

ATTACHMENT

**ITEM 6.2.6 – REVIEW OF CODE OF CONDUCT
AND ACCESS TO INFORMATION POLICY**

MID-WESTERN REGIONAL COUNCIL

Code of Conduct

October 2008

ADOPTION OF MODEL CODE OF CONDUCT

Mid-Western Regional Council formally adopted the DLG Model Code of Conduct as Council's Code of Conduct at its meeting on 16 July 2008, Minute No. 105/08. The new Council at its meeting on 15 October 2008, Minute No 215/08 confirmed this decision.

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PART 1: CONTEXT

This Part of the Model Code establishes the purpose and principles that are used to interpret the standards in the Code. This Part does not constitute separate enforceable standards of conduct.

1 INTRODUCTION

This Model Code of Conduct for Local Councils in NSW (“the Model Code of Conduct”) is made for the purposes of section 440 of the *Local Government Act 1993* (“the Act”). Section 440 of the Act requires every council to adopt a code of conduct that incorporates the provisions of the Model Code. For the purposes of section 440 of the Act, the Model Code of Conduct comprises all Parts of this document.

The Code is made in three Parts: Context, Standards of Conduct and Procedures.

- Part 1: Context, establishes the purpose and principles that are used to interpret the standards in the Code. This Part does not constitute separate enforceable standards of conduct.
- Part 2: Standards of Conduct, set out the conduct obligations required of council officials. These are the enforceable standards of conduct.
- Part 3: Procedures, contains the complaint handling procedures, complaint assessment criteria and the operating guidelines for the conduct review committee/reviewer. This Part should be used to guide the management of complaints about breaches of the Code.

Councillors have two distinct roles under the *Local Government Act 1993*: as a member of the governing body of the council; and as an elected person. Councillors, as members of the governing body, should work as part of a team to make decisions and policies that guide the activities of the council. The role as an elected person requires councillors to represent the interests of the community and provide leadership. The Model Code sets the standard of conduct that is expected when council officials exercise these roles.

Councillors, administrators, members of staff of council, independent conduct reviewers, members of council committees including the conduct review committee and delegates of the council must comply with the applicable provisions of council’s code of conduct in carrying out their functions as council officials. It is the personal responsibility of council officials to comply with the standards in the code and regularly review their personal circumstances with this in mind. Council contractors and volunteers will also be required to observe the relevant provisions of council’s code of conduct.

Failure by a councillor to comply with Part 2, the standards of conduct, of council’s code of conduct constitutes misbehaviour. The *Local Government Act 1993* provides for suspension of councillors from civic office for up to six months for proven misbehaviour. For further information on misbehaviour refer to Sections 11 and 12 of this Code.

Failure by a member of staff to comply with council's code of conduct may give rise to disciplinary action.

A set of guidelines has also been developed to assist councils to review and enhance their codes of conduct. The guidelines support this Code and provide further information and examples on the provisions in this Code.

2 DEFINITIONS

In the Model Code of Conduct the following definitions apply:

the Act	the Local Government Act 1993
act of disorder	see the definition in clause 256 of the <i>Local Government (General) Regulation 2005</i>
conduct review committee	a committee of three or more persons independent of council who are selected from those appointed by council to review allegations of breaches of the code of conduct by councillors or the general manager in accordance with the procedures set out in Sections 12, 13 and 14.
conduct reviewer	a person independent of council who is solely selected from those appointed by council to review allegations of breaches of the code of conduct by councillors or the general manager in accordance with the procedures set out in Sections 12, 13 and 14.
conflict of interests	a conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty.
council official	includes councillors, members of staff of council, administrators appointed under section 256 of the Act, members of council committees, conduct reviewers and delegates of council
delegate of council	a person or body, and the individual members of that body, to whom a function of council is delegated
designated person	see the definition in section 441 of the Act
misbehaviour	see the definition in section 440F of the Act
personal information	information or an opinion about a person whose identity is apparent, or can be determined from the information or opinion

person independent
of council

a person who is not an employee of the council, has no current or ongoing contractual relationship with council in the nature of a contract for services, retainer or contract for the provision of goods of any kind, or is not an employee of any entity with such a contractual relationship.

The term “you” used in the Model Code of Conduct refers to council officials.

3 PURPOSE OF THE CODE OF CONDUCT

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

The Model Code of Conduct has been developed to assist council officials to:

- understand the standards of conduct that are expected of them
- enable them to fulfil their statutory duty to act honestly and exercise a reasonable degree of care and diligence (section 439)
- act in a way that enhances public confidence in the integrity of local government.

4 KEY PRINCIPLES

This Model Code of Conduct is based on a number of key principles. It sets out standards of conduct that meets these principles and statutory provisions applicable to local government activities. The principles underpin and guide these standards and may be used as an aid in interpreting the substantive provisions of the Code, but do not themselves constitute separate enforceable standards of conduct.

4.1 Integrity

You must not place yourself under any financial or other obligation to any individual or organisation that might reasonably be thought to influence you in the performance of your duties.

4.2 Leadership

You have a duty to promote and support the key principles by leadership and example and to maintain and strengthen the public’s trust and confidence in the integrity of the council. *This means promoting public duty to others in the council and outside, by your own ethical behaviour.*

4.3 Selflessness

You have a duty to make decisions in the public interest. You must not act in order to gain financial or other benefits for yourself, your family, friends or business interests. *This means making decisions because they benefit the public, not because they benefit the decision maker.*

4.4 Impartiality

You should make decisions on merit and in accordance with your statutory obligations when carrying out public business. This includes the making of appointments, awarding of contracts or recommending individuals for rewards or benefits. *This means fairness to all; impartial assessment; merit selection in recruitment and in purchase and sale of council's resources; considering only relevant matters.*

4.5 Accountability

You are accountable to the public for your decisions and actions and should consider issues on their merits, taking into account the views of others. *This means recording reasons for decisions; submitting to scrutiny; keeping proper records; establishing audit trails.*

4.6 Openness

You have a duty to be as open as possible about your decisions and actions, giving reasons for decisions and restricting information only when the wider public interest clearly demands. *This means recording, giving and revealing reasons for decisions; revealing other avenues available to the client or business; when authorised, offering all information; communicating clearly.*

4.7 Honesty

You have a duty to act honestly. You must declare any private interests relating to your public duties and take steps to resolve any conflicts arising in such a way that protects the public interest. *This means obeying the law; following the letter and spirit of policies and procedures; observing the code of conduct; fully disclosing actual or potential conflict of interests and exercising any conferred power strictly for the purpose for which the power was conferred.*

4.8 Respect

You must treat others with respect at all times. *This means not using derogatory terms towards others, observing the rights of other people, treating people with courtesy and recognising the different roles others play in local government decision-making.*

5 GUIDE TO ETHICAL DECISION MAKING

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

- Is the decision or conduct lawful?
- Is the decision or conduct consistent with council's policy and with council's objectives and the code of conduct?
- What will the outcome be for the employee or councillor, work colleagues, the council, persons with whom you are associated and any other parties?
- Do these outcomes raise a conflict of interest or lead to private gain or loss at public expense?
- Can the decision or conduct be justified in terms of the public interest and would it withstand public scrutiny?

