conduct and has made a recommendation in their final report under clause 7.36, paragraphs (d) to (j) (whether or not in conjunction with recommendations made under clause 7.36, paragraphs (a) to (c)).

7.48 The council is to close its meeting to the public to consider the final investigation report in cases where it is permitted to do so under section 10A of the LGA.

7.49 Where the complainant is a councillor, they must absent themselves from the meeting and take no part in any discussion or voting on the matter. The complainant councillor may absent themselves without making any disclosure of interest in relation to the matter unless otherwise required to do so under the code of conduct.

7.50 Prior to imposing a sanction, the council must provide the respondent with an opportunity to make a submission to the council. A submission may be made orally or in writing. The respondent is to confine their submission to addressing the investigator’s recommendation/s.

7.51 Once the respondent has made their submission they must absent themselves from the meeting and, where they are a councillor, take no part in any discussion or voting on the matter.

7.52 The council must not invite submissions from other persons for the purpose of seeking to re hear evidence previously considered by the investigator.

7.53 Prior to imposing a sanction, the council may by resolution:

a) request that the investigator make additional enquiries and/or provide additional information to it in a supplementary report, or

b) seek an opinion from the Office in relation to the report.

7.54 The council may, by resolution, defer further consideration of the matter pending the receipt of a supplementary report from the investigator or an opinion from the Office.

7.55 The investigator may make additional enquiries for the purpose of preparing a supplementary report.

7.56 Where the investigator prepares a supplementary report, they must provide copies to the complaints coordinator who shall provide a copy each to the council and the respondent.

7.57 The investigator is not obliged to notify or consult with any person prior to submitting the supplementary report to the complaints coordinator.

7.58 The council is only required to provide the respondent a further opportunity to make an oral or written submission on a supplementary report if the supplementary report contains new information that is adverse to them.

7.59 A council may by resolution impose one or more of the following sanctions on a respondent:
a) that the respondent undertake any training or other education relevant to the conduct giving rise to the breach

b) that the respondent be counselled for their conduct

c) that the respondent be removed from membership of a committee of the council or any other body or organisation that the respondent serves on as the council’s representative

d) that the respondent gives an undertaking not to repeat the offending behaviour in such time and form specified by the resolution

e) that findings of inappropriate conduct be made public by publishing the investigator’s findings and determination in the minutes of the meeting

f) in the case of a breach by the general manager, that action be taken under the general manager’s contract for the breach

h) in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the LGA

i) in the case of a breach by a councillor:

l) that the councillor be formally censured for the breach under section 440G of the LGA, and

ii) that the matter be referred to the Office for further action under the misconduct provisions of the LGA.

7.60 The council is not obliged to accept the investigator’s recommendation(s). Where the council proposes not to adopt one or more of the investigator’s recommendation(s), the council must resolve not to adopt the recommendation(s) and state in its resolution the reasons for its decision.

7.61 Where the council proposes to impose a sanction on the respondent under clause 7.59 that is different to the sanction recommended by the investigator in their final report, the council must state in its resolution the reasons for its decision.

7.62 Where the council resolves not to adopt the investigator’s recommendation(s) or imposes a sanction on the respondent under clause 7.59 that is different to the sanction recommended by the investigator, the complaints coordinator must notify the Office of the council’s decision and the reasons for it.
Part 8: Oversight and Rights of Review
The Office’s powers of review

8.1 The Office may, at any time, whether or not in response to a request, review the consideration of a matter under a council’s code of conduct where it is concerned that a person has failed to comply with a requirement prescribed under these procedures or has misinterpreted or misapplied the standards of conduct prescribed under the code of conduct in their consideration of a matter.

8.2 The Office may direct any person, including the council, to defer taking further action in relation to a matter under consideration under the council’s code of conduct pending the completion of its review. Any person the subject of a direction must comply with the direction.

8.3 Where the Office undertakes a review of a matter under clause 8.1, it will notify the complaints coordinator and any other affected persons, of the outcome of the review.

Complaints about conduct reviewers

8.4 The general manager or their delegate must refer code of conduct complaints about conduct reviewers to the Office for its consideration.

8.5 The general manager must notify the complainant of the referral of their complaint about the conduct reviewer in writing.

8.6 The general manager must implement any recommendation made by the Office as a result of its consideration of a complaint about a conduct reviewer.

Practice rulings

8.7 Where a respondent and an investigator are in dispute over a requirement under these procedures, either person may make a request in writing to the Office to make a ruling on a question of procedure (a practice ruling).

8.8 Where the Office receives a request in writing for a practice ruling, the Office may provide notice in writing of its ruling and the reasons for it to the person who requested it and to the investigator, where that person is different.

8.9 Where the Office makes a practice ruling, all parties must comply with it.

8.10 The Office may decline to make a practice ruling. Where the Office declines to make a practice ruling, it will provide notice in writing of its decision and the reasons for it to the person who requested it and to the investigator, where that person is different.

Review of decisions to impose sanctions

8.11 A person who is the subject of a sanction imposed under Part 7 of these procedures other than one imposed under clause 7.59, paragraph (i), may, within 28 days of the sanction being imposed, seek a review of the investigator’s determination and recommendation by the Office.

8.12 A review under clause 8.11 may be sought on the following grounds:

a) that the investigator has failed to comply with a requirement under these procedures, or

b) that the investigator has misinterpreted or misapplied the standards of conduct prescribed under the code of conduct, or
c) that in imposing its sanction, the council has failed to comply with a requirement under these procedures.

8.13 A request for a review made under clause 8.11 must be made in writing and must specify the grounds upon which the person believes the investigator or the council has erred.

8.14 The Office may decline to conduct a review, in cases where the grounds upon which the review is sought are not sufficiently specified.

8.15 The Office may undertake a review of a matter without receiving a request under clause 8.11.

8.16 The Office will undertake a review of the matter on the papers. However, the Office may request that the complaints coordinator provide such further information that the Office considers reasonably necessary for it to review the matter. The complaints coordinator must, as far as is reasonably practicable, provide the information requested by the Office.

8.17 Where a person requests a review under clause 8.11, the Office may direct the council to defer any action to implement a sanction. The council must comply with a direction to defer action by the Office.

8.18 The Office must notify the person who requested the review and the complaints coordinator of the outcome of the Office's review in writing and the reasons for its decision. In doing so, the Office may comment on any other matters the Office considers to be relevant.

8.19 Where the Office considers that the investigator or the council has erred, the Office may recommend that a decision to impose a sanction under these procedures be reviewed.

8.20 In the case of a sanction implemented by the general manager or mayor under clause 7.45, where the Office recommends that the decision to impose a sanction be reviewed:

a) the complaints coordinator must provide a copy of the Office's determination in relation to the matter to the general manager or the mayor, and

b) the general manager or mayor must review any action taken by them to implement the sanction, and

c) the general manager or mayor must consider the Office's recommendation in doing so.

8.21 In the case of a sanction imposed by the council by resolution under clause 7.59, where the Office recommends that the decision to impose a sanction be reviewed:

a) the complaints coordinator must, where practicable, arrange for the Office's determination to be tabled at the next ordinary council meeting unless the meeting is to be held within the 4 weeks prior to an ordinary local government election, in which case it must be tabled at the first ordinary council meeting following the election, and

b) the council must:

i) review its decision to impose the sanction, and

ii) consider the Office's recommendation in doing so, and

iii) resolve to either rescind or reaffirm its previous resolution in relation to the matter.

8.22 Where, having reviewed its previous decision in relation to a matter under clause 8.21, the council resolves to reaffirm its previous decision, the council must state in its resolution its reasons for doing so.
Part 9:
Procedural Irregularities
9.1 A failure to comply with these procedures does not, on its own, constitute a breach of the code of conduct, except as may be otherwise specifically provided under the code of conduct.

9.2 A failure to comply with these procedures will not render a decision made in relation to a matter invalid where:

a) the non-compliance is isolated and/or minor in nature, or

b) reasonable steps are taken to correct the non-compliance, or

c) reasonable steps are taken to address the consequences of the non-compliance.
Part 10:
Practice Directions
10.1 The Office may at any time issue a practice direction in relation to the application of these procedures.

10.2 The Office will issue practice directions in writing, by circular to all councils.

10.3 All persons performing a function prescribed under these procedures must consider the Office’s practice directions when performing the function.
Part 11:
Reporting Statistics on Code of Conduct Complaints About Councillors and the General Manager
11.1 The complaints coordinator must arrange for the following statistics to be reported to the council within 3 months of the end of September of each year:

a) the total number of code of conduct complaints made about councillors and the general manager under the code of conduct in the year to September (the reporting period)

b) the number of code of conduct complaints referred to a conduct reviewer during the reporting period

c) the number of code of conduct complaints finalised by a conduct reviewer at the preliminary assessment stage during the reporting period and the outcome of those complaints

d) the number of code of conduct complaints investigated by a conduct reviewer during the reporting period

e) without identifying particular matters, the outcome of investigations completed under these procedures during the reporting period

f) the number of matters reviewed by the Office during the reporting period and, without identifying particular matters, the outcome of the reviews, and

g) the total cost of dealing with code of conduct complaints made about councillors and the general manager during the reporting period, including staff costs.

11.2 The council is to provide the Office with a report containing the statistics referred to in clause 11.1 within 3 months of the end of September of each year.
Part 12:
Confidentiality
12.1 Information about code of conduct complaints and the management and investigation of code of conduct complaints is to be treated as confidential and is not to be publicly disclosed except as may be otherwise specifically required or permitted under these procedures.