Conflict of interests

- 5.2 If you are unsure as to whether or not you have a conflict of interests in relation to a matter, you should consider these six points:
- Do you have a personal interest in a matter you are officially involved with?
 - Is it likely you could be influenced by a personal interest in carrying out your public duty?
 - Would a reasonable person believe you could be so influenced?
 - What would be the public perception of whether or not you have a conflict of interests?
 - Do your personal interests conflict with your official role?
 - What steps do you need to take and that a reasonable person would expect you to take to appropriately manage any conflict of interests?

Political donations and conflict of interests

- 5.3 Councillors should take all reasonable steps to identify circumstances where political contributions may give rise to a reasonable perception of influence in relation to their vote or support.

Seeking advice

- 5.4 Remember – you have the right to question any instruction or direction given to you that you think may be unethical or unlawful. If you are uncertain about an action or decision, you may need to seek advice from other people. This may include your supervisor or trusted senior officer, your union representatives, the [Divisioneapartment](#) of Local Government, the Ombudsman's Office and the Independent Commission Against Corruption.

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

PART 2: STANDARDS OF CONDUCT

This Part of the Model Code sets out the conduct obligations required of council officials. These are the enforceable standards of conduct.

Failure by a councillor to comply with Part 2, the standards of conduct, of council's code of conduct constitutes misbehaviour and may constitute a substantial breach for the purposes of section 9 of the ICAC Act 1988. The Local Government Act 1993 provides for suspension of councillors from civic office for up to six months for proven misbehaviour. For further information on misbehaviour refer to Sections 11 and 12 of this Code.

Failure by a member of staff to comply with council's code of conduct may give rise to disciplinary action.

6 GENERAL CONDUCT OBLIGATIONS

General conduct

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

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

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

6.3 You must treat others with respect at all times.

6.4 Where you are a councillor and have been found in breach of the code of conduct, you must comply with any council resolution requiring you to take action as a result of that breach.

Fairness and equity

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

- 6.6 You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case. You must not take irrelevant matters or circumstances into consideration when making decisions.

Harassment and discrimination

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

Development decisions

- 6.8 You must ensure that development decisions are properly made and that parties involved in the development process are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the development assessment process.
- 6.9 In determining development applications, you must ensure that no action, statement or communication between yourself and applicants or objectors conveys any suggestion of willingness to provide improper concessions or preferential treatment.

7 CONFLICT OF INTERESTS

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

What is a pecuniary interest?

- 7.5 A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. (*section 442*)
- 7.6 A person will also be taken to have a pecuniary interest in a matter if that person's spouse or de facto partner or a relative of the person or a partner or employer of the person, or a company or other body of which the person, or a nominee, partner or employer of the person is a member, has a pecuniary interest in the matter. (*section 443*)
- 7.7 Pecuniary interests are regulated by Chapter 14, Part 2 of the Act. The Act requires that:
- a) councillors and designated persons lodge an initial and an annual written disclosure of interests that could potentially be in conflict with their public or professional duties (*section 449*)
 - b) councillors and members of council committees disclose an interest and the nature of that interest at a meeting, leave the meeting and be out of sight of the meeting and not participate in discussions or voting on the matter (*section 451*)
 - c) designated persons immediately declare, in writing, any pecuniary interest. (*section 459*)
- 7.8 Designated persons are defined at section 441 of the Act, and include, but are not limited to, the general manager and other senior staff of the council.
- 7.9 Where you are a member of staff of council, other than a designated person (as defined by section 441), you must disclose in writing to your supervisor or the general manager, the nature of any pecuniary interest you have in a matter you are dealing with as soon as practicable.

What is a non-pecuniary conflict of interests?

- 7.10 Non-pecuniary interests are private or personal interests the council official has that do not amount to a pecuniary interest as defined in the Act. These commonly arise out of family, or personal relationships, or involvement in sporting, social or other cultural groups and associations and may include an interest of a financial nature.
- 7.11 The matter of a report to council from the conduct review committee/reviewer relates to the public duty of a councillor or the general manager. Therefore, there is no requirement for councillors or the general manager to disclose a conflict of interests in such a matter.
- 7.12 The political views of a councillor do not constitute a private interest.

Managing non-pecuniary conflict of interests

- 7.13 Where you have a non-pecuniary interest that conflicts with your public duty, you must disclose the interest fully and in writing, even if the conflict is not significant. You must do this as soon as practicable.
- 7.14 If a disclosure is made at a council or committee meeting, both the disclosure and the nature of the interest must be recorded in the minutes. This disclosure constitutes disclosure in writing for the purposes of clause 7.13.
- 7.15 How you manage a non-pecuniary conflict of interests will depend on whether or not it is significant.
- 7.16 As a general rule, a non-pecuniary conflict of interests will be significant where a matter does not raise a pecuniary interest but it involves:
- a) a relationship between a council official and another person that is particularly close, for example, parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse, current or former spouse or partner, de facto or other person living in the same household
 - b) other relationships that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship
 - c) an affiliation between the council official and an organisation, sporting body, club, corporation or association that is particularly strong.
- 7.17 If you are a council official, other than a member of staff of council, and you have disclosed that a significant non-pecuniary conflict of interests exists, you must manage it in one of two ways:
- a) remove the source of the conflict, by relinquishing or divesting the interest that creates the conflict, or reallocating the conflicting duties to another council official
 - b) have no involvement in the matter, by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in section 451(2) of the Act apply

- 7.18 If you determine that a non-pecuniary conflict of interests is less than significant and does not require further action, you must provide an explanation of why you consider that the conflict does not require further action in the circumstances.
- 7.19 If you are a member of staff of council, the decision on which option should be taken to manage a non-pecuniary conflict of interests must be made in consultation with your manager.
- 7.20 Despite clause 7.17(b), a councillor who has disclosed that a significant non-pecuniary conflict of interests exists may participate in a decision to delegate council's decision-making role to council staff, or appoint another person or body to make the decision in accordance with the law. This applies whether or not council would be deprived of a quorum if one or more councillors were to manage their conflict of interests by not voting on a matter in accordance with clause 7.17(b) above.

Political donations exceeding \$1,000

- 7.21 Councillors should note that matters before council involving political or campaign donors may give rise to a non-pecuniary conflict of interests.
- 7.22 Councillors should take all reasonable steps to ascertain the source of any political contributions that directly benefit their election campaigns. For example, councillors should have reasonable knowledge of contributions received by them or their "official agent" (within the meaning of the *Election Funding Act 1981*) that directly benefit their election campaign.
- 7.23 Where a councillor or the councillor's "official agent" has received "political contributions" or "political donations", as the case may be, within the meaning of the *Election Funding Act 1981* exceeding \$1,000 which directly benefit their campaign:
- a) from a political or campaign donor or related entity in the previous four years; and
 - b) where the political or campaign donor or related entity has a matter before council,
- then the councillor must declare a non-pecuniary conflict of interests, disclose the nature of the interest, and manage the conflict of interests in accordance with clause 7.17(b).
- 7.24 Councillors should note that political contributions below \$1,000, or political contributions to a registered political party or group by which a councillor is endorsed, may still give rise to a non-pecuniary conflict of interests. Councillors should determine whether or not such conflicts are significant and take the appropriate action to manage them.
- 7.25 If a councillor has received a donation of the kind referred to in clause 7.23, that councillor is not prevented from participating in a decision to delegate council's decision-making role to council staff or appointing another person or body to make the decision in accordance with the law (see clause 7.20 above).

Other business or employment

| 7.26 **I**f you are a member of staff of council considering outside employment or contract work that relates to the business of the council or that might conflict with your council duties, you must notify and seek the approval of the general manager in writing. (*section 353*)

7.27 As a member of staff, you must ensure that any outside employment or business you engage in will not:

- a) conflict with your official duties
- b) involve using confidential information or council resources obtained through your work with the council
- c) require you to work while on council duty
- d) discredit or disadvantage the council.

Personal dealings with council

7.28 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 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.

8 PERSONAL BENEFIT

For the purposes of this section, a reference to a gift or benefit does not include a political donation or contribution to an election fund that is subject to the provisions of the relevant election funding legislation.

Token gifts and benefits

8.1 Generally speaking, token gifts and benefits include:

- a) free or subsidised meals, beverages or refreshments provided in conjunction with:
 - i) the discussion of official business
 - ii) council work related events such as training, education sessions, workshops
 - iii) conferences
 - iv) council functions or events
 - v) social functions organised by groups, such as council committees and community organisations.
- b) invitations to and attendance at local social, cultural or sporting events
- c) gifts of single bottles of reasonably priced alcohol to individual council officials at end of year functions, public occasions or in recognition of work done (such as providing a lecture/training session/address)
- d) ties, scarves, coasters, tie pins, diaries, chocolates or flowers.

Gifts and benefits of value

8.2 Notwithstanding clause 8.1, gifts and benefits that have more than a token value include, but are not limited to, tickets to major sporting events (such as state or international cricket matches or matches in other national sporting codes (including the NRL, AFL, FFA, NBL)), corporate hospitality at a corporate facility at major sporting events, discounted products for personal use, the frequent use of facilities such as gyms, use of holiday homes, free or discounted travel.

Gifts and benefits

8.3 You must not:

- a) seek or accept a bribe or other improper inducement
- b) seek gifts or benefits of any kind
- c) accept any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your public duty
- d) accept any gift or benefit of more than token value
- e) accept an offer of money, regardless of the amount.

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

- 8.5 You must avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to secure favourable treatment from you or from the council.
- 8.6 You must take all reasonable steps to ensure that your immediate family members do not receive gifts or benefits that give rise to the appearance of being an attempt to secure favourable treatment. Immediate family members ordinarily include parents, spouses, children and siblings.

Improper and undue influence

- 8.7 You must not use your position to influence other council officials in the performance of their public or professional duties to obtain a private benefit for yourself or for somebody else. A councillor will not be in breach of this clause where they seek to influence other council officials through the appropriate exercise of their representative functions.
- 8.8 You must not take advantage (or seek to take advantage) of your status or position with or of functions you perform for council in order to obtain a private benefit for yourself or for any other person or body.

9 RELATIONSHIP BETWEEN COUNCIL OFFICIALS

Obligations of councillors and administrators

9.1 Each council is a body corporate. The councillors or administrator/s are the governing body of the council. The governing body has the responsibility of directing and controlling the affairs of the council in accordance with the Act and is responsible for policy determinations, for example, those relating to industrial relations policy.

9.2 Councillors or administrators must not:

- a) direct council staff other than by giving appropriate direction to the general manager in the performance of council's functions by way of council or committee resolution, or by the Mayor or administrator exercising their power under section 226 of the Act (*section 352*)
- b) in any public or private forum, direct or influence or attempt to direct or influence, any other member of the staff of the council or a delegate of the council in the exercise of the functions of the member or delegate (*Schedule 6A of the Act*)
- c) contact a member of the staff of the council on council related business unless in accordance with the policy and procedures governing the interaction of councillors and council staff that have been authorised by the council and the general manager
- d) contact or issue instructions to any of council's contractors or tenderers, including council's legal advisers, unless by the Mayor or administrator exercising their power under section 226 of the Act. This does not apply to council's external auditors who, in the course of their work, may be provided with information by individual councillors.

Obligations of staff

9.3 The general manager is responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation of the decisions of the council without delay.

9.4 Members of staff of council must:

- a) give their attention to the business of council while on duty
- b) ensure that their work is carried out efficiently, economically and effectively
- c) carry out lawful directions given by any person having authority to give such directions
- d) give effect to the lawful decisions, policies, and procedures of the council, whether or not the staff member agrees with or approves of them.

Obligations during meetings

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

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

Inappropriate interactions

- 9.7 You must not engage in any of the following inappropriate interactions:
- a) Councillors and administrators approaching staff and staff organisations to discuss individual staff matters and not broader industrial policy issues.
 - b) Council staff approaching councillors and administrators to discuss individual staff matters and not broader industrial policy issues.
 - c) Council staff refusing to give information that is available to other councillors to a particular councillor.
 - d) Councillors and administrators who have lodged a development application with council, discussing the matter with council staff in staff-only areas of the council.
 - e) Councillors and administrators being overbearing or threatening to council staff.
 - f) Councillors and administrators making personal attacks on council staff in a public forum.
 - g) Councillors and administrators directing or pressuring council staff in the performance of their work, or recommendations they should make.
 - h) Council staff providing ad hoc advice to councillors and administrators without recording or documenting the interaction as they would if the advice was provided to a member of the community.
 - i) Council staff meeting with developers alone AND outside office hours to discuss development applications or proposals.
 - j) Councillors attending on-site inspection meetings with lawyers and/or consultants engaged by council associated with current or proposed legal proceedings unless permitted to do so by council's general manager or, in the case of the Mayor or administrator, exercising their power under section 226 of the Act.
- 9.8 It is appropriate that staff and staff organisations have discussions with councillors in relation to matters of industrial policy.

10 ACCESS TO INFORMATION AND COUNCIL RESOURCES

Councillor and administrator access to information

10.1 The general manager and public officer are responsible for ensuring that members of the public, councillors and administrators can gain access to the documents available under the *Government Information (Public Access) Act 2009* (the GIPA Act), section 12 of the *Local Government Act 1993*.

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10.2 The general manager must provide councillors and administrators with information sufficient to enable them to carry out their civic office functions.

10.3 Members of staff of council must provide full and timely information to councillors and administrators sufficient to enable them to carry out their civic office functions and in accordance with council procedures.

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

10.5 Councillors and administrators who have a private (as distinct from civic) interest in a document of council have the same rights of access as any member of the public.

Councillors and administrators to properly examine and consider information

10.6 Councillors and administrators must properly examine and consider all the information provided to them relating to matters that they are dealing with to enable them to make a decision on the matter in accordance with council's charter.

Refusal of access to documents

10.7 Where the general manager and public officer determine to refuse access to a document sought by a councillor or administrator they must act reasonably. In reaching this decision they must take into account whether or not the document sought is required for the councillor or administrator to perform their civic duty (see clause 10.2). The general manager or public officer must state the reasons for the decision if access is refused the right of review under the GIPA Act and advise in relation to the complaint handling functions of the NSW Ombudsman and Division of local Government.

Use of certain council information

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

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

Use and security of confidential information

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

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

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

Personal information

10.11 When dealing with personal information you must comply with:

- a) *the Privacy and Personal Information Protection Act 1998,*
- b) *the Health Records and Information Privacy Act 2002,*
- c) the Information Protection Principles and Health Privacy Principles,
- d) council's privacy management plan,
- e) the Privacy Code of Practice for Local Government

Use of council resources

10.12 You must use council resources ethically, effectively, efficiently and carefully in the course of your official duties, and must not use them for private purposes (except when supplied as part of a contract of employment) unless this use is lawfully authorised and proper payment is made where appropriate.