12.2 Where a complainant publicly discloses information on one or more occasions about a code of conduct complaint they have made or purported to make, the general manager or their delegate may, with the consent of the Office, determine that the complainant is to receive no further information about their complaint and any future code of conduct complaint they make or purport to make.

12.3 Prior to seeking the Office’s consent under clause 12.2, the general manager or their delegate must give the complainant written notice of their intention to seek the Office’s consent, invite them to make a written submission within at least 14 days or such other period specified by the general manager or their delegate, and consider any submission made by them.

12.4 In giving its consent under clause 12.2, the Office must consider any submission made by the complainant to the general manager or their delegate.

12.5 The general manager or their delegate must give written notice of a determination made under clause 12.2 to:

a) the complainant

b) the complaints coordinator

c) the Office, and

d) any other person the general manager or their delegate considers should be notified of the determination.

12.6 Any requirement under these procedures that a complainant is to be provided with information about a code of conduct complaint that they have made or purported to make, will not apply to a complainant the subject of a determination made by the general manager or their delegate under clause 12.2.

12.7 Clause 12.6 does not override any entitlement a person may have to access to council information under the Government Information (Public Access) Act 2009 or to receive information under the Public Interest Disclosures Act 1994 in relation to a complaint they have made.
ATTACHMENTS

Date of Meeting: Monday 8 April 2019
Report Title: Code of Meeting Practice
Attachments: Draft Model Code of Meeting Practice
PENRITH CITY COUNCIL

CODE OF MEETING PRACTICE

Based on the Model Code of Meeting Practice for Local Councils in NSW 2018
Table of Contents

1 INTRODUCTION.............................................................................................................. 3
2 MEETING PRINCIPLES .............................................................................................. 3
3 BEFORE THE MEETING................................................................................................. 9
4 ADDRESSING THE MEETING AND SUSPENSION OF STANDING ORDERS............... 7
5 COMING TOGETHER..................................................................................................... 9
6 THE CHAIRPERSON...................................................................................................... 12
7 MODES OF ADDRESS.................................................................................................... 14
8 ORDER OF BUSINESS FOR ORDINARY COUNCIL MEETINGS .................................. 14
9 CONSIDERATION OF BUSINESS AT COUNCIL MEETINGS...................................... 14
10 RULES OF DEBATE...................................................................................................... 17
11 VOTING......................................................................................................................... 20
12 COMMITTEE OF THE WHOLE.................................................................................... 21
13 DEALING WITH ITEMS BY EXCEPTION...................................................................... 21
14 CLOSURE OF COUNCIL MEETINGS TO THE PUBLIC.............................................. 22
15 KEEPING ORDER AT MEETINGS................................................................................ 26
16 CONFLICTS OF INTEREST.......................................................................................... 28
17 DECISIONS OF THE COUNCIL................................................................................... 29
18 AFTER THE MEETING.................................................................................................. 31
19 COUNCIL COMMITTEES............................................................................................... 32
20 IRREGULARITIES.......................................................................................................... 35
21 DEFINITIONS............................................................................................................... 36
1 INTRODUCTION

This Model Code of Meeting Practice for Local Councils in NSW (the Model Meeting Code) is made under section 360 of the Local Government Act 1993 (the Act) and the Local Government (General) Regulation 2005 (the Regulation).

This code applies to all meetings of councils and committees of councils of which all the members are councillors (committees of council). Council committees whose members include persons other than councillors may adopt their own rules for meetings unless the council determines otherwise.

Councils must adopt a code of meeting practice that incorporates the mandatory provisions of the Model Meeting Code.

A council’s adopted code of meeting practice may also incorporate the non-mandatory provisions of the Model Meeting Code and other supplementary provisions. However, a code of meeting practice adopted by a council must not contain provisions that are inconsistent with the mandatory provisions of this Model Meeting Code.

2 MEETING PRINCIPLES

2.1 Council and committee meetings should be:

   Transparent: Decisions are made in a way that is open and accountable.

   Informed: Decisions are made based on relevant, quality information.

   Inclusive: Decisions respect the diverse needs and interests of the local community.

   Principled: Decisions are informed by the principles prescribed under Chapter 3 of the Act.

   Trusted: The community has confidence that councillors and staff act ethically and make decisions in the interests of the whole community.

   Respectful: Councillors, staff and meeting attendees treat each other with respect.

   Effective: Meetings are well organised, effectively run and skilfully chaired.

   Orderly: Councillors, staff and meeting attendees behave in a way that contributes to the orderly conduct of the meeting.

3 BEFORE THE MEETING

Timing of ordinary council meetings

3.1 The council shall, by resolution, set the frequency, time, date and place of its ordinary meetings.
Note: Under section 365 of the Act, councils are required to meet at least ten (10) times each year, each time in a different month unless the Minister for Local Government has approved a reduction in the number of times that a council is required to meet each year under section 365A.

Extraordinary meetings

3.2 If the mayor receives a request in writing, signed by at least two (2) councillors, the mayor must call an extraordinary meeting of the council to be held as soon as practicable, but in any event, no more than fourteen (14) days after receipt of the request. The mayor can be one of the two councillors requesting the meeting.

Note: Clause 3.2 reflects section 366 of the Act.

Notice to the public of council meetings

3.3 The council must give notice to the public of the time, date and place of each of its meetings, including extraordinary meetings and of each meeting of committees of the council.

Note: Clause 3.3 reflects section 9(1) of the Act.

3.4 For the purposes of clause 3.3, notice of a meeting of the council and of a committee of council is to be published before the meeting takes place. The notice must be published on the council’s website, and in such other manner that the council is satisfied is likely to bring notice of the meeting to the attention of as many people as possible.

3.5 For the purposes of clause 3.4, notice of more than one (1) meeting may be given in the same notice.

Notice to councillors of ordinary council meetings

3.6 The general manager must send to each councillor, at least three (3) days before each meeting of the council, a notice specifying the time, date and place at which the meeting is to be held, and the business proposed to be considered at the meeting.

Note: Clause 3.6 reflects section 367(1) of the Act.

3.7 The notice and the agenda for, and the business papers relating to, the meeting may be given to councillors in electronic form, but only if all councillors have facilities to access the notice, agenda and business papers in that form.

Note: Clause 3.7 reflects section 367(3) of the Act.

Notice to councillors of extraordinary meetings

3.8 Notice of less than three (3) days may be given to councillors of an extraordinary meeting of the council in cases of emergency.
Note: Clause 3.8 reflects section 367(2) of the Act.

Giving notice of business to be considered at council meetings

3.9 A councillor may give notice of any business they wish to be considered by the council at its next ordinary meeting by way of a notice of motion. To be included on the agenda of the meeting, the notice of motion must be in writing and must be submitted five (5) business days before the meeting is to be held.

3.10 A councillor may, in writing to the general manager, request the withdrawal of a notice of motion submitted by them prior to its inclusion in the agenda and business paper for the meeting at which it is to be considered.

Questions with notice

3.11 A councillor may, by way of a notice submitted under clause 3.9, ask a question for response by the general manager about the performance or operations of the council.

3.12 A councillor is not permitted to ask a question with notice under clause 3.11 that comprises a complaint against the general manager or a member of staff of the council, or a question that implies wrongdoing by the general manager or a member of staff of the council.

3.13 The general manager or their nominee may respond to a question with notice submitted under clause 3.11 by way of a report included in the business papers for the relevant meeting of the council or orally at the meeting.

Agenda and business papers for ordinary meetings

3.14 The general manager must cause the agenda for a meeting of the council or a committee of the council to be prepared as soon as practicable before the meeting.

3.15 The general manager must ensure that the agenda for an ordinary meeting of the council states:

(a) all matters to be dealt with arising out of the proceedings of previous meetings of the council, and
(b) if the mayor is the chairperson – any matter or topic that the chairperson proposes, at the time when the agenda is prepared, to put to the meeting, and
(c) all matters, including matters that are the subject of staff reports and reports of committees, to be considered at the meeting, and
(d) any business of which due notice has been given under clause 3.9.

3.16 Nothing in clause 3.16 limits the powers of the mayor to put a mayoral minute to a meeting under clause 9.6.

3.17 The general manager must not include in the agenda for a meeting of the council any business of which due notice has been given if, in the opinion of the general manager, the business is, or the implementation of the business
would be, unlawful. The general manager must report, without giving details of the item of business, any such exclusion to the next meeting of the council.

3.18 Where the agenda includes the receipt of information or discussion of other matters that, in the opinion of the general manager, is likely to take place when the meeting is closed to the public, the general manager must ensure that the agenda of the meeting:

(a) identifies the relevant item of business and indicates that it is of such a nature (without disclosing details of the information to be considered when the meeting is closed to the public), and

(b) states the grounds under section 10A(2) of the Act relevant to the item of business.

Note: Clause 3.18 reflects section 9(2A)(a) of the Act.

3.19 The general manager must ensure that the details of any item of business which, in the opinion of the general manager, is likely to be considered when the meeting is closed to the public, are included in a business paper provided to councillors for the meeting concerned. Such details must not be included in the business papers made available to the public, and must not be disclosed by a councillor or by any other person to another person who is not authorised to have that information.

Note: Clause 3.20 reflects section 9(2) and (4) of the Act.