10.13 Union delegates and consultative committee members may have reasonable access to council resources for the purposes of carrying out their industrial responsibilities, including but not limited to:

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

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

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

- 10.16 The interests of a councillor in their re-election is considered to be a private interest and as such the reimbursement of travel expenses incurred on election matters is not appropriate. You must not use council letterhead, council crests and other information that could give the appearance it is official council material for these purposes.
- 10.17 You must not convert any property of the council to your own use unless properly authorised.
- 10.18 You must not use council's computer resources to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature.

Councillor access to council buildings

- 10.19 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.
- 10.20 Councillors and administrators must not enter staff-only areas of council buildings without the approval of the general manager (or delegate) or as provided in the procedures governing the interaction of councillors and council staff.
- 10.21 Councillors and administrators must ensure that when they are within a staff area they avoid giving rise to the appearance that they may improperly influence council staff decisions.

11 REPORTING BREACHES

- 11.1 Any person, whether or not a council official, may make a complaint alleging a breach of the code of conduct.
- 11.2 For the purposes of Chapter 14, Part 1, Division 3 of the Act, failure by a councillor to comply with an applicable requirement of this code of conduct constitutes misbehaviour. (section 440F)

Protected disclosures

- 11.3 The *Protected Disclosures Act 1994* aims to encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration and serious and substantial waste in the public sector.
- 11.4 The purpose of that Act is to ensure that public officials who wish to make disclosures under the legislation receive protection from reprisals, and that matters raised in the disclosures are properly investigated.¹
- 11.5 If a complaint under this code is or could be a protected disclosure, you must ensure that in dealing with the complaint, you comply with the confidentiality provisions of the Protected Disclosures Act set out in section 22:

'An investigating authority or public authority (or officer of an investigating authority or public authority) or public official to whom a protected disclosure is made or referred is not to disclose information that might identify or tend to identify a person who has made the protected disclosure unless:

- (a) the person consents in writing to the disclosure of that information, or*
- (b) it is essential, having regard to the principles of natural justice, that the identifying information be disclosed to a person whom the information provided by the disclosure may concern, or*
- (c) the investigating authority, public authority, officer or public official is of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively or it is otherwise in the public interest to do so.'*

Reporting breaches of the code of conduct

- 11.6 You should report suspected breaches of the code of conduct by councillors, members of staff of council (excluding the general manager) or delegates to the general manager in writing.
- 11.7 Where you believe that the general manager has breached the code of conduct, you should report the matter to the Mayor in writing.

¹ Protected Disclosures Guidelines, 5th Edition, NSW Ombudsman, May 2004, Annexure 2.

- 11.8 Where you believe that an administrator has breached the code of conduct, you should report the matter to the Minister for Local Government in writing.
- 11.9 Councillors should not make allegations of suspected breaches of the code at council meetings or in other public forums.

PART 3: PROCEDURES

This Part of the Model Code contains the complaint handling procedures, complaint assessment criteria and the operating guidelines for the conduct review committee/reviewer. This Part should be used to guide the management of complaints about breaches of the Code.

12 COMPLAINT HANDLING PROCEDURES & SANCTIONS

12.1 Complaints about the conduct of councillors, members of staff of council, members of council committees and delegates of council should be addressed in writing to the general manager.

12.2 Complaints about the conduct of the general manager should be addressed in writing to the Mayor.

Complaint handling procedures – staff, delegate and council committee member conduct (excluding the general manager)

12.3 The general manager is responsible for making enquiries, or causing enquiries to be made, into complaints alleging breach of the code of conduct regarding members of staff of council, delegates of council and/or members of council committees (other than councillors), and will determine such matters.

12.4 Where the general manager has determined not to enquire into the matter, the general manager will give the complainant the reason/s in writing as provided in clause 13.1 of this Code, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith.

12.5 Enquiries made into staff conduct that might give rise to disciplinary action must occur in accordance with the relevant industrial instrument and make provision for procedural fairness including the right of an employee to be represented by their union.

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

12.7 Sanctions for delegates and/or members of council committees depend on the severity, scale and importance of the breach and may include:

- a) censure
- b) requiring the person to apologise to any person adversely affected by the breach
- c) counselling
- d) prosecution for any breach of the law
- e) removing or restricting the person's delegation
- f) removing the person from membership of the relevant council committee
- g) revising any of council's policies, procedures and/or the code of conduct.

Complaint handling procedures – councillor conduct

12.8 The general manager is responsible for assessing complaints, made under Section 11.1, alleging breaches of the code of conduct by councillors, in accordance with the assessment criteria provided at Section 13 of this Code, in order to determine whether to refer the matter to the conduct review committee/reviewer.

12.9 The general manager must determine either to:

- a) take no further action and give the complainant the reason/s in writing as provided in clause 13.1 of this Code, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith, or
- b) resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing, or
- c) discontinue the assessment in the circumstances where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing, or
- d) refer the matter to the conduct review committee/reviewer.

Complaint handling procedures – general manager conduct

12.10 The Mayor is responsible for assessing complaints, made under clause 11.1, alleging breaches of the code of conduct by the general manager, in accordance with the assessment criteria provided at Section 13 of this Code, in order to determine whether to refer the matter to the conduct review committee/reviewer.

12.11 The Mayor must determine either to:

- a) take no further action and give the complainant the reason/s in writing as provided in clause 13.1 of this Code, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith, or
- b) resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing, or
- c) discontinue the assessment in the circumstances where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing, or
- d) refer the matter to the conduct review committee/reviewer.

Conduct review committee/reviewer

12.12 Council must resolve to appoint persons independent of council to comprise the members of a conduct review committee and/or to act as sole conduct reviewers.

- 12.13 The members of the conduct review committee and/or the persons acting as sole conduct reviewers should be appropriately qualified persons of high standing in the community. These persons do not need to be residents of the local government area of the council that has appointed them.
- 12.14 The conduct review committee, members of such committee and sole conduct reviewers may act in that role for more than one council.
- 12.15 The general manager, or in the case of complaints about the general manager, the Mayor, will undertake the following functions in relation to the conduct review committee/reviewer:
- provide procedural advice when requested
 - ensure adequate resources are provided, including providing secretariat support
 - attend meetings of the conduct review committee if so requested by the committee, and then in an advisory capacity only
 - provide advice about council processes if requested to do so but not so as to take part in the decision making process
 - if attending the conduct review committee meeting to provide advice, must not be present at, or in sight of, the meeting when a decision is taken.
- 12.16 Where a matter is to be considered by the conduct review committee/reviewer, then in each case, the general manager, or Mayor in the case of complaints about the general manager, acting in their capacity as advisor, will either convene a conduct review committee and select its members from those appointed by council or alternatively select a sole conduct reviewer from those appointed by council.
- 12.17 The conduct review committee/reviewer will operate in accordance with the operating guidelines at Section 14 of this code.
- 12.18 The conduct review committee/reviewer operating guidelines (Section 14) are the minimum requirements for the operation of conduct review committees/reviewers. Council may supplement the guidelines, but any additional provisions should not be inconsistent with the guidelines.
- 12.19 The conduct review committee/reviewer is responsible for making enquiries into complaints made under clause 11.1 alleging breaches of the code of conduct by councillors and/or the general manager and must determine either to:
- a) not make enquiries into the complaint and give the complainant the reason/s in writing as provided in clause 13.1 of this Code, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith, or
 - b) resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, making recommendations to the general manager, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing, or
 - c) make enquiries into the complaint, or

- d) engage another appropriately qualified person to make enquiries into the complaint, or
- e) not make enquiries or discontinue making enquiries where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing. Despite any other provision of this code, this will constitute finalisation of such matters and no further action is required.

12.20 Where the conduct review committee/reviewer conducts enquiries or causes enquiries to be conducted, the conduct review committee/reviewer must make findings on whether, in its view, the conduct referred to it comprises a breach of the code of conduct.

12.21 Where the conduct review committee/reviewer makes findings, the conduct review committee/reviewer may recommend that council take any actions provided for in this code of conduct that it considers reasonable in the circumstances.

12.22 Where the conduct review committee/reviewer makes findings, the conduct review committee/reviewer will report its findings, and the reasons for those findings, in writing to the council, the complainant and the person subject of the complaint.

12.23 The conduct review committee/reviewer will report its findings and any recommendations to council only when it has completed its deliberations.

Sanctions

12.24 Before a council can impose a sanction it must make a determination that a councillor or the general manager has breached the code of conduct.

12.25 Where the council finds that a councillor or general manager has breached the code, it may decide by resolution to:

- a) censure the councillor for misbehaviour in accordance with section 440G of the Act
- b) require the councillor or general manager to apologise to any person adversely affected by the breach
- c) counsel the councillor or general manager
- d) make public findings of inappropriate conduct
- e) prosecute for any breach of law.

Councillor misbehaviour

12.26 Under section 440G a council may by resolution at a meeting formally censure a councillor for misbehaviour.

12.27 Under section 440H, the process for the suspension of a councillor from civic office can be initiated by a request made by council to the Director General of the Department of Local Government.

- 12.28 The first ground on which a councillor may be suspended from civic office is where the councillor's behaviour has been disruptive over a period, involving more than one incident of misbehaviour during that period, and the pattern of behaviour during that period is of such a sufficiently serious nature as to warrant the councillor's suspension.
- 12.29 Council cannot request suspension on this ground unless during the period concerned the councillor has been:
- formally censured for incidents of misbehaviour on two or more occasions, or
 - expelled from a meeting of the council or a committee of the council for an incident of misbehaviour on at least one occasion.
- 12.30 The second ground on which a councillor may be suspended from civic office is where the councillor's behaviour has involved one incident of misbehaviour that is of such a sufficiently serious nature as to warrant the councillor's suspension.
- 12.31 Council cannot request suspension on this ground unless the councillor has been:
- formally censured for the incident of misbehaviour concerned, or
 - expelled from a meeting of the council or a committee of the council for the incident of misbehaviour concerned.
- 12.32 Under section 440H, the process for the suspension of a councillor can also be initiated by the [Divisione](#)partment of Local Government, the Independent Commission Against Corruption or the NSW Ombudsman.

Reporting on complaints

- 12.33 The general manager must report annually to council on code of conduct complaints. This report should include, as a minimum, a summary of the:
- a) number of complaints received,
 - b) nature of the issues raised by complainants, and
 - c) outcomes of complaints.

13 COMPLAINT ASSESSMENT CRITERIA

- 13.1 The general manager or Mayor, in the case of a complaint about the general manager, will assess a complaint alleging a breach of the code of conduct to determine if the matter should be referred to the conduct review committee/reviewer. In assessing the complaint, the general manager and Mayor will have regard to the following grounds:
- a) whether there is any prima facie evidence of a breach of the code of conduct
 - b) whether the subject matter of the complaint relates to conduct that is associated with the carrying out of the functions of civic office or duties as general manager
 - c) whether the complaint is trivial, frivolous, vexatious or not made in good faith
 - d) whether the conduct the subject of the complaint could reasonably constitute a breach of the code of conduct
 - e) whether the complaint raises issues that require investigation by another person or body, such as referring the matter to the Divisionepartment of Local Government, the NSW Ombudsman, the Independent Commission Against Corruption or the NSW Police
 - f) whether there is an alternative and satisfactory means of redress
 - g) how much time has elapsed since the events the subject of the complaint took place
 - h) how serious the complaint is and the significance it has for council
 - i) whether the complaint is one of a series indicating a pattern of conduct.
- 13.2 Complaints that are assessed as not having sufficient grounds to warrant referral to the conduct review committee/reviewer or that are to be referred to a more appropriate person or body can be finalised by the general manager or the Mayor, in the case of complaints about the general manager.
- 13.3 If a matter is referred to the conduct review committee/reviewer, then the conduct review committee/reviewer should use the above criteria in clause 13.1 for its initial assessment of the complaint and determination of the course to follow in dealing with the complaint.

14 CONDUCT REVIEW COMMITTEE/REVIEWER OPERATING GUIDELINES²

14.1 Jurisdiction of the conduct review committee/reviewer

The complaint handling function of the conduct review committee/reviewer is limited to consideration of, making enquiries into and reporting on complaints made under clause 11.1, about councillors and/or the general manager.

Complaints regarding pecuniary interest matters should be reported to the Director General of the ~~D~~ivision~~e~~partment of Local Government and will not be dealt with by the conduct review committee/reviewer.

Sole reviewers and members of the conduct review committee are subject to the provisions of this code of conduct.

14.2 Role of the general manager and Mayor

The general manager, or in the case of complaints about the general manager, the Mayor, will undertake the following functions in relation to the conduct review committee/reviewer:

- provide procedural advice when requested
- ensure adequate resources are provided, including providing secretariat support
- attend meetings of the conduct review committee if so requested by the committee, and then in an advisory capacity only
- provide advice about council processes if requested to do so but not so as to take part in the decision making process
- if attending the conduct review committee meeting to provide advice, must not be present at, or in sight of, the meeting when a decision is taken.

Where the general manager, or in the case of complaints about the general manager, the Mayor, is unable to act as advisor to the conduct review committee/reviewer due to a conflict of interests in relation to a complaint, they are to nominate a senior council officer or councillor (in the case of complaints about the general manager) to perform this role.

14.3 Composition of the conduct review committee

Where council has a conduct review committee it will comprise three or more appropriately qualified persons of high standing in the community who are independent of the council, convened and selected as provided in clause 12.16.

In the circumstances where a member of the conduct review committee cannot participate in a matter, the general manager, or Mayor in the case of complaints about the general manager, should select another person as provided in clause 12.16.

² The operating guidelines have been adapted from the Ku-ring-gai Council Conduct Committee Guidelines – 25 October 2006

The chairperson is to be elected by the members of the conduct review committee.

The general manager, or in the case of complaints about the general manager, the Mayor, will act in an advisory capacity to the committee when requested.

14.4 Quorum of the conduct review committee

A quorum for a meeting of the conduct review committee is the majority of the members of the conduct review committee.

If a quorum is not present at a meeting of the conduct review committee it must be adjourned to a time and date that is specified.

Business is not to be conducted at any meeting of the conduct review committee unless a quorum is present.

Business may be conducted by video-conference or teleconference.

14.5 Voting of the conduct review committee

Each member of the conduct review committee shall be entitled to one vote in respect of any matter. In the event of equality of votes being cast, the chairperson shall have the casting vote.

If the vote on a matter is not unanimous, then this should be noted in any report to council on its findings.