3.20 Copies of the agenda and the associated business papers, such as correspondence and reports for meetings of the council and committees of council, are to be published on the council’s website, and must be made available to the public for inspection, or for taking away by any person free of charge at the offices of the council, at the relevant meeting and at such other venues determined by the council.

Note: Clause 3.21 reflects section 9(2A)(b) of the Act.

3.22 For the purposes of clause 3.20, copies of agendas and business papers must be published on the council’s website and made available to the public at a time that is as close as possible to the time they are available to councillors.

Note: Clause 3.22 reflects section 9(3) of the Act.

3.23 A copy of an agenda, or of an associated business paper made available under clause 3.20, may in addition be given or made available in electronic form.

Note: Clause 3.23 reflects section 9(5) of the Act.
3.24 The general manager must ensure that the agenda for an extraordinary meeting of the council deals only with the matters stated in the notice of the meeting.

3.25 Despite clause 3.24, business may be considered at an extraordinary meeting of the council, even though due notice of the business has not been given, if:
   (a) a motion is passed to have the business considered at the meeting, and
   (b) the business to be considered is ruled by the chairperson to be of great urgency on the grounds that it requires a decision by the council before the next scheduled ordinary meeting of the council.

3.26 A motion moved under clause 3.25(a) can be moved without notice but only after the business notified in the agenda for the extraordinary meeting has been dealt with.

3.27 Despite clauses 10.20–10.30, only the mover of a motion moved under clause 3.25(a) can speak to the motion before it is put.

3.28 A motion of dissent cannot be moved against a ruling of the chairperson under clause 3.25(b) on whether a matter is of great urgency.

Availability of the agenda and business papers to the public

3.29 Circumstances will necessitate the distribution of urgent reports either prior to or at Ordinary, Extraordinary and Committee Meetings. Where the urgent items are distributed:
   (a) prior to the meeting no additional time will be allowed for Councillors to read the report unless the meeting decides otherwise;
   (b) at the meeting the chairperson shall determine a period of time, to allow Councillors to read the report, prior to the item being discussed or determined.

3.30 Urgent reports, other than those relating to confidential business, will be available to the public as soon as practicable after they have been printed but in any event will be available on the night of the meeting.

4 ADDRESSING THE MEETING AND SUSPENSION OF STANDING ORDERS

4.1 It is at the absolute discretion of the Council or the committee to determine whether or not a member of the public who has requested permission to address the meeting of the Council or committee of Council is permitted to do so.

4.2 Any member of the public may make a request to the General Manager, or Governance Manager by completing the form in full that is available on the council’s website or provided on request for permission to address a meeting of the Council or a committee of the Council on the following basis:
   a) up to 12 noon on the day of the meeting if the item on which the member of the public wishes to address the Council or committee is on the Agenda as part of the order of business for the meeting.

Penrith City Council Code of Meeting Practice
b) if the item, the subject of the address, is not to be included on the Agenda of the upcoming meeting, as part of the order of business for the meeting, then the details will be taken and Council advised of the request at the next available Ordinary Meeting. Council will then determine whether the request will be granted and whether a report is required to be presented at the same meeting at which the address will be heard.

4.3 The Council or committee may, notwithstanding clause 4.2, by resolution, allow a member of the public to address the meeting if it considers that the situation warrants such action.

4.4 Prior to addressing a meeting, the meeting may consider whether the material provided in the application is considered irrelevant, vexatious or frivolous and accordingly refuse an application to address the meeting. The meeting may call on the General Manager or on relevant Council staff, through a request to the General Manager, to provide advice as to whether the material is considered to be irrelevant, vexatious or frivolous.

4.5 The number of speakers on any one item is to be limited to three in support of any proposal and three in opposition except at the discretion of Council.

4.6 Any member of the public granted permission by the meeting of the Council or committee of the Council to address the meeting is required to limit the address to a maximum of 5 minutes. The Council or committee may, at its discretion, grant an extension of time of 3 minutes in appropriate circumstances.

4.7 It should be noted that speakers at meetings of the Council or Committee do not have absolute privilege (parliamentary privilege). A speaker who makes any potentially offensive or defamatory remarks about any other person may render themselves open to legal action.

A person addressing Council or Committee will be informed that they do not enjoy any privilege and that permission to speak may be withdrawn should they make inappropriate comments.

Prior to addressing the meeting the person will be required to sign the following statement:

"I (name) understand that the meeting I intend to address on (date) is a public meeting. I also understand that should I say or present any material that is inappropriate, I may be subject to legal action. I also acknowledge that I have been informed to obtain my own legal advice about the appropriateness of the material that I intend to present at the above mentioned meeting."

Should a person fail to sign the above statement then permission to address either the Council or Committee will not be granted.

4.8 A speaker may only address Council or Committee once on any particular item unless there are circumstances that, in the opinion of the Council, have changed substantially since Council's previous consideration.
A speaker seeking to address the Council or Committee and raise allegations about the Council of handling of a matter by staff must make such allegations in writing to the Mayor, in respect of Council or the General Manager, in respect of staff.

(The purpose of this is not intended to restrict people from raising concerns about the way Council or about the way staff have handled matters but to provide a mechanism whereby any allegations are properly investigated and dealt with appropriately.)

A request to address Council on a matter that is the subject of Legal proceedings will not be accepted.

A request by a Tenderer to address Council on a matter regarding a tender will not be accepted. Council may however accept a written submission provided by a Tenderer.

Once closed to the public no person, unless requested by the Committee, is entitled to address Committee of the Whole other than Council staff and Council advisors, and any information provided by Council staff or Council advisors shall be upon the request of the chairperson of the committee or by the direction of the General Manager.

On occasions it will be necessary for members of the public to make formal presentations to meetings of the Council or committees of Council to support applications or as a result of studies commissioned by the Council.

Any reports outlining the need for presentations should give some indication of the period of time which will be needed for the presentation.

It is at the absolute discretion of the Council or the committee to determine whether or not the presentation proceeds.

At every ordinary and extraordinary meeting of the Council it is necessary for a resolution to be passed to the effect that only so much of the standing orders be suspended as would prevent members of the public addressing or making presentations to the meeting.

If the Council is not prepared to suspend standing orders then the address or presentation to the Council cannot be made.

## 5 COMING TOGETHER

### Attendance by councillors at meetings

All councillors must make reasonable efforts to attend meetings of the council and of committees of the council of which they are members.

**Note: A councillor may not attend a meeting as a councillor (other than the first meeting of the council after the councillor is elected or a meeting at which the councillor takes an oath or makes an affirmation of office)**
until they have taken an oath or made an affirmation of office in the form prescribed under section 233A of the Act.

5.2 A councillor cannot participate in a meeting of the council or of a committee of the council unless personally present at the meeting.

5.3 Where a councillor is unable to attend one or more ordinary meetings of the council, the councillor should request that the council grant them a leave of absence from those meetings. This clause does not prevent a councillor from making an apology if they are unable to attend a meeting. However the acceptance of such an apology does not constitute the granting of a leave of absence for the purposes of this code and the Act.

5.4 A councillor’s request for leave of absence from council meetings should, if practicable, identify (by date) the meetings from which the councillor intends to be absent and the grounds upon which the leave of absence is being sought.

5.5 The council must act reasonably when considering whether to grant a councillor’s request for a leave of absence.

5.6 A councillor’s civic office will become vacant if the councillor is absent from three (3) consecutive ordinary meetings of the council without prior leave of the council, or leave granted by the council at any of the meetings concerned, unless the holder is absent because they have been suspended from office under the Act, or because the council has been suspended under the Act, or as a consequence of a compliance order under section 438HA.

Note: Clause 5.7 reflects section 234(1)(d) of the Act.

5.7 A councillor who intends to attend a meeting of the council despite having been granted a leave of absence should, if practicable, give the general manager at least two (2) days’ notice of their intention to attend.

The quorum for a meeting

5.8 The quorum for a meeting of the council is a majority of the councillors of the council who hold office at that time and are not suspended from office.

Note: Clause 5.9 reflects section 368(1) of the Act.

5.9 Clause 5.9 does not apply if the quorum is required to be determined in accordance with directions of the Minister in a performance improvement order issued in respect of the council.

Note: Clause 5.10 reflects section 368(2) of the Act.

5.10 A meeting of the council must be adjourned if a quorum is not present:

(a) at the commencement of the meeting where the number of apologies received for the meeting indicates that there will not be a quorum for the meeting, or

(b) within half an hour after the time designated for the holding of the meeting, or
5.11 In either case, the meeting must be adjourned to a time, date and place fixed:

(a) by the chairperson, or
(b) in the chairperson’s absence, by the majority of the councillors present, or
(c) failing that, by the general manager.

5.12 The general manager must record in the council’s minutes the circumstances relating to the absence of a quorum (including the reasons for the absence of a quorum) at or arising during a meeting of the council, together with the names of the councillors present.

5.13 Where, prior to the commencement of a meeting, it becomes apparent that a quorum may not be present at the meeting, or that the safety and welfare of councillors, council staff and members of the public may be put at risk by attending the meeting because of a natural disaster (such as, but not limited to flood or bushfire), the mayor may, in consultation with the general manager and, as far as is practicable, with each councillor, cancel the meeting. Where a meeting is cancelled, notice of the cancellation must be published on the council’s website and in such other manner that the council is satisfied is likely to bring notice of the cancellation to the attention of as many people as possible.