In relation to any procedural matters relating to the operation of the conduct review committee, the ruling of the chairperson shall be final.

14.6 Procedures of the conduct review committee/reviewer

The general manager or Mayor, in the case of a complaint about the general manager, will be responsible for convening the initial meeting of the conduct review committee when there is a complaint to be referred to it.

The conduct review committee/reviewer will conduct business in the absence of the public.

The conduct review committee/reviewer will keep proper records of deliberations.

The conduct review committee shall determine the procedures governing the conduct of its meetings provided such procedures are consistent with these operating guidelines.

14.7 Procedural fairness

In conducting enquiries, the conduct review committee/reviewer or the person engaged to do so should follow the rules of procedural fairness and must -

- a) provide the person the subject of the complaint with a reasonable opportunity to respond to the substance of the allegation
- b) provide the person the subject of the complaint with an opportunity to place before the conduct review committee/reviewer or person undertaking the enquiry any information the person considers relevant to the enquiry
- c) provide the person the subject of the complaint with an opportunity to address the conduct review committee/reviewer in person
- d) hear all parties to a matter and consider submissions before deciding the substance of any complaint
- e) make reasonable enquiries before making any recommendations
- f) act fairly and without prejudice or bias
- g) ensure that no person decides a case in which they have a conflict of interests
- h) conduct the enquiries without undue delay.³

Where the person the subject of the complaint declines or fails to take the opportunity provided to respond to the substance of the allegation against them, the conduct review committee/reviewer should proceed to finalise the matter.

14.8 Complaint handling procedures

In addition to complying with these operating guidelines, the conduct review committee/reviewer will ensure it deals with all complaints in accordance with the provisions of Section 12 of this Code.

All persons who are the subject of complaints that are referred to the conduct review committee/reviewer will receive written information about the process being undertaken to deal with the matter.

The conduct review committee/reviewer will only deal with matters that are referred to it by the general manager or the Mayor.

Where the conduct review committee/reviewer determines to make enquiries into the matter, such enquiries should be made without undue delay.

In circumstances where the person the subject of the complaint meets with the conduct review committee/reviewer, they are entitled to bring a support person or legal adviser. That person will act in an advisory and support role to the person affected. They will not speak on behalf of the subject person.

³ NSW Ombudsman, Investigating complaints, A manual for investigators, June 2004.

14.9 Findings and recommendations of the conduct review committee/reviewer

Where the conduct review committee/reviewer determines, in its view that the conduct referred to it comprises a breach of this code of conduct it may, in its report to the council, make recommendations, that the council take any of the following actions:


- a) censure the councillor for misbehaviour
- b) require the councillor or general manager to apologise to any person adversely affected by the breach
- c) counsel the councillor or general manager
- d) make public findings of inappropriate conduct
- e) prosecute for any breach of the law
- f) revise any of council's policies, procedures and/or the code of conduct.

Before making any such recommendations, the conduct review committee/reviewer shall have regard to the following:

- a) the seriousness of the breach
- b) whether the breach can be easily remedied or rectified
- c) whether the subject has remedied or rectified their conduct
- d) whether the subject has expressed contrition
- e) whether the breach is technical or trivial only
- f) whether the breach represents repeated conduct
- g) the age, physical or mental health or special infirmity of the subject
- h) the degree of reckless intention or negligence of the subject
- i) the extent to which the breach has affected other parties or the council as a whole
- j) the harm or potential harm to the reputation of local government and of the council arising from the conduct
- k) whether the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny
- l) whether an educative approach would be more appropriate than a punitive approach
- m) the relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action
- n) what action or remedy would be in the public interest
- o) where to comply with a councillor's obligations under this code of conduct would have had the effect of depriving the council of a quorum or otherwise compromise the capacity of council to exercise its functions

14.10 Amendment of the operating guidelines

The conduct review committee/reviewer guidelines may be added to and any additional requirements may be further amended or repealed by resolution of the council.

	POLICY	ADOPTED C/M 19/5/10 Minute No. 123/10
	ACCESS TO INFORMATION	REVIEW: May 2012 FILE No. A0220040, A0100021

1. Purpose

To establish the principles that apply and Council's approach to, disclosure of information and rights of public access to documents.

Council is subject to NSW legislation regarding disclosure of information, in particular the Local Government Act (LGA), the Government Information Public Access Act (GIPA) and the Environmental Planning and Assessment Act. It also is subject to the NSW Privacy and Personal Information Protection Act and Health Records Information Privacy Act that establish standards for information handling practices for personal and health information.

The Commonwealth Copyright Act may apply in some circumstances to limit the copying of certain documents held by the Council.

2. Policy statement

Council is committed to:

- Openness and transparency in the conduct of its public functions.
- Proactive disclosure and dissemination of information about operations, plans and decisions or information that will enhance quality of life and economic development of the community.
- Provision of access to Council documents unless disclosure in a particular case would be contrary to the public interest.

3. Principles

Council will promote disclosure and dissemination of information about operations, plans and decisions, and information that promotes community advancement on its website wherever practicable, and will facilitate public access through this and other appropriate mediums.

Documents required by law to be available for public inspection will be posted on the website, unless internet access poses an unacceptable risk of interference with privacy through potential data gathering and matching techniques or unless to do so would impose unreasonable additional costs on Council.

Any person is entitled to have information about their place of residence suppressed from documents available for inspection where disclosure would endanger personal safety, or removed from any register available for public inspection in accordance with the NSW Privacy and Personal Information Protection Act.

Other Council documents not posted on the website will be available for inspection unless disclosure on balance is contrary to the public interest.

Copying of some documents may be restricted where the Copyright Act imposes limitations.

ACCESS TO INFORMATION

Council's Guidelines on Access to Information (attached) list the types of documents available including public registers available for inspection.

The Guidelines also list the categories of documents not available because of legislative restrictions or because disclosure is likely to be contrary to the public interest. Documents of this kind include those that contain information about the personal affairs of other ratepayers, commercially sensitive information, or information which if disclosed would have an adverse effect on Council's law enforcement or other functions, such as the identifying particulars of complainants.

Inspection of Council documents which are specified as Open Access Information as outlined in Clause 18 of the GIPA Act, is free of charge, or on payment of reasonable copying charges. Fees for Formal Applications are outlined in the attached Guidelines.

Broad requests for access to a large number of unspecified documents which, if processed, would divert substantial Council resources from dealing with other requests, or from performing other Council functions may be refused on the grounds that such a diversion of resources is contrary to the public interest (Clause 60 GIPA Act).

Any member of the public may also lodge a formal application under the GIPA Act, which will be dealt with in accordance with the Act's provisions. Formal applications will not be required where documents are otherwise available in accordance with this policy and associated guidelines.

Any individual also has a right to know what personal or health information Council holds about him or her, to access that information in accordance with the provisions of the NSW Privacy and Personal Information Protection Act and the NSW Health Records and Information Privacy Act, and to amend that information in certain circumstances.

**MID-WESTERN REGIONAL COUNCIL
GUIDELINES ON INFORMATION ACCESS
(To be read in conjunction with Council's Access to
Information Policy)**

Introduction

These guidelines set out the documents and types of information that are available to members of the public on a proactive basis, and those that will not generally be available for inspection and copying. These guidelines relate not only to written information, or information held within another format, such as within a computer system but also any information given out face to face, or via a telephone or email.

Council is committed to proactive dissemination of information about the conduct of its public functions and information that will assist community advancement.

Documents required to be available for public inspection as open access information will, where practicable, be made available on Council's website, unless to do so would impose unreasonable additional costs on Council.

Council will deal with informal requests to inspect other documents in accordance with the GIPA Act free of charge but charges may apply for photocopies, and for any additional services which go beyond the provision of access to identified documents.

The rights of access under the GIPA Act are the specified documents listed in Schedule 5 Government Information (Public Access) Regulation 2009 of the Act, and to other documents held by the Council unless disclosure is, on balance, contrary to the public interest.

While any application will be considered on its merits Council may refuse access where:

- a) dealing with the application would require an unreasonable and substantial diversion of the Council's resources,
- b) the Council has already decided a previous application for the information concerned (or information that is substantially the same as that information) made by the applicant and there are no reasonable grounds for believing that the Council would make a different decision on the application,(clause 60)

Any applications will be processed in accordance with the Act's requirements and a decision made to provide access to the documents, or not to provide access based on public interest considerations of the GIPA Act. Charges for formal GIPA applications are set out in Council's Schedule of Fees and Charges.

An individual also has rights to access and amend the personal and health information held by Council about him or her under the NSW Privacy and Personal Information Protection Act (PPIPA) and the NSW Health Records and Information Privacy Act (HRIPA). Where information about an individual is held in documents, files or systems that include information about other persons, any request should be made under the GIPA Act which provides for consultation with any other affected parties prior to the possible provision of access to information concerning their personal or business affairs.

ACCESS TO INFORMATION

Privacy Legislation and Access to Council Information and Documents

The privacy acts referred to above also apply to the collection, storage, use and disclosure of personal and health information by Council. The acts set out principles for the handling of this type of information.

Full details of the acts and Council's obligations are set out in the Privacy Management Plan.

It is not a breach of the privacy principles to disclose personal or health information where this is in accordance with the acts, (eg where disclosure is consistent with the purpose for which the information was collected, or where the person was aware that particular information is usually disclosed) or where another act or law requires, permits or contemplates disclosure.

Disclosure of documents required to be made available for public inspection by the GIPA Act, Local Government Act, the Environmental Planning and Assessment Act or any other act, of disclosure under the GIPA Act is not contrary to privacy legislation.

Where access to other documents is requested and a judgment needs to be made about whether disclosure, on balance, is contrary to the public interest, privacy may be a consideration if personal information about another person is involved. Relevant factors include the nature of the information, and the degree to which disclosure involves significant privacy issues, and any public interest that would be advanced by disclosure. Council may need to be able to explain considerations taken into account in deciding to disclose personal information to someone other than the person concerned.

Council Documents Available for Inspection

The following documents are available for inspection as required by Schedule 5 Government Information (Public Access) Regulation 2009 and can be accessed via Council's website or by contacting either Council's Right to Information Officer or Council's Customer Service Section on 6378 2850.

1 Information about Council

- (1) Information contained in the current version and the most recent previous version of the following records is prescribed as open access information:
 - (a) the model code prescribed under section 440 (1) of the LGA and the code of conduct adopted under section 440 (3) of the LGA,
 - (b) code of meeting practice,
 - (c) annual report,
 - (d) annual financial reports,
 - (e) auditor's report,
 - (f) management plan,
 - (g) EEO management plan,
 - (h) policy concerning the payment of expenses incurred by, and the provision of facilities to, councillors,
 - (i) annual reports of bodies exercising functions delegated by Council,
 - (j) any codes referred to in the LGA
- (2) Information contained in the following records:
 - (a) returns of the interests of councillors, designated persons and delegates,
 - (b) agendas and business papers for any meeting of Council or any committee of Council (but not including business papers for matters considered when part of a meeting is closed to the public),
 - (c) minutes of any meeting of Council or any committee of Council, but restricted (in the case of any part of a meeting that is closed to the public) to the resolutions and recommendations of the meeting,

(d) Departmental representative reports presented at a meeting of the local authority in accordance with section 433 of the LGA.

(3) Information contained in the current version of the following records:

- (a) land register,
- (b) register of investments,
- (c) register of delegations,
- (d) register of graffiti removal work kept in accordance with section 13 of the Graffiti Control Act 2008,
- (e) register of current declarations of disclosures of political donations kept in accordance with section 328A of the LGA,
- (f) the register of voting on planning matters kept in accordance with section 375A of the LGA.

2 Plans and policies

Information contained in the current version and the most recent previous version of the following:

- (a) policies adopted by Council concerning approvals and orders,
- (b) plans of management for community land,
- (c) environmental planning instruments, development control plans and contributions plans made under the Environmental Planning and Assessment Act 1979 applying to land within the local authority's area.

3 Information about development applications

(1) Information contained in the following records (whenever created):

- (a) development applications (within the meaning of the Environmental Planning and Assessment Act 1979) and any associated documents received in relation to a proposed development including the following:
 - (i) home warranty insurance documents,
 - (ii) construction certificates,
 - (iii) occupation certificates,
 - (iv) structural certification documents,
 - (v) town planner reports,
 - (vi) submissions received on development applications,
 - (vii) heritage consultant reports,
 - (viii) tree inspection consultant reports,
 - (ix) acoustics consultant reports,
 - (x) land contamination consultant reports,
- (b) records of decisions on development applications (including decisions made on appeal),
- (c) a record that describes the general nature of the documents that the council decides are excluded from the operation of this clause by subclause (2).

(2) This clause does not apply to so much of the information referred to in subclause (1) (a) as consists of:

- (a) the plans and specifications for any residential parts of a proposed building, other than plans that merely show its height and its external configuration in relation to the site on which it is proposed to be erected, or
- (b) commercial information, if the information would be likely to prejudice the commercial position of the person who supplied it or to reveal a trade secret.

4 Approvals, orders and other documents

ACCESS TO INFORMATION

Information contained in the following records (whenever created):

- (a) applications for approvals under Part 1 of Chapter 7 of the LGA and any associated documents received in relation to such an application,
- (b) applications for approvals under any other Act and any associated documents received in relation to such an application,
- (c) records of approvals granted or refused, any variation from local policies with reasons for the variation, and decisions made on appeals concerning approvals,
- (d) orders given under Part 2 of Chapter 7 of the LGA, and any reasons given under section 136 of the LGA,
- (e) orders given under the authority of any other Act,
- (f) records of building certificates under the Environmental Planning and Assessment Act 1979,
- (g) plans of land proposed to be compulsorily acquired by the local authority,
- (h) compulsory acquisition notices,
- (i) leases and licences for use of public land classified as community land.

Public Registers

In addition to registers mentioned above, Council maintains other registers which are required by law to be available for public inspection.

Where the public register contains personal or health information, Council is required to ensure that access by a member of the public is for a purpose consistent with the purpose for which the register exists. The Local Government Code of Practice issued under the Privacy and Personal Information Protection Act (PPIPA) permits Council to provide access to such registers by way of inspection on Council premises and for the copying of an entry or page in the register without regard to the purpose of the person who seeks access.

Council reserves the right to seek to satisfy itself about the purpose of access and to require a statutory declaration from the person seeking access that personal information will only be used for a specified lawful purpose.

In relation to the returns of interests of councillors, designated persons and delegates Council will maintain a record of the names of persons who access these documents.