5.14 Where a meeting is cancelled under clause 5.13, the business to be considered at the meeting may instead be considered, where practicable, at the next ordinary meeting of the council or at an extraordinary meeting called under clause 3.3.

Entitlement of the public to attend council meetings

5.16 Everyone is entitled to attend a meeting of the council and committees of the council. The council must ensure that all meetings of the council and committees of the council are open to the public.

Note: Clause 5.16 reflects section 10(1) of the Act.

5.17 Clause 5.16 does not apply to parts of meetings that have been closed to the public under section 10A of the Act.

5.18 A person (whether a councillor or another person) is not entitled to be present at a meeting of the council or a committee of the council if expelled from the meeting:

(a) by a resolution of the meeting, or
(b) by the person presiding at the meeting if the council has, by resolution, authorised the person presiding to exercise the power of expulsion.

Note: Clause 5.18 reflects section 10(2) of the Act.

Note: Clauses 15.13 and 15.14 confer a standing authorisation on all chairpersons of meetings of the council and committees of the council
to expel persons from meetings. If adopted, clause 15.13 authorises chairpersons to expel any person, including a councillor, from a council or committee meeting. Alternatively, if adopted, clause 15.14 authorises chairpersons to expel persons other than councillors from a council or committee meeting.

Webcasting of meetings

5.19 All meetings of the council and committees of the council will be audio recorded and uploaded on to the Council’s website as soon as practical after the meeting.

5.20 Clause 5.19 does not apply to parts of a meeting that have been closed to the public under section 10A of the Act.

5.21 At the start of each meeting the chairperson is to make a statement informing those in attendance that the meeting is being webcast and that those in attendance should refrain from making any defamatory statements.

5.22 An audio recording of each meeting of the council and committee of the council is to be retained on the council’s website for a period of at least one year. Recordings of meetings may be disposed of in accordance with the State Records Act 1998.

Attendance of the general manager and other staff at meetings

5.23 The general manager is entitled to attend, but not to vote at, a meeting of the council or a meeting of a committee of the council of which all of the members are councillors.

Note: Clause 5.23 reflects section 376(1) of the Act.

5.24 The general manager is entitled to attend a meeting of any other committee of the council and may, if a member of the committee, exercise a vote.

Note: Clause 5.24 reflects section 376(2) of the Act.

5.25 The general manager may be excluded from a meeting of the council or a committee while the council or committee deals with a matter relating to the standard of performance of the general manager or the terms of employment of the general manager.

Note: Clause 5.25 reflects section 376(3) of the Act.

5.26 The attendance of other council staff at a meeting, (other than as members of the public) shall be with the approval of the general manager.

6 THE CHAIRPERSON

The chairperson at meetings

6.1 The mayor, or at the request of or in the absence of the mayor, the deputy mayor (if any) presides at meetings of the council.
Note: Clause 6.1 reflects section 369(1) of the Act.

6.2 If the mayor and the deputy mayor (if any) are absent, a councillor elected to chair the meeting by the councillors present presides at a meeting of the council.

Note: Clause 6.2 reflects section 369(2) of the Act.

Election of the chairperson in the absence of the mayor and deputy mayor

6.3 If no chairperson is present at a meeting of the council at the time designated for the holding of the meeting, the first business of the meeting must be the election of a chairperson to preside at the meeting.

6.4 The election of a chairperson must be conducted:

(a) by the general manager or, in their absence, an employee of the council designated by the general manager to conduct the election, or

(b) by the person who called the meeting or a person acting on their behalf if neither the general manager nor a designated employee is present at the meeting, or if there is no general manager or designated employee.

6.5 If, at an election of a chairperson, two (2) or more candidates receive the same number of votes and no other candidate receives a greater number of votes, the chairperson is to be the candidate whose name is chosen by lot.

6.6 For the purposes of clause 6.5, the person conducting the election must:

(a) arrange for the names of the candidates who have equal numbers of votes to be written on similar slips, and

(b) then fold the slips so as to prevent the names from being seen, mix the slips and draw one of the slips at random.

6.7 The candidate whose name is on the drawn slip is the candidate who is to be the chairperson.

6.8 Any election conducted under clause 6.3, and the outcome of the vote, are to be recorded in the minutes of the meeting.

Chairperson to have precedence

6.9 When the chairperson rises or speaks during a meeting of the council:

(a) any councillor then speaking or seeking to speak must cease speaking and, if standing, immediately resume their seat, and

(b) every councillor present must be silent to enable the chairperson to be heard without interruption.

Liability of Councillors, employees and other persons

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

7 MODES OF ADDRESS

7.1 If the chairperson is the mayor, they are to be addressed as ‘Mr Mayor’ or ‘Madam Mayor’.

7.2 Where the chairperson is not the mayor, they are to be addressed as either ‘Mr Chairperson’ or ‘Madam Chairperson’.

7.3 A councillor is to be addressed as ‘Councillor [surname]’.

7.4 A council officer is to be addressed by their official designation or as Mr/Ms [surname].

8 ORDER OF BUSINESS FOR ORDINARY COUNCIL MEETINGS

8.1 The general order of business for an ordinary meeting of the council shall be:

- Opening meeting
- Statement of Recognition
- Prayer
- Leave of Absence
- Apologies and applications for a leave of absence by councillors
- Confirmation of minutes
- Disclosures of interests
- Addressing Council
- Mayoral minute(s)
- Notices of motions/Questions with notice
- Reports of committees
- Reports to council
- Requests for Reports or Memorandums
- Urgent Business
- Confidential matters/Committee of the Whole
- Conclusion of the meeting

8.2 The order of business as fixed under clause 8.1 may be altered for a particular meeting of the council if a motion to that effect is passed at that meeting. Such a motion can be moved without notice.

8.3 Despite clauses 10.20–10.30, only the mover of a motion referred to in clause 8.2 may speak to the motion before it is put.

9 CONSIDERATION OF BUSINESS AT COUNCIL MEETINGS

Business that can be dealt with at a council meeting

9.1 The council must not consider business at a meeting of the council:
(a) unless a councillor has given notice of the business, as required by clause 3.09, and
(b) unless notice of the business has been sent to the councillors in accordance with clause 3.7 in the case of an ordinary meeting or clause 3.9 in the case of an extraordinary meeting called in an emergency.

9.2 Clause 9.1 does not apply to the consideration of business at a meeting, if the business:
(a) is already before, or directly relates to, a matter that is already before the council, or
(b) is the election of a chairperson to preside at the meeting, or
(c) subject to clause 9.9, is a matter or topic put to the meeting by way of a mayoral minute, or
(d) is a motion for the adoption of recommendations of a committee, including, but not limited to, a committee of the council.

9.3 Despite clause 9.1, business may be considered at a meeting of the council even though due notice of the business has not been given to the councillors if:
(a) a motion is passed to have the business considered at the meeting, and
(b) the business to be considered is ruled by the chairperson to be of great urgency on the grounds that it requires a decision by the council before the next scheduled ordinary meeting of the council.

9.4 A motion moved under clause 9.3(a) can be moved without notice. Despite clauses 10.20–10.30, only the mover of a motion referred to in clause 9.3(a) can speak to the motion before it is put.

9.5 A motion of dissent cannot be moved against a ruling by the chairperson under clause 9.3(b).

Mayoral minutes

9.6 Subject to clause 9.9, if the mayor is the chairperson at a meeting of the council, the mayor may, by minute signed by the mayor, put to the meeting without notice any matter or topic that is within the jurisdiction of the council, or of which the council has official knowledge.

9.7 A mayoral minute, when put to a meeting, takes precedence over all business on the council’s agenda for the meeting. The chairperson (but only if the chairperson is the mayor) may move the adoption of a mayoral minute without the motion being seconded.

9.8 A recommendation made in a mayoral minute put by the mayor is, so far as it is adopted by the council, a resolution of the council.

9.9 A mayoral minute must not be used to put without notice matters that are routine and not urgent, or matters for which proper notice should be given because of their complexity. For the purpose of this clause, a matter will be
9.10 Where a mayoral minute makes a recommendation which, if adopted, would require the expenditure of funds on works and/or services other than those already provided for in the council’s current adopted operational plan, it must identify the source of funding for the expenditure that is the subject of the recommendation. If the mayoral minute does not identify a funding source, the council must defer consideration of the matter, pending a report from the general manager on the availability of funds for implementing the recommendation if adopted.

Staff reports

9.11 A recommendation made in a staff report is, so far as it is adopted by the council, a resolution of the council.

Reports of committees of council

9.12 The recommendations of a committee of the council are, so far as they are adopted by the council, resolutions of the council.

9.13 If in a report of a committee of the council distinct recommendations are made, the council may make separate decisions on each recommendation.

Questions

9.14 A question must not be asked at a meeting of the council unless it concerns a matter on the agenda of the meeting or notice has been given of the question in accordance with clauses 3.09 and 3.11.

9.15 A councillor may, through the chairperson, put a question to another councillor about a matter on the agenda.

9.16 A councillor may, through the general manager, put a question to a council employee about a matter on the agenda. Council employees are only obliged to answer a question put to them through the general manager at the direction of the general manager.

9.17 A councillor or council employee to whom a question is put is entitled to be given reasonable notice of the question and, in particular, sufficient notice to enable reference to be made to other persons or to documents. Where a councillor or council employee to whom a question is put is unable to respond to the question at the meeting at which it is put, they may take it on notice and report the response to the next meeting of the council.

9.18 Councillors must put questions directly, succinctly, respectfully and without argument.

9.19 The chairperson must not permit discussion on any reply to, or refusal to reply to, a question put to a councillor or council employee.
10 RULES OF DEBATE

Motions to be seconded

10.1 Unless otherwise specified in this code, a motion or an amendment cannot be debated unless or until it has been seconded.

Notices of motion

10.2 A councillor who has submitted a notice of motion under clause 3.09 is to move the motion the subject of the notice of motion at the meeting at which it is to be considered.

10.3 If a councillor who has submitted a notice of motion under clause 3.09 wishes to withdraw it after the agenda and business paper for the meeting at which it is to be considered have been sent to councillors, the councillor may request the withdrawal of the motion when it is before the council.

10.4 In the absence of a councillor who has placed a notice of motion on the agenda for a meeting of the council:

(a) any other councillor may, with the leave of the chairperson, move the motion at the meeting, or
(b) the chairperson may defer consideration of the motion until the next meeting of the council.

Chairperson's duties with respect to motions

10.5 It is the duty of the chairperson at a meeting of the council to receive and put to the meeting any lawful motion that is brought before the meeting.

10.6 The chairperson must rule out of order any motion or amendment to a motion that is unlawful or the implementation of which would be unlawful.

10.7 Before ruling out of order a motion or an amendment to a motion under clause 10.6, the chairperson is to give the mover an opportunity to clarify or amend the motion or amendment.

10.8 Any motion, amendment or other matter that the chairperson has ruled out of order is taken to have been lost.

Motions requiring the expenditure of funds

10.9 A motion or an amendment to a motion which if passed would require the expenditure of funds on works and/or services other than those already provided for in the council’s current adopted operational plan must identify the source of funding for the expenditure that is the subject of the motion. If the motion does not identify a funding source, the council must defer consideration of the matter, pending a report from the general manager on the availability of funds for implementing the motion if adopted.

Amendments to motions

Penrith City Council Code of Meeting Practice
10.10 An amendment to a motion must be moved and seconded before it can be debated.

10.11 An amendment to a motion must relate to the matter being dealt with in the original motion before the council and must not be a direct negative of the original motion. An amendment to a motion which does not relate to the matter being dealt with in the original motion, or which is a direct negative of the original motion, must be ruled out of order by the chairperson.

10.12 The mover of an amendment is to be given the opportunity to explain any uncertainties in the proposed amendment before a seconder is called for.

10.13 If an amendment has been lost, a further amendment can be moved to the motion to which the lost amendment was moved, and so on, but no more than one (1) motion and one (1) proposed amendment can be before council at any one time.

10.14 While an amendment is being considered, debate must only occur in relation to the amendment and not the original motion. Debate on the original motion is to be suspended while the amendment to the original motion is being debated.

10.15 If the amendment is carried, it becomes the motion and is to be debated. If the amendment is lost, debate is to resume on the original motion.

10.16 An amendment may become the motion without debate or a vote where it is accepted by the councillor who moved the original motion.

**Foreshadowed motions**

10.17 A councillor may propose a foreshadowed motion in relation to the matter the subject of the original motion before the council, without a seconder during debate on the original motion. The foreshadowed motion is only to be considered if the original motion is lost or withdrawn and the foreshadowed motion is then moved and seconded. If the original motion is carried, the foreshadowed motion lapses.

10.18 Where an amendment has been moved and seconded, a councillor may, without a seconder, foreshadow a further amendment that they propose to move after the first amendment has been dealt with. There is no limit to the number of foreshadowed amendments that may be put before the council at any time. However, no discussion can take place on foreshadowed amendments until the previous amendment has been dealt with and the foreshadowed amendment has been moved and seconded.

10.19 Foreshadowed motions and foreshadowed amendments are to be considered in the order in which they are proposed. However, foreshadowed motions cannot be considered until all foreshadowed amendments have been dealt with.

**Limitations on the number and duration of speeches**
10.20 A councillor who, during a debate at a meeting of the council, moves an original motion, has the right to speak on each amendment to the motion and a right of general reply to all observations that are made during the debate in relation to the motion, and any amendment to it at the conclusion of the debate before the motion (whether amended or not) is finally put.

10.21 A councillor, other than the mover of an original motion, has the right to speak once on the motion and once on each amendment to it.

10.22 A councillor must not, without the consent of the council, speak more than once on a motion or an amendment, and for longer than five (5) minutes at any one time.

10.23 Despite clause 10.22, the chairperson may permit a councillor who claims to have been misrepresented or misunderstood to speak more than once on a motion or an amendment, and for longer than five (5) minutes on that motion or amendment to enable the councillor to make a statement limited to explaining the misrepresentation or misunderstanding.

10.24 Despite clause 10.22, the council may resolve to shorten the duration of speeches to expedite the consideration of business at a meeting.

10.25 Despite clauses 10.20 and 10.21, a councillor may move that a motion or an amendment be now put:

(a) if the mover of the motion or amendment has spoken in favour of it and no councillor expresses an intention to speak against it, or
(b) if at least two (2) councillors have spoken in favour of the motion or amendment and at least two (2) councillors have spoken against it.

10.26 The chairperson must immediately put to the vote, without debate, a motion moved under clause 10.25. A seconder is not required for such a motion.

10.27 If a motion that the original motion or an amendment be now put is passed, the chairperson must, without further debate, put the original motion or amendment to the vote immediately after the mover of the original motion has exercised their right of reply under clause 10.20.

10.28 If a motion that the original motion or an amendment be now put is lost, the chairperson must allow the debate on the original motion or the amendment to be resumed.

10.29 All councillors must be heard without interruption and all other councillors must, unless otherwise permitted under this code, remain silent while another councillor is speaking.

10.30 Once the debate on a matter has concluded and a matter has been dealt with, the chairperson must not allow further debate on the matter.

Order of Dealing with Motions and Amendments

10.31 Amendment
Original Motion
Foreshadowed Motion

If an amendment is is accepted by the mover and seconder of the original motion, the amendment can become a part of the Original Motion. The general right of reply remains with the Councillor who moved the original motion.

11 VOTING

Voting entitlements of councillors

11.1 Each councillor is entitled to one (1) vote.

Note: Clause 11.1 reflects section 370(1) of the Act.

11.2 The person presiding at a meeting of the council has, in the event of an equality of votes, a second or casting vote.

Note: Clause 11.2 reflects section 370(2) of the Act.

11.3 Where the chairperson declines to exercise, or fails to exercise, their second or casting vote, in the event of an equality of votes, the motion being voted upon is lost.

Voting at council meetings

11.4 A councillor who is present at a meeting of the council but who fails to vote on a motion put to the meeting is taken to have voted against the motion.

11.5 If a councillor who has voted against a motion put at a council meeting so requests, the general manager must ensure that the councillor’s dissenting vote is recorded in the council’s minutes.

11.6 The decision of the chairperson as to the result of a vote is final, unless the decision is immediately challenged and not fewer than two (2) councillors rise and call for a division.

11.7 When a division on a motion is called, the chairperson must ensure that the division takes place immediately. The general manager must ensure that the names of those who vote for the motion and those who vote against it are recorded in the council’s minutes for the meeting.

11.8 When a division on a motion is called, any councillor who fails to vote will be recorded as having voted against the motion in accordance with clause 11.4 of this code.

11.9 Voting at a meeting, including voting in an election at a meeting, is to be by open means (such as on the voices, by show of hands or by a visible electronic voting system). However, the council may resolve that the voting in any election by councillors for mayor or deputy mayor is to be by secret ballot.

Voting on planning decisions

11.10 The general manager must keep a register containing, for each planning...
decision made at a meeting of the council or a council committee (including, but not limited to a committee of the council), the names of the councillors who supported the decision and the names of any councillors who opposed (or are taken to have opposed) the decision.

11.12 Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document.

11.13 Clauses 11.10–11.12 apply also to meetings that are closed to the public.

Note: Clauses 11.10–11.12 reflect section 375A of the Act.

12 COMMITTEE OF THE WHOLE

12.1 The council may resolve itself into a committee to consider any matter before the council.

Note: Clause 12.1 reflects section 373 of the Act.

12.2 All the provisions of this code relating to meetings of the council, so far as they are applicable, extend to and govern the proceedings of the council when in committee of the whole, except the provisions limiting the number and duration of speeches.

Note: Clauses 10.20–10.30 limit the number and duration of speeches.

12.3 The general manager or, in the absence of the general manager, an employee of the council designated by the general manager, is responsible for reporting to the council the proceedings of the committee of the whole. It is not necessary to report the proceedings in full but any recommendations of the committee must be reported.

12.4 The council must ensure that a report of the proceedings (including any recommendations of the committee) is recorded in the council’s minutes. However, the council is not taken to have adopted the report until a motion for adoption has been made and passed.

13 DEALING WITH ITEMS BY EXCEPTION

13.1 The council or a committee of council may, at any time, resolve to adopt multiple items of business on the agenda together by way of a single resolution.

13.2 Before the council or committee resolves to adopt multiple items of business on the agenda together under clause 13.1, the chairperson must list the items of business to be adopted and ask councillors to identify any individual items of business listed by the chairperson that they intend to vote against the recommendation made in the business paper or that they wish to speak on.
13.3 The council or committee must not resolve to adopt any item of business under clause 13.1 that a councillor has identified as being one they intend to vote against the recommendation made in the business paper or to speak on.

13.4 Where the consideration of multiple items of business together under clause 13.1 involves a variation to the order of business for the meeting, the council or committee must resolve to alter the order of business in accordance with clause 8.2.

13.5 A motion to adopt multiple items of business together under clause 13.1 must identify each of the items of business to be adopted and state that they are to be adopted as recommended in the business paper.

13.6 Items of business adopted under clause 13.1 are to be taken to have been adopted unanimously.

13.7 Councillors must ensure that they declare and manage any conflicts of interest they may have in relation to items of business considered together under clause 13.1 in accordance with the requirements of the council’s code of conduct.

14 CLOSURE OF COUNCIL MEETINGS TO THE PUBLIC

Grounds on which meetings can be closed to the public

14.1 The council or a committee of the council may close to the public so much of its meeting as comprises the discussion or the receipt of any of the following types of matters:

(a) personnel matters concerning particular individuals (other than councillors),
(b) the personal hardship of any resident or ratepayer,
(c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business,
(d) commercial information of a confidential nature that would, if disclosed:
   (i) prejudice the commercial position of the person who supplied it, or
   (ii) confer a commercial advantage on a competitor of the council, or
   (iii) reveal a trade secret,
(e) information that would, if disclosed, prejudice the maintenance of law,
(f) matters affecting the security of the council, councillors, council staff or council property,
(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,
(h) information concerning the nature and location of a place or an item of Aboriginal significance on community land,
(i) alleged contraventions of the council’s code of conduct.

Note: Clause 14.1 reflects section 10A(1) and (2) of the Act.

14.2 The council or a committee of the council may also close to the public so much
of its meeting as comprises a motion to close another part of the meeting to the public.

**Note:** Clause 14.2 reflects section 10A(3) of the Act.

**Matters to be considered when closing meetings to the public**

14.3 A meeting is not to remain closed during the discussion of anything referred to in clause 14.1:

(a) except for so much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security, and 

(b) if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret – unless the council or committee concerned is satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the public interest.

**Note:** Clause 14.3 reflects section 10B(1) of the Act.

14.4 A meeting is not to be closed during the receipt and consideration of information or advice referred to in clause 14.1(g) unless the advice concerns legal matters that:

(a) are substantial issues relating to a matter in which the council or committee is involved, and 

(b) are clearly identified in the advice, and 

(c) are fully discussed in that advice.

**Note:** Clause 14.4 reflects section 10B(2) of the Act.

14.5 If a meeting is closed during the discussion of a motion to close another part of the meeting to the public (as referred to in clause 14.2), the consideration of the motion must not include any consideration of the matter or information to be discussed in that other part of the meeting other than consideration of whether the matter concerned is a matter referred to in clause 14.1.

**Note:** Clause 14.5 reflects section 10B(3) of the Act.

14.6 For the purpose of determining whether the discussion of a matter in an open meeting would be contrary to the public interest, it is irrelevant that:

(a) a person may misinterpret or misunderstand the discussion, or 

(b) the discussion of the matter may:

(i) cause embarrassment to the council or committee concerned, or to councillors or to employees of the council, or 

(ii) cause a loss of confidence in the council or committee.

**Note:** Clause 14.6 reflects section 10B(4) of the Act.

14.7 In deciding whether part of a meeting is to be closed to the public, the council or committee concerned must consider any relevant guidelines issued by the Chief Executive of the Office of Local Government.
Note: Clause 14.7 reflects section 10B(5) of the Act.

Notice of likelihood of closure not required in urgent cases

14.8 Part of a meeting of the council, or of a committee of the council, may be closed to the public while the council or committee considers a matter that has not been identified in the agenda for the meeting under clause 3.18 as a matter that is likely to be considered when the meeting is closed, but only if:

(a) it becomes apparent during the discussion of a particular matter that the matter is a matter referred to in clause 14.1, and

(b) the council or committee, after considering any representations made under clause 14.9, resolves that further discussion of the matter:
   (i) should not be deferred (because of the urgency of the matter), and
   (ii) should take place in a part of the meeting that is closed to the public.

Note: Clause 14.8 reflects section 10C of the Act.

Representations by members of the public

14.9 The council, or a committee of the council, may allow members of the public to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.

Note: Clause 14.9 reflects section 10A(4) of the Act.

14.10 A representation under clause 14.9 is to be made after the motion to close the part of the meeting is moved and seconded.

14.11 Where the matter has been identified in the agenda of the meeting under clause 3.18 as a matter that is likely to be considered when the meeting is closed to the public, in order to make representations under clause 14.9, members of the public must first make an application (available on the council’s website or by request) to the council in the approved form. Applications must be received by midday on the day of the meeting the matter is to be considered.

14.12 The general manager (or their delegate) may refuse an application made under clause 14.11. The general manager or their delegate must give reasons in writing for a decision to refuse an application.

14.13 No more than two speakers are to be permitted to make representations under clause 14.9.

14.14 If more than the permitted number of speakers apply to make representations under clause 14.9, the general manager or their delegate may request the speakers to nominate from among themselves the persons who are to make representations to the council. If the speakers are not able to agree on whom to nominate to make representations under clause 14.9, the general manager or their delegate is to determine who will make representations to the council.

14.15 The general manager (or their delegate) is to determine the order of speakers.
14.16 Where the council or a committee of the council proposes to close a meeting or part of a meeting to the public in circumstances where the matter has not been identified in the agenda for the meeting under clause 3.18 as a matter that is likely to be considered when the meeting is closed to the public, the chairperson is to invite representations from the public under clause 14.9 after the motion to close the part of the meeting is moved and seconded. The chairperson is to permit no more than two speakers to make representations in such order as determined by the chairperson.

14.17 Each speaker will be allowed three minutes to make representations, and this time limit is to be strictly enforced by the chairperson. Speakers must confine their representations to whether the meeting should be closed to the public. If a speaker digresses to irrelevant matters, the chairperson is to direct the speaker not to do so. If a speaker fails to observe a direction from the chairperson, the speaker will not be further heard.

Expulsion of non-councillors from meetings closed to the public

14.18 If a meeting or part of a meeting of the council or a committee of the council is closed to the public in accordance with section 10A of the Act and this code, any person who is not a councillor and who fails to leave the meeting when requested, may be expelled from the meeting as provided by section 10(2)(a) or (b) of the Act.

14.19 If any such person, after being notified of a resolution or direction expelling them from the meeting, fails to leave the place where the meeting is being held, a police officer, or any person authorised for the purpose by the council or person presiding, may, by using only such force as is necessary, remove the first-mentioned person from that place and, if necessary restrain that person from re-entering that place for the remainder of the meeting.

Information to be disclosed in resolutions closing meetings to the public

14.20 The grounds on which part of a meeting is closed must be stated in the decision to close that part of the meeting and must be recorded in the minutes of the meeting. The grounds must specify the following:

(a) the relevant provision of section 10A(2) of the Act,
(b) the matter that is to be discussed during the closed part of the meeting,
(c) the reasons why the part of the meeting is being closed, including (if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret) an explanation of the way in which discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

Note: Clause 14.20 reflects section 10D of the Act.

Resolutions passed at closed meetings to be made public

14.21 If the council passes a resolution during a meeting, or a part of a meeting, that is closed to the public, the chairperson must make the resolution public as
soon as practicable after the meeting, or the relevant part of the meeting, has ended, and the resolution must be recorded in the publicly available minutes of the meeting.

14.22 Resolutions passed during a meeting, or a part of a meeting, that is closed to the public must be made public by the chairperson under clause 14.21 during a part of the meeting that is webcast.

15 KEEPING ORDER AT MEETINGS

Points of order

15.1 A councillor may draw the attention of the chairperson to an alleged breach of this code by raising a point of order. A point of order does not require a seconder.

15.2 A point of order cannot be made with respect to adherence to the principles contained in clause 2.1.

15.3 A point of order must be taken immediately it is raised. The chairperson must suspend the business before the meeting and permit the councillor raising the point of order to state the provision of this code they believe has been breached. The chairperson must then rule on the point of order – either by upholding it or by overruling it.

Questions of order

15.4 The chairperson, without the intervention of any other councillor, may call any councillor to order whenever, in the opinion of the chairperson, it is necessary to do so.

15.5 A councillor who claims that another councillor has committed an act of disorder, or is out of order, may call the attention of the chairperson to the matter.

15.6 The chairperson must rule on a question of order immediately after it is raised but, before doing so, may invite the opinion of the council.

15.7 The chairperson's ruling must be obeyed unless a motion dissenting from the ruling is passed.

Motions of dissent

15.8 A councillor can, without notice, move to dissent from a ruling of the chairperson on a point of order or a question of order. If that happens, the chairperson must suspend the business before the meeting until a decision is made on the motion of dissent.

15.9 If a motion of dissent is passed, the chairperson must proceed with the suspended business as though the ruling dissented from had not been given. If, as a result of the ruling, any motion or business has been rejected as out of order, the chairperson must restore the motion or business to the agenda and proceed with it in due course.
15.10 Despite any other provision of this code, only the mover of a motion of dissent and the chairperson can speak to the motion before it is put. The mover of the motion does not have a right of general reply.

Acts of disorder

15.11 A councillor commits an act of disorder if the councillor, at a meeting of the council or a committee of the council:

(a) contravenes the Act or any regulation in force under the Act or this code, or
(b) assaults or threatens to assault another councillor or person present at the meeting, or
(c) moves or attempts to move a motion or an amendment that has an unlawful purpose or that deals with a matter that is outside the jurisdiction of the council or the committee, or addresses or attempts to address the council or the committee on such a motion, amendment or matter, or
(d) insults or makes personal reflections on or imputes improper motives to any other council official, or alleges a breach of the council's code of conduct, or
(e) says or does anything that is inconsistent with maintaining order at the meeting or is likely to bring the council or the committee into disrepute.

15.12 The chairperson may require a councillor:

(a) to apologise without reservation for an act of disorder referred to in clauses 15.11(a) or (b), or
(b) to withdraw a motion or an amendment referred to in clause 15.11(c) and, where appropriate, to apologise without reservation, or
(c) to retract and apologise without reservation for an act of disorder referred to in clauses 15.11(d) and (e).

How disorder at a meeting may be dealt with

15.13 If disorder occurs at a meeting of the council, the chairperson may adjourn the meeting for a period of not more than fifteen (15) minutes and leave the chair. The council, on reassembling, must, on a question put from the chairperson, decide without debate whether the business is to be proceeded with or not. This clause applies to disorder arising from the conduct of members of the public as well as disorder arising from the conduct of councillors.

Expulsion from meetings

15.14 All chairpersons of meetings of the council and committees of the council are authorised under this code to expel any person, including any councillor, from a council or committee meeting, for the purposes of section 10(2)(b) of the Act.

15.15 Clause 15.14 does not limit the ability of the council or a committee of the council to resolve to expel a person, including a councillor, from a council or committee meeting, under section 10(2)(a) of the Act.
15.16 A councillor may, as provided by section 10(2)(a) or (b) of the Act, be expelled from a meeting of the council for having failed to comply with a requirement under clause 15.12. The expulsion of a councillor from the meeting for that reason does not prevent any other action from being taken against the councillor for the act of disorder concerned.

15.17 A member of the public may, as provided by section 10(2)(a) or (b) of the Act, be expelled from a meeting of the council for engaging in or having engaged in disorderly conduct at the meeting.

15.18 Where a councillor or a member of the public is expelled from a meeting, the expulsion and the name of the person expelled, if known, are to be recorded in the minutes of the meeting.

15.19 If a councillor or a member of the public fails to leave the place where a meeting of the council is being held immediately after they have been expelled, a police officer, or any person authorised for the purpose by the council or person presiding, may, by using only such force as is necessary, remove the councillor or member of the public from that place and, if necessary, restrain the councillor or member of the public from re-entering that place for the remainder of the meeting.

Use of mobile phones and the unauthorised recording of meetings

15.20 Councillors, council staff and members of the public must ensure that mobile phones are turned to silent during meetings of the council and committees of the council.

15.21 A person must not live stream or use an audio recorder, video camera, mobile phone or any other device to make a recording of the proceedings of a meeting of the council or a committee of the council without the prior authorisation of the council or the committee.

15.22 Any person who contravenes or attempts to contravene clause 15.21, may be expelled from the meeting as provided for under section 10(2) of the Act.

15.23 If any such person, after being notified of a resolution or direction expelling them from the meeting, fails to leave the place where the meeting is being held, a police officer, or any person authorised for the purpose by the council or person presiding, may, by using only such force as is necessary, remove the first-mentioned person from that place and, if necessary, restrain that person from re-entering that place for the remainder of the meeting.

16 CONFLICTS OF INTEREST

16.1 All councillors and, where applicable, all other persons, must declare and manage any conflicts of interest they may have in matters being considered at meetings of the council and committees of the council in accordance with the council's code of conduct. All declarations of conflicts of interest and how the conflict of interest was managed by the person who made the declaration must be recorded in the minutes of the meeting at which the declaration was made.
17 DECISIONS OF THE COUNCIL

17.1 A decision supported by a majority of the votes at a meeting of the council at which a quorum is present is a decision of the council.

Note: Clause 17.1 reflects section 371 of the Act in the case of councils and section 400T(8) in the case of joint organisations.

17.2 Decisions made by the council must be accurately recorded in the minutes of the meeting at which the decision is made.

Rescinding or altering council decisions

17.3 A resolution passed by the council may not be altered or rescinded except by a motion to that effect of which notice has been given under clause 3.09.

Note: Clause 17.3 reflects section 372(1) of the Act.

17.4 If a notice of motion to rescind a resolution is given at the meeting at which the resolution is carried, the resolution must not be carried into effect until the motion of rescission has been dealt with.

Note: Clause 17.4 reflects section 372(2) of the Act.

17.5 If a motion has been lost, a motion having the same effect must not be considered unless notice of it has been duly given in accordance with clause 3.09.

Note: Clause 17.5 reflects section 372(3) of the Act.

17.6 A notice of motion to alter or rescind a resolution, and a notice of motion which has the same effect as a motion which has been lost, must be signed by three (3) councillors if less than three (3) months has elapsed since the resolution was passed, or the motion was lost.

Note: Clause 17.6 reflects section 372(4) of the Act.

17.7 If a motion to alter or rescind a resolution has been lost, or if a motion which has the same effect as a previously lost motion is lost, no similar motion may be brought forward within three (3) months of the meeting at which it was lost. This clause may not be evaded by substituting a motion differently worded, but in principle the same.

Note: Clause 17.7 reflects section 372(5) of the Act.

17.8 The provisions of clauses 17.5–17.7 concerning lost motions do not apply to motions of adjournment.

Note: Clause 17.8 reflects section 372(7) of the Act.

17.9 A notice of motion submitted in accordance with clause 17.6 may only be
withdrawn under clause 3.10 with the consent of all signatories to the notice of motion.

17.10 A motion to alter or rescind a resolution of the council may be moved on the report of a committee of the council and any such report must be recorded in the minutes of the meeting of the council.

Note: Clause 17.11 reflects section 372(6) of the Act.

17.11 Subject to clause 17.7, in cases of urgency, a motion to alter or rescind a resolution of the council may be moved at the same meeting at which the resolution was adopted, where:

(a) a notice of motion signed by three councillors is submitted to the chairperson, and
(b) a motion to have the motion considered at the meeting is passed, and
(c) the chairperson rules the business that is the subject of the motion is of great urgency on the grounds that it requires a decision by the council before the next scheduled ordinary meeting of the council.

17.12 A motion moved under clause 17.11(b) can be moved without notice. Despite clauses 10.20–10.30, only the mover of a motion referred to in clause 17.11(b) can speak to the motion before it is put.

17.13 A motion of dissent cannot be moved against a ruling by the chairperson under clause 17.11(c).

Recommitting resolutions to correct an error

17.14 Despite the provisions of this Part, a councillor may, with the leave of the chairperson, move to recommit a resolution adopted at the same meeting:

(a) to correct any error, ambiguity or imprecision in the council’s resolution, or
(b) to confirm the voting on the resolution.

17.15 In seeking the leave of the chairperson to move to recommit a resolution for the purposes of clause 17.15(a), the councillor is to propose alternative wording for the resolution.

17.16 The chairperson must not grant leave to recommit a resolution for the purposes of clause 17.15(a), unless they are satisfied that the proposed alternative wording of the resolution would not alter the substance of the resolution previously adopted at the meeting.

17.17 A motion moved under clause 17.15 can be moved without notice. Despite clauses 10.20–10.30, only the mover of a motion referred to in clause 17.15 can speak to the motion before it is put.

17.18 A motion of dissent cannot be moved against a ruling by the chairperson under clause 17.15.

17.19 A motion moved under clause 17.15 with the leave of the chairperson cannot
be voted on unless or until it has been seconded.

18 AFTER THE MEETING

Minutes of meetings

18.1 The council is to keep full and accurate minutes of the proceedings of meetings of the council.

Note: Clause 18.1 reflects section 375(1) of the Act.

18.2 At a minimum, the general manager must ensure that the following matters are recorded in the council’s minutes:

(a) details of each motion moved at a council meeting and of any amendments moved to it,
(b) the names of the mover and seconder of the motion or amendment,
(c) whether the motion or amendment was passed or lost, and
(d) such other matters specifically required under this code.

18.3 The minutes of a council meeting must be confirmed at a subsequent meeting of the council.

Note: Clause 18.3 reflects section 375(2) of the Act.

18.4 Any debate on the confirmation of the minutes is to be confined to whether the minutes are a full and accurate record of the meeting they relate to.

18.5 When the minutes have been confirmed, they are to be signed by the person presiding at the subsequent meeting.

Note: Clause 18.5 reflects section 375(2) of the Act.

18.6 The confirmed minutes of a meeting may be amended to correct typographical or administrative errors after they have been confirmed. Any amendment made under this clause must not alter the substance of any decision made at the meeting.

18.7 The confirmed minutes of a council meeting must be published on the council’s website. This clause does not prevent the council from also publishing unconfirmed minutes of its meetings on its website prior to their confirmation.

Access to correspondence and reports laid on the table at, or submitted to, a meeting

18.8 The council and committees of the council must, during or at the close of a meeting, or during the business day following the meeting, give reasonable access to any person to inspect correspondence and reports laid on the table at, or submitted to, the meeting.

Note: Clause 19.8 reflects section 11(1) of the Act.
18.9 Clause 18.8 does not apply if the correspondence or reports relate to a matter that was received or discussed or laid on the table at, or submitted to, the meeting when the meeting was closed to the public.

Note: Clause 18.9 reflects section 11(2) of the Act.

18.10 Clause 18.8 does not apply if the council or the committee resolves at the meeting, when open to the public, that the correspondence or reports are to be treated as confidential because they relate to a matter specified in section 10A(2) of the Act.

Note: Clause 18.10 reflects section 11(3) of the Act.

18.11 Correspondence or reports to which clauses 18.9 and 18.10 apply are to be marked with the relevant provision of section 10A(2) of the Act that applies to the correspondence or report.

Implementation of decisions of the council

18.12 The general manager is to implement, without undue delay, lawful decisions of the council.

Note: Clause 18.12 reflects section 335(b) of the Act.

19 COUNCIL COMMITTEES

Application of this Part

19.1 This Part only applies to committees of the council whose members are all councillors.

Council committees whose members are all councillors

19.2 The council may, by resolution, establish such committees as it considers necessary.

19.3 A committee of the council is to consist of the mayor and such other councillors as are elected by the councillors or appointed by the council.

19.4 The quorum for a meeting of a committee of the council is to be:

(a) such number of members as the council decides, or
(b) if the council has not decided a number – a majority of the members of the committee.

Functions of committees

19.5 The council must specify the functions of each of its committees when the committee is established, but may from time to time amend those functions.

Notice of committee meetings

19.6 The general manager must send to each councillor, regardless of whether they...
are a committee member, at least three (3) days before each meeting of the committee, a notice specifying:

(a) the time, date and place of the meeting, and
(b) the business proposed to be considered at the meeting.

19.7 Notice of less than three (3) days may be given of a committee meeting called in an emergency.

Attendance at committee meetings

19.8 A committee member (other than the mayor) ceases to be a member of a committee if the committee member:

(a) has been absent from three (3) consecutive meetings of the committee without having given reasons acceptable to the committee for the member’s absences, or
(b) has been absent from at least half of the meetings of the committee held during the immediately preceding year without having given to the committee acceptable reasons for the member’s absences.

19.9 Clause 20.8 does not apply if all of the members of the council are members of the committee.

Non-members entitled to attend committee meetings

19.10 A councillor who is not a member of a committee of the council is entitled to attend, and to speak at a meeting of the committee. However, the councillor is not entitled:

(a) to give notice of business for inclusion in the agenda for the meeting, or
(b) to move or second a motion at the meeting, or
(c) to vote at the meeting.

Chairperson and deputy chairperson of council committees

19.11 The chairperson of each committee of the council must be:

(a) the mayor, or
(b) if the mayor does not wish to be the chairperson of a committee, a member of the committee elected by the council, or
(c) if the council does not elect such a member, a member of the committee elected by the committee.

19.12 The council may elect a member of a committee of the council as deputy chairperson of the committee. If the council does not elect a deputy chairperson of such a committee, the committee may elect a deputy chairperson.

19.13 If neither the chairperson nor the deputy chairperson of a committee of the council is able or willing to preside at a meeting of the committee, the committee must elect a member of the committee to be acting chairperson of the committee.
19.14 The chairperson is to preside at a meeting of a committee of the council. If the chairperson is unable or unwilling to preside, the deputy chairperson (if any) is to preside at the meeting, but if neither the chairperson nor the deputy chairperson is able or willing to preside, the acting chairperson is to preside at the meeting.

Procedure in committee meetings

19.15 Subject to any specific requirements of this code, each committee of the council may regulate its own procedure. The provisions of this code are to be taken to apply to all committees of the council unless the council or the committee determines otherwise in accordance with this clause.

19.16 Whenever the voting on a motion put to a meeting of the committee is equal, the chairperson of the committee is to have a casting vote as well as an original vote unless the council or the committee determines otherwise in accordance with clause 20.15.

19.17 Voting at a council committee meeting is to be by open means (such as on the voices, by show of hands or by a visible electronic voting system).

Closure of committee meetings to the public

19.18 The provisions of the Act and Part 14 of this code apply to the closure of meetings of committees of the council to the public in the same way they apply to the closure of meetings of the council to the public.

19.19 If a committee of the council passes a resolution, or makes a recommendation, during a meeting, or a part of a meeting that is closed to the public, the chairperson must make the resolution or recommendation public as soon as practicable after the meeting or part of the meeting has ended, and report the resolution or recommendation to the next meeting of the council. The resolution or recommendation must also be recorded in the publicly available minutes of the meeting.

19.20 Resolutions passed during a meeting, or a part of a meeting that is closed to the public must be made public by the chairperson under clause 20.19 during a part of the meeting that is webcast.

Disorder in committee meetings

19.21 The provisions of the Act and this code relating to the maintenance of order in council meetings apply to meetings of committees of the council in the same way as they apply to meetings of the council.

Minutes of council committee meetings

19.22 Each committee of the council is to keep full and accurate minutes of the proceedings of its meetings. At a minimum, a committee must ensure that the following matters are recorded in the committee’s minutes:

(a) details of each motion moved at a meeting and of any amendments
moved to it,
(b)  the names of the mover and seconder of the motion or amendment,
(c)  whether the motion or amendment was passed or lost, and
(d)  such other matters specifically required under this code.

19.23  The minutes of meetings of each committee of the council must be confirmed at a subsequent meeting of the committee.

19.24  Any debate on the confirmation of the minutes is to be confined to whether the minutes are a full and accurate record of the meeting they relate to.

19.25  When the minutes have been confirmed, they are to be signed by the person presiding at that subsequent meeting.

19.26  The confirmed minutes of a meeting may be amended to correct typographical or administrative errors after they have been confirmed. Any amendment made under this clause must not alter the substance of any decision made at the meeting.

19.27  The confirmed minutes of a meeting of a committee of the council must be published on the council's website. This clause does not prevent the council from also publishing unconfirmed minutes of meetings of committees of the council on its website prior to their confirmation.

20  IRREGULARITIES

20.1  Proceedings at a meeting of a council or a council committee are not invalidated because of:

(a)  a vacancy in a civic office, or
(b)  a failure to give notice of the meeting to any councillor or committee member, or
(c)  any defect in the election or appointment of a councillor or committee member, or
(d)  a failure of a councillor or a committee member to declare a conflict of interest, or to refrain from the consideration or discussion of, or vote on, the relevant matter, at a council or committee meeting in accordance with the council's code of conduct, or
(e)  a failure to comply with this code.

Note: Clause 20.1 reflects section 374 of the Act.
## 21 DEFINITIONS

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>the Act</td>
<td>means the <em>Local Government Act 1993</em></td>
</tr>
<tr>
<td>act of disorder</td>
<td>means an act of disorder as defined in clause 15.11 of this code</td>
</tr>
<tr>
<td>amendment</td>
<td>in relation to an original motion, means a motion moving an amendment to that motion</td>
</tr>
<tr>
<td>audio recorder</td>
<td>any device capable of recording speech</td>
</tr>
<tr>
<td>business day</td>
<td>means any day except Saturday or Sunday or any other day the whole or part of which is observed as a public holiday throughout New South Wales</td>
</tr>
<tr>
<td>chairperson</td>
<td>in relation to a meeting of the council – means the person presiding at the meeting as provided by section 369 of the Act and clauses 6.1 and 6.2 of this code, and in relation to a meeting of a committee – means the person presiding at the meeting as provided by clause 19.11 of this code</td>
</tr>
<tr>
<td>this code</td>
<td>means the council's adopted code of meeting practice</td>
</tr>
<tr>
<td>committee of the council</td>
<td>means a committee established by the council in accordance with clause 19.2 of this code (being a committee consisting only of councillors) or the council when it has resolved itself into committee of the whole under clause 12.1</td>
</tr>
<tr>
<td>council official</td>
<td>has the same meaning it has in the Model Code of Conduct for Local Councils in NSW</td>
</tr>
<tr>
<td>day</td>
<td>means calendar day</td>
</tr>
<tr>
<td>division</td>
<td>means a request by two councillors under clause 11.7 of this code requiring the recording of the names of the councillors who voted both for and against a motion</td>
</tr>
<tr>
<td>foreshadowed amendment</td>
<td>means a proposed amendment foreshadowed by a councillor under clause 10.18 of this code during debate on the first amendment</td>
</tr>
<tr>
<td>foreshadowed motion</td>
<td>means a motion foreshadowed by a councillor under clause 10.17 of this code during debate on an original motion</td>
</tr>
<tr>
<td>open voting</td>
<td>means voting on the voices or by a show of hands or by a visible electronic voting system or similar means</td>
</tr>
<tr>
<td>planning decision</td>
<td>means a decision made in the exercise of a function of a council under the <em>Environmental Planning and Assessment Act 1979</em> including any decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but not including the making of an order under Division 9.3 of Part 9 of that Act</td>
</tr>
<tr>
<td>performance improvement order</td>
<td>means an order issued under section 438A of the Act</td>
</tr>
</tbody>
</table>

Penrith City Council Code of Meeting Practice
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>quorum</td>
<td>means the minimum number of councillors or committee members necessary to conduct a meeting</td>
</tr>
<tr>
<td>the Regulation</td>
<td>means the <em>Local Government (General) Regulation 2005</em></td>
</tr>
<tr>
<td>webcast</td>
<td>a video or audio broadcast of a meeting transmitted across the internet either concurrently with the meeting or at a later time</td>
</tr>
<tr>
<td>year</td>
<td>means the period beginning 1 July and ending the following 30 June</td>
</tr>
</tbody>
</table>