Council maintains some registers which are not available for public inspection. Particular entries in these registers, for example from Council's Rates Record and the Register of Impounded Items required by the Impounding Act, are available to any person. In the case of an application for a certificate of an entry in the Rates Record under Section 603 of the LGA, a charge is payable.

Access to Other Documents Held by the Council

Other Council documents are available for inspection under the GIPA Act unless disclosure is, on balance, contrary to the public interest. Any application must be received in writing and will be processed promptly and within the agreed timeframe.

The request should specify the documents sought, with a reference to any time or date limitations. Any application will be considered on its merits and considered in the light of the obligation to make documents available unless public interest considerations favour the withholding of the document(s).

Information and Documents Not Usually Available

Information about the name of a property owner is in the public domain through internet access to the register maintained by the NSW Land and Property Information Service.

ACCESS TO INFORMATION

Council holds information about property ownership for the purpose of carrying out its functions. Council policy is not to make available information about the name of a property owner except in emergency circumstances or where the enquirer can establish a clear need to know. Council will not supply bulk property data to third parties for the purposes of direct marketing.

Documents listed below will not usually be available because they are excluded from the right to access by an express provision in the LGA, or Council has concluded that disclosure of such documents, or documents containing information of the kind indicated would, in the usual case, be contrary to the public interest.

Documents Not Available Because of Provisions in LGA

The following information will not be available:

- Papers submitted to Council for consideration in a closed session.
- Documents containing information about personnel matters concerning particular individuals, the personal hardship of any resident or rate payer, trade secrets or other sensitive commercial information, or where disclosure would found an action for breach of confidence.
- Documents that contain information, the release of which would constitute an offence against an Act.

Other Documents Not Available

- Documents or parts of documents which would reveal the identifying particulars of persons who provide information to Council in connection with its law enforcement and regulatory responsibilities, or who otherwise contact Council about matters of interest or concern, including complaints about other persons conduct or activities, and matters that require investigation by Council.
- Documents which reveal confidential communications between the Council and its legal advisers, or documents which have been prepared by Council officers or others for the dominant purpose of use in proposed or anticipated legal proceedings.
- Documents, the release of which are likely to endanger the life or safety of any person, or the security of any building or structure, or which would prejudice the conduct of a lawful investigation by Council or another authority.
- Documents concerning Council functions or operations where disclosure would have a prejudicial effect on Council's property or financial interests, or would otherwise have an adverse effect on its regulatory functions, or its capacity to operate in an efficient and effective manner.
- Council working documents prepared or received in connection with its decision making functions, prior to the making of a decision by Council, a committee of Council, or an officer exercising delegated authority.

It should be noted that access through verbal advice as to the content of documents listed above is also not available.

Large General Requests for Access to Documents

Broad, general requests for a large number of documents, for example all documents of a certain kind, or documents held on a number of different Council files, or which otherwise require a substantial allocation of Council resources, may be refused after consideration of the public interest factors involved by Council's Public Officer/ Right to Information Officer. The Officer may, in the light of an assessment of the work involved in identifying, locating, collating and assessing a large number of Council documents, conclude that access should be refused on the grounds that the substantial diversion of Council resources necessary to deal with the application would, on balance, be contrary to the public interest. The Public Officer/Right to Information Officer shall, in reaching such a decision take into account the following:

ACCESS TO INFORMATION

- an assessment of the work and time involved in responding to the application.
- the extent to which the work involved in dealing with the request would result in Council resources being diverted from dealing with other access requests, or from other important functions.
- the nature of the documents requested and any public interests to be advanced by disclosure generally, or disclosure to the particular applicant. Council acknowledges there is a public interest in disclosure of documents about Council operations and the exercise of its functions, and in a particular applicant gaining access to documents where there is a strong and justifiable right to know.

However the right to access documents free of charge to an individual also requires consideration of the effect the processing of such an application may have on the rights of others, and on the efficient and effective use of Council resources in the interests of all ratepayers.

Refusal of Access

Where access to documents is refused under the GIPA Act, Council will advise the applicant in writing of the reasons for the decision. In the case of refusal on grounds that dealing with the request would involve the substantial diversion of Council resources, the Public Officer/Right to Information Officer will provide details to the applicant in writing, including an estimate of the time involved in responding to the application and consideration of the other factors mentioned in these guidelines however before doing so will give the applicant a reasonable opportunity to amend the application

Any applicant dissatisfied with Council's handling of a request for documents under GIPA Act may seek a review in accordance with Sections 82 - 88 of the GIPA Act and may also seek a review of reviewable decisions through either the Information Commissioner or the Administrative Decisions Tribunal.

Copyright

Copyright issues may arise when requests are made for copies of documents held by the Council. The Commonwealth Copyright Act (1968) takes precedence over State legislation. Therefore the right to copy documents under GIPA does not override the Copyright Act.

If Council commissions a report etc from a consultant it will be under the terms of the contract whether it can be copied. With regard to documents supplied with development applications, Council's development application form includes a statement whereby applicants give their permission to allow documents included with a development application to be accessed under the GIPA Act.

Access to Information by Councillors and Administrators

The process for access to information by Councillors and Administrators is outlined in Clause 10 of Council's Code of Conduct.

GIPA Act

Access to the GIPA Act is available from the website of the Office of the Information Commission of NSW at the following link:

http://www.informationcommissioner.nsw.gov.au/lawlink/oic/ll_oic.nsf/pages/information_commissioner_legislation

Government Information (Public Access) Act 2009

ACCESS APPLICATION

Please complete this form to apply for formal access to government information under the *Government Information (Public Access) Act 2009* ("GIPA Act"). Please forward to Right to Information Officer, Mid-Western Regional Council PO Box 156 (or 86 Market Street) Mudgee NSW 2850. If you need help in filling out this form, please contact the Right to Information Officer on 6378 2850 or visit our website at www.midwestern.nsw.gov.au

Your details

Surname: **Title:** Mr / Ms
Other names:
Postal address: **Postcode:**
Day-time telephone: **Facsimile:**
Email:

The questions below are optional and the information will only be used for the purposes of providing better service.

Place of birth: **Main language spoken:**

Aboriginal or Torres Strait Islander: Yes / No (circle one)

Do you have special needs for assistance with this application:
.....
.....

I agree to receive correspondence at the above email address.

Government information

Please describe the information you would like to access in enough detail to allow us to identify it.

Note: If you do not give enough details about the information, the Council may refuse to process your application.

.....
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.....

ACCESS TO INFORMATION

Are you seeking personal information? **Yes / No** (circle one)

Form of access

How do you wish to access the information?

- Inspect the document(s) A copy of the document(s)
- Access in another way (please specify)

Application Fee

I attach payment of the **\$30 application fee** by cash / cheque / money order (circle one).

(Note: please do NOT send cash by post)

Disclosure log

If the information sought is released to you and would be of interest to other members of the public, details about your application may be recorded in the agency's 'disclosure log'. This is published on the agency's website.

Do you object to this? **Yes / No** (circle one)

Discount in processing charges

If you are given access to the information sought, you may be asked to pay a charge for processing the application (\$30 / hour). Some applicants may be entitled to a 50% reduction in their processing charges. If you wish to apply for a discount, please indicate the reason:

- Financial hardship – please attach supporting documentation (eg a pension or Centrelink card).

AND / OR

- Special benefit to the public – please specify why below:

.....
.....
.....

Applicant's signature:

Date: