



**ORANGE CITY COUNCIL  
ORDINARY COUNCIL MEETING**

**ATTACHMENTS**

**5.4 – STRATEGIC POLICY  
REVIEWS - POST EXHIBITION  
ADOPTION**

**6 DECEMBER 2022**

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## Acknowledgement of Country

Orange City Council is situated within the traditional lands of the Wiradjuri Nation.

We acknowledge the traditional custodians of these lands, and pay our respect to the Wiradjuri people for their care and stewardship of these lands for more than 40,000 years and to the Elders of the Wiradjuri Nation, past, present and emerging.





CODE OF CONDUCT

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**Strategic Policy ST01**





## Message from the CEO

As individuals we are responsible for our actions and behaviours.

The need for integrity, transparency and accountability is critical in our roles as staff, elected members of Council or committee members in our interactions to ensure we serve the community and manage its resources to the highest standard.

The Code of Conduct is for Councillors, Staff, Delegates, Administrators and Members of Committees and will guide you through complex and often difficult local government issues.

The Code provides obligations and standards for how we operate as individuals and also as an organisation. It fosters good judgement, ensuring our behaviour and actions are undertaken ethically and responsibly. Collectively we should always observe the highest standards of honesty and integrity and avoid any conduct which would bring ourselves or Council into disrepute.

Council's Core values of Respect, Ownership, High Performance, Customer Focus, Safety, Diversity and Leadership are a perfect expression of how we, as a Council, strive to conduct ourselves and what we value in our organisation. The Code of Conduct underpins our abilities to fulfil these core values.

It is expected that all Councillors, Staff, Delegates, Administrators and Committee Members make themselves aware of the Code of Conduct and implement and comply with its provisions acting both within the letter and the spirit of the Code.

**David Waddell**  
**Chief Executive Officer**  
Orange City Council



**Live**

A healthy, safe, inclusive and vibrant community.

**Preserve**

Balancing the natural and built environment.

**Prosper**

A smart, innovative and resilient economy.

**Collaborate**

Leading and partnering to support the community.

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## PART 1

## Introduction

This Code of Conduct applied to Councillors, Administrators, Members of Staff (including the Chief Executive Officer, Volunteers & Contractors), Delegates of Council, Committee and Members and is based on the Model Code of Conduct for Local Councils in NSW ("the Model Code of Conduct"), made under section 440 of the *Local Government Act 1993* ("LGA") and the *Local Government (General) Regulation 2005* ("the Regulation").

This 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 to adopt a Code of Conduct that incorporates the provisions of the Model Code of Conduct. A council'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 adopted code of conduct has no effect to the extent that it is inconsistent with the Model Code of Conduct. However, a council'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.





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## PART 2

## Definitions

This code contains the following terms and meanings:

<b>administrator</b>	an administrator of a council appointed under the LGA other than an administrator appointed under section 66
<b>committee</b>	see the definition of "council committee"
<b>complaint</b>	a code of conduct complaint made for the purposes of clauses 4.1 and 4.2 of the Procedures
<b>conduct</b>	includes acts and omissions
<b>council</b>	includes county councils and joint organisations
<b>council committee</b>	a committee established by a council comprising of councillors, staff or other persons that the council has delegated functions to and the council's audit, risk and improvement committee
<b>council committee member</b>	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, and a person other than a councillor who is a member of the council's audit, risk and improvement committee
<b>council official</b>	includes councillors, members of staff of a council, administrators, council committee members, delegates of council and council advisers, for purposes of clause 4.16, council advisers
<b>councillor</b>	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
<b>delegate of council</b>	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
<b>designated person</b>	a person referred to in clause 4.8
<b>election campaign</b>	includes council, state and federal election campaigns
<b>environmental planning instrument</b>	has the same meaning as it has in the Environmental Planning and Assessment Act 1979
<b>general manager/ chief executive officer</b>	includes the executive officer of a joint organisation



<b>joint organisation</b>	a joint organisation established under section 4000 of the LGA
<b>LGA</b>	the Local Government Act 1993
<b>local planning panel</b>	a local planning panel constituted under the Environmental Planning and Assessment Act 1979
<b>mayor</b>	includes the chairperson of a county council or a joint organisation
<b>members of staff of a council</b>	includes members of staff of county councils and joint organisations
<b>the Office</b>	Office of Local Government
<b>personal information</b>	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
<b>the Procedures</b>	the Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW prescribed under the Regulation
<b>the Regulation</b>	the Local Government (General) Regulation 2005
<b>voting representative</b>	a voting representative of the board of a joint organisation
<b>wholly advisory committee</b>	a council committee that the council has not delegated any functions to

## PART 3

## General conduct obligations

### 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, comprises 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 treat others with respect at all times.
- 3.3** 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

- 3.4** You must consider issues consistently, promptly and fairly. You must deal with matters in accordance with established procedures, in a non-discriminatory manner.
- 3.5** You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case. You must not take irrelevant matters or circumstances into consideration when making decisions.
- 3.6** An act or omission in good faith, whether or not it involves error, will not constitute a breach of clauses 3.4 or 3.5.

### HARASSMENT AND DISCRIMINATION

- 3.7** You must not harass or unlawfully discriminate

against others, or support others who harass or unlawfully discriminate against others, on the grounds of age, disability, race (including colour, national or ethnic origin or immigrant status), sex, pregnancy, marital or relationship status, family responsibilities or breastfeeding, sexual orientation, gender identity or intersex status or political, religious or other affiliation.

**3.8** 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

**3.9** You must not engage in bullying behaviour towards others.

**3.10** 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.

**3.11** 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'
- e) 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.

**3.12** 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

**3.13** All council officials, including councillors, owe statutory duties under the Work Health and Safety Act 2011 (WHS Act). You must comply with your duties under the WHS 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 WHS 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 chief executive officer or such other staff member nominated by the chief executive officer, 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 WHS Act in relation to the same matter.

### LAND USE PLANNING, DEVELOPMENT ASSESSMENT AND OTHER REGULATORY FUNCTIONS

- 3.14** 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.
- 3.15** 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

- 3.16** You must not participate in binding caucus votes in relation to matters to be considered at a council or committee meeting.
- 3.17** For the purposes of clause 3.16, 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.
- 3.18** Clause 3.16 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.
- 3.19** Clause 3.16 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

- 3.20** 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.
- 3.21** 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).
- 3.22** 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.

- 3.23** 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:

- leave a meeting of the council or a committee for the purposes of depriving the meeting of a quorum, or
- 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
- deliberately seek to impede the consideration of business at a meeting.

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## 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 subclauses 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 to, 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
- (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 chief executive officer
- (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 chief executive officer (or if the person is the chief executive officer, 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 chief executive officer 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 chief executive officer 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 chief executive officer 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 chief executive officer 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 written returns of interests in accordance with clause 4.21, and
  - (b) must disclose pecuniary interests in accordance with clause 4.28 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 chief executive officer 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 councillor or designated 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 councillor or designated 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 chief executive officer must keep a register of returns required to be made and lodged with the chief executive officer.
- 4.25** Returns required to be lodged with the chief executive officer 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 chief executive officer 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** A disclosure made at a meeting of a council or council committee must be recorded in the minutes of the meeting.

**4.31** A general notice may be given to the chief executive officer 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.

**4.32** 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.

**4.33** 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.

**4.34** 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.

**4.35** 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.

**4.36** 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.

**4.37** 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.

**4.38** 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.

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## PART 5

## Non-pecuniary conflict 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 chief executive officer, such a disclosure is to be made to the staff member's manager. In the case of the chief executive officer, 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 that is particularly strong. The strength of a 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.

- d) membership, as the council's representative, of the board or management committee of an organisation that is affected by a decision or a matter under consideration, in circumstances where the interests of the council and the organisation are potentially in conflict in relation to the particular matter
- e) a financial interest (other than an interest of a type referred to in clause 4.6) that is not a pecuniary interest for the purposes of clause 4.1
- f) the conferral or loss of a personal benefit other than one conferred or lost as a member of the community or a broader class of people affected by a decision.

**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 chief executive officer, 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 chief executive officer, 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.

**24 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) 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.

**Note:** for the purpose of clauses 5.21 and 5.22m a "council committee member" includes a member of staff of Council who is a member of a council committee.

### OTHER BUSINESS OR EMPLOYMENT

**5.23** The chief executive officer 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 chief executive officer in writing of the employment, work or business and the chief executive officer has given their written approval for the staff member to engage in the employment, work or business.
- 5.25** The chief executive officer 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:
- conflict with their official duties
  - involve using confidential information or council resources obtained through their work with the council including where private use is permitted
  - require them to work while on council duty
  - discredit or disadvantage the council
  - 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.

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## 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) a benefit or facility provided by the council to an employee or councillor
  - d) attendance by a council official at a work-related event or function for the purposes of performing their official duties, or
  - e) free or subsidised meals, beverages or refreshments 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 chief executive officer in writing. The recipient, manager, or chief executive officer 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.

FOR ADOPTION





## 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 chief executive officer 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 chief executive officer
- d) contact or issue instructions to any of the council's contractors, including the council's legal advisers, 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 chief executive officer 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 or administrator 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 chief executive officer 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 chief executive officer is responsible for ensuring that councillors and administrators can access information necessary for the performance of their official functions. The chief executive officer 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 chief executive officer 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 chief executive officer 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 chief executive officer 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.

**34 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 chief executive officer.

**8.26** Councillors and administrators must not enter staff-only areas of council buildings without the approval of the chief executive officer (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.

#### DISCLOSURE OF INFORMATION ABOUT THE CONSIDERATION OF A MATTER UNDER THE PROCEDURES

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

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

**9.11** 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.

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

**9.13** 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

**9.14** Complaints alleging a breach of this Part by a councillor, the chief executive officer 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.

**9.15** Complaints alleging a breach of this Part by other council officials are to be managed by the chief executive officer in accordance with the Procedures.

## SCHEDULE 1

## Disclosures of interests 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:

**address** means:

- 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 Act 1987*.

**disposition of property** means a conveyance, transfer, assignment, 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
- e) 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.

**listed 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:

- a) in the case of a return made under clause 4.21(a), the date on which a person became a councillor or designated person
- b) in the case of a return made under clause 4.21(b), 30 June of the year in which the return is made
- c) in the case of a return made under clause 4.21(c), the date on which the councillor or designated person became aware of the interest to be disclosed.

**relative** includes any of the following:

- a) a person's spouse or de facto partner

- b) a person's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
- c) a person's spouse's or de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
- d) the spouse or de facto partner of a person referred to in paragraphs (b) and (c).

**travel** includes accommodation incidental to a journey.

## 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.
- 40 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.

### INTERESTS AND POSITIONS IN CORPORATIONS

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 53 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.

#### SOURCES OF INCOME

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:
- on the return date, and
  - 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:
- 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:
    - 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
    - the amounts to be paid exceeded, in the aggregate, \$500, or
  - the person was liable to pay the debt to a relative, or
  - 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
  - in the case of a debt arising from the supply of goods or services:
    - 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
    - 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
  - subject to paragraph (a), 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.

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## 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 chief executive officer 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 chief executive officer 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 chief executive officer, 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 chief executive officer 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 chief executive officer in a register of returns. The chief executive officer 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.



## SCHEDULE 2

## Form of return Disclosure of interest

### DISCLOSURES BY COUNCILLORS AND DESIGNATED PERSONS' RETURN

#### DIRECTIONS

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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer, 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 Chief Executive Officer 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.

#### DISCLOSURE OF PECUNIARY INTERESTS AND OTHER MATTERS

By \_\_\_\_\_

\_\_\_\_\_  
(full name of Councillor or designated person)

\*as at \_\_\_\_\_  
(return date ie. If this is the first return required to be submitted by you after attaining the position of designated person, put the date that you attained that position, put N/A if this does not pertain to you)

\*in respect of the period from  
1 July 20\_\_ TO 30 June 20\_\_ (return period)

\_\_\_\_\_  
(Councillor's or designated person's signature)

\_\_\_\_\_  
(date)

#### 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 Chief Executive Officer in a register of returns. The Chief Executive Officer 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.

Everyone is entitled to inspect the register of returns free of charge. You may correct or update the information contained in the register of returns by submitting a fresh return at any time.

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.

**A. REAL PROPERTY**

Street address of each parcel of real property in which I had an interest at the return date/at any time since 30 June	Nature of interest

**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:**

**Sources of income I received from an occupation at any time since 30 June**

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which patnership conducted (if applicable)

**2. Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June**

**Sources of income I received from a trust since 30 June**

Name and address of settlor	Name and address of trustee

**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**

**Sources of other income I received at any time since 30 June (Include description sufficient to identify the person from whom, or the circumstances in which, that income was received)**



**C. GIFTS**

Description of each gift I received at any time since 30 June

Name and address of donor


**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

Date on which travel was undertaken

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


**E. INTEREST 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

Name of interest (if any)

Description of position (if any)

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


**F. WERE YOU A PROPERTY DEVELOPER OR CLOSE ASSOCIATE OF A PROPERTY DEVELOPER ON THE RETURN DATE? (Please circle)**

Yes

No

**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**


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## 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.

FOR ADOPTION

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**SCHEDULE 3 – FORM OF RETURN – SPECIAL DISCLOSURE OF INTEREST**

Submitted under clause 4.25 of the Model Code of Conduct

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)

to be held on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

**PECUNIARY INTEREST**

Address of the affected principal place of residence of the Councillor or an associated person, company or body (the identified land)

Relationship of identified land to the Councillor (tick or cross one box)

☐

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.

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**MATTER GIVING RISE TO PECUNIARY INTEREST<sup>1</sup>**

Nature of the land that is subject to a change in zone/planning control by the proposed LEP (the subject land). (tick or cross one box)

☐

The identified land.

☐

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

Current zone/planning control (Insert name of current planning instrument and identify relevant zone/planning control applying to the subject land)<sup>2</sup>

Proposed change of zone/planning control (Insert name of proposed LEP and identify proposed change of zone/planning control applying to the subject land)

Effect of proposed change of zone/planning control on Councillor or associated person (Insert one of the following: "Appreciable financial gain" or "Appreciable financial loss")

[If more than one pecuniary interest is to be declared, reprint the above box and fill in for each additional interest.]

Councillor's signature \_\_\_\_\_ Date \_\_\_\_\_

<sup>1</sup>Clause 4.1 of this Code of Conduct for Councillors (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 Code of Conduct.<sup>2</sup>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 Code of Conduct has a proprietary interest.





## CODE OF CONDUCT

Acknowledgement of receipt  
form**Name****Position****Address**

I hereby certify that I have read, understood and agree to comply with the provisions of the Orange City Council Code of Conduct.

**Signature****Date**

Please return to the Executive Support Manager or via [council@orange.nsw.gov.au](mailto:council@orange.nsw.gov.au)

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FOR ADOPTION



FOR ADOPTION

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#### Enquiries

For information about the  
Code of Conduct, contact:  
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# Strategic Policy ST01.1

## Procedures for the Administration of the Code of Conduct

FOR ADOPTION

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All policies can be reviewed or revoked by a resolution of Council, at any time.

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## PART 1 INTRODUCTION

These procedures are prescribed for the administration of the Code of Conduct for Orange City Council and are based on the Model Code of Conduct and Procedures.

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").

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: 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 Chief Executive Officer.

## 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 code of conduct complaint made for the purposes of clauses 4.1 and 4.2 of the Procedures
complainant	a person who makes a code of conduct complaint
complainant councillor	a councillor who makes a code of conduct complaint
complainants coordinator	a person appointed by the Chief Executive Officer 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 Chief Executive Officer
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 and the council's audit, risk and improvement committee
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 council advisers, for purposes of clause 4.12, council advisers
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
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



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general manager/chief executive officer	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
LGA	the Local Government Act 1993
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
respondent	a person whose conduct is the subject of investigation by a conduct reviewer under these procedures
the office	Office of Local Government
wholly advisory committee	a council committee that the council has not delegated any functions to (community committees)

### 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.



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- 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.
- 3.11 When the term of the panel of conduct reviewers concludes or is terminated, the Council must establish a new panel of conduct reviewers in accordance with the requirements of this Part.
- 3.12 A person who was a member of a previous panel of conduct reviewers established by the Council may be a member of subsequent panels of conduct reviewers established by the Council if they continue to meet the selection and eligibility criteria for membership of the panel.
- 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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer must not undertake the role of complaints coordinator.

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



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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 Chief Executive Officer or their delegate, or, in the case of a complaint about the Chief Executive Officer, 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 Chief Executive Officer be made?

4.6 All code of conduct complaints other than those relating to the Chief Executive Officer are to be made to the Chief Executive Officer 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 Chief Executive Officer 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.





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- 4.8 In making a code of conduct complaint about a Council official other than the Chief Executive Officer, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.
- 4.9 The Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer be made?

- 4.11 Code of conduct complaints about the Chief Executive Officer are to be made to the Mayor in writing. This clause does not operate to prevent a person from making a complaint about the Chief Executive Officer to an external agency.
- 4.12 Where a code of conduct complaint about the Chief Executive Officer 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 Chief Executive Officer, 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 Chief Executive Officer, 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 Chief Executive Officer and Mayor of their functions under this Part

- 5.1 A Chief Executive Officer 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 Chief Executive Officer or Mayor are also to be taken to be references to their delegates.

Consideration of complaints by Chief Executive Officer and Mayor

- 5.2 In exercising their functions under this Part, the Chief Executive Officer and Mayor 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 Chief Executive Officer or, in the case of a complaint about the Chief Executive Officer, 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



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- 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 Chief Executive Officer) to be dealt with?

5.4 The Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer decides to take no action in relation to a code of conduct complaint about a member of staff of Council, the Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer decides to take no action in relation to a code of conduct complaint about a delegate of Council or a Council committee member, the Chief Executive Officer must give the complainant reasons in writing for their decision and this shall finalise the consideration of the matter under these procedures.



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- 5.14 Where the Chief Executive Officer considers it to be practicable and appropriate to do so, the Chief Executive Officer 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 Chief Executive Officer resolves a code of conduct complaint under clause 5.14 to the Chief Executive Officer's satisfaction, the Chief Executive Officer 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:
- censure
  - requiring the person to apologise to any person or organisation adversely affected by the breach in such a time and form specified by the Chief Executive Officer
  - prosecution for any breach of the law
  - removing or restricting the person's delegation
  - 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 5.16, the Chief Executive Officer or any person making enquiries on behalf of the Chief Executive Officer must comply with the requirements of procedural fairness. In particular:
- 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
  - the person must be given an opportunity to respond to the allegation, and
  - the Chief Executive Officer must consider the person's response in deciding whether to impose a sanction under clause 5.16.
- How are code of conduct complaints about administrators to be dealt with?
- 5.18 The Chief Executive Officer must refer all code of conduct complaints about administrators to the Office for its consideration.
- 5.19 The Chief Executive Officer 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 Chief Executive Officer must refer the following code of conduct complaints about Councillors to the Office:
- complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct
  - 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)
  - 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
  - complaints that are the subject of a special complaints management arrangement with the Office under clause 5.49.



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- 5.21 Where the Chief Executive Officer refers a complaint to the Office under clause 5.20, the Chief Executive Officer must notify the complainant of the referral in writing.
- 5.22 The Chief Executive Officer 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 Chief Executive Officer decides to take no action in relation to a code of conduct complaint about a Councillor, the Chief Executive Officer 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 Chief Executive Officer considers it to be practicable and appropriate to do so, the Chief Executive Officer 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 Chief Executive Officer resolves a code of conduct complaint under clause 5.24 to the Chief Executive Officer's satisfaction, the Chief Executive Officer 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 Chief Executive Officer must refer all code of conduct complaints about Councillors, other than those referred to the Office under clause 5.20 or finalised under clause 5.23 or resolved under clause 5.24, to the complaints coordinator.
- How are code of conduct complaints about the Chief Executive Officer to be dealt with?
- 5.27 The Mayor must refer the following code of conduct complaints about the Chief Executive Officer 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 Chief Executive Officer, 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 Chief Executive Officer, 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 Chief Executive Officer, other than those





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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 Chief Executive Officer, 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 Chief Executive Officer and the Mayor to be dealt with?

5.34 Where the Chief Executive Officer or Mayor receives a code of conduct complaint that alleges a breach of the code of conduct by both the Chief Executive Officer and the Mayor, the Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer, 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 Chief Executive Officer, 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 Chief Executive Officer, 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 finalise 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.



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- 5.40 Clause 5.39 does not apply to code of conduct complaints made by Councillors about other Councillors or the Chief Executive Officer.
- 5.41 Where a Councillor makes a code of conduct complaint about another Councillor or the Chief Executive Officer, 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 Chief Executive Officer 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 Chief Executive Officer 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.
- 5.46 Where a Councillor makes a code of conduct complaint about another Councillor or the Chief Executive Officer as a public interest disclosure, before the matter may be dealt with under these procedures, the complainant Councillor must consent in writing to the disclosure of their identity as the complainant.
- 5.47 Where a complainant Councillor declines to consent to the disclosure of their identity as the complainant under clause 5.46, the Chief Executive Officer 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*.
- 5.48 The Chief Executive Officer 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:
- imposed an undue and disproportionate cost burden on the Council's administration of its code of conduct, or
  - impeded or disrupted the effective administration by the Council of its code of conduct, or
  - impeded or disrupted the effective functioning of the Council.

#### 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.

#### Special complaints management arrangements



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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 Chief Executive Officer, 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 CHIEF EXECUTIVE OFFICER BY CONDUCT REVIEWERS**

### Referral of code of conduct complaints about Councillors or the Chief Executive Officer to conduct reviewers

6.1 The complaints coordinator must refer all code of conduct complaints about Councillors or the Chief Executive Officer that have not been referred to an external agency or declined or resolved by the Chief Executive Officer, 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 Chief Executive Officer 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.



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- 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 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 Chief Executive Officer 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.





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- 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 Chief Executive Officer or, in the case of a complaint about the Chief Executive Officer, 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 the formal censure of a councillor under section 440G of the LGA disciplinary action against the Chief Executive Officer under their contract of employment if it were to be proven, 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 formal censure of a Councillor under section 440G of the LGA or disciplinary action



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against the Chief Executive Officer under their contract of employment, 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 Chief Executive Officer or Mayor for resolution

6.26 Where the conduct reviewer determines to refer a matter back to the Chief Executive Officer or to the Mayor to be resolved by alternative and appropriate means, they must write to the Chief Executive Officer or, in the case of a complaint about the Chief Executive Officer, to the Mayor, recommending the means by which the complaint may be resolved.

6.27 The conduct reviewer must consult with the Chief Executive Officer or Mayor prior to referring a matter back to them under clause 6.13(c).

6.28 The Chief Executive Officer 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 Chief Executive Officer or Mayor under clause 6.13(c), the Chief Executive Officer or, in the case of a complaint about the Chief Executive Officer, 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 Chief Executive Officer or Mayor under clause 6.13(c), the Chief Executive Officer, or, in the case of a complaint about the Chief Executive Officer, 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



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- 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
  - o) such other considerations that the conduct reviewer considers may be relevant to the assessment of the 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 Chief Executive Officer, or, in the case of alleged conduct on the part of the Chief Executive Officer, to the Mayor.
- 7.3** The Chief Executive Officer 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

## **PART 7 INVESTIGATIONS OF CODE OF CONDUCT COMPLAINTS ABOUT COUNCILLORS OR THE CHIEF EXECUTIVE OFFICER**

### 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.



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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 Chief Executive Officer, or in the case of a complaint about the Chief Executive Officer, to the complainant, the complaints coordinator and the Mayor. The notice must:
- advise them of the matter the investigator is investigating, and
  - in the case of the notice to the complainant, advise them of the requirement to maintain confidentiality, and
  - 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.

#### Written and oral submissions

- 7.9 Where the respondent or the complainant fails to make a written submission in relation to the matter within the period specified by the investigator in their notice of investigation or amended notice of investigation, the investigator may proceed to prepare their draft report without receiving such submissions.
- 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





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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 Chief Executive Officer, or, in the case of a complaint about the Chief Executive Officer, 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 Chief Executive Officer, or in the case of a complaint about the Chief Executive Officer, 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.



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- 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:
- a) make findings of fact in relation to the matter investigated, and,
  - b) make a determination that the conduct investigated either,
    - i. constitutes a breach of the code of conduct, or
    - ii. does not constitute a breach of the code of conduct, and
  - c) provide reasons for the determination.
- 7.36 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.
- 7.37 Where the investigator determines that the conduct investigated constitutes a breach of the code of conduct, the investigator may recommend:
- a) in the case of a breach by the Chief Executive Officer, that disciplinary action be taken under the Chief Executive Officer's contract of employment for the breach, or
  - b) in the case of a breach by a Councillor, that the Councillor be formally censured for the breach under section 440G of the LGA, or



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- c) 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.
- 7.38 Where the investigator proposes to make a recommendation under clause 7.37(c), 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.
- 7.39 Where the investigator has determined that there has been a breach of the code of conduct, the investigator may, in addition to making a recommendation under clause 7.37, recommend that the council revise any of its policies, practices or procedures.
- 7.40 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.
- 7.41 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 Chief Executive Officer or, where the report relates to the Chief Executive Officer'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 7.37, the complaints coordinator must, where practical, 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.
- 7.45 Where it is apparent to the complaints coordinator that the Council will not be able to form a quorum to consider the investigator's report, the complaints coordinator must refer the investigations report to the Office for consideration instead of reporting it to the Council under clause 7.44.
- Consideration of the final investigation report by Council
- 7.46 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 7.76.



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- 7.47 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.
- 7.48 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.
- 7.49 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.
- 7.50 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.
- 7.51 The Council must not invite submissions from other persons for the purpose of seeking to rehear evidence previously considered by the investigator.
- 7.52 Prior to imposing a sanction, the Council may by resolution:
- request that the investigator make additional enquiries and/or provide additional information to it in a supplementary report, or
  - seek an opinion from the Office in relation to the report.
- 7.53 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.
- 7.54 The investigator may make additional enquiries for the purpose of preparing a supplementary report
- 7.55 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.
- 7.56 The investigator is not obliged to notify or consult with any person prior to submitting the supplementary report to the complaints coordinator.
- 7.57 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.
- 7.58 A Council may by resolution impose one or more of the following sanctions on a respondent:
- in the case of a breach by the Chief Executive Officer, that action be taken under the Chief Executive Officer's contract of employment for the breach, or
  - in the case of a breach by a Councillor, that the Councillor be formally censured for the breach under section 440G of the LGA
  - in the case of a breach by a Councillor:
    - that the Councillor be formally censured for the breach under section 440G of the LGA, and
    - that the matter be referred to the Office for further action under the misconduct provisions of the LGA.
- 7.59 Where the Council censures a Councillor under section 440G of the LGA, the Council must specify in the censure resolution the grounds on which it is satisfied that the Councillor should be censured by disclosing in the resolution, the investigator's findings and determination and/or such other grounds that the Council considers may be relevant or appropriate.





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- 7.60 The Council is not obliged to adopt the investigator's recommendation. Where the Council proposes not to adopt one or more of the investigator's recommendation, the Council must resolve not to adopt the recommendation and state in its resolution the reasons for its decision.
- 7.61 Where the Council resolves not to adopt the investigator's recommendation, the complaints coordinator must notify the Office of the Council's decision and the reasons for it.
- 8.5 The Chief Executive Officer must notify the complainant of the referral of their complaint about the conduct reviewer in writing.
- 8.6 The Chief Executive Officer must implement any recommendation made by the Office as a result of its consideration of a complaint about a conduct reviewer.

#### Practice rulings

## **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.
- 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 7.5, paragraph (c), may, within 28 days of the sanction being imposed, seek a review of the investigator's determination and recommendation by the Office.

### Complaints about conduct reviewers

- 8.4 The Chief Executive Officer or their delegate must refer code of conduct complaints about conduct reviewers to the Office for its consideration.



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- 8.12** A review under clause 8.11 may be sought on the following grounds:
- that the investigator has failed to comply with a requirement under these procedures, or
  - that the investigator has misinterpreted or misapplied the standards of conduct prescribed under the code of conduct, or
  - 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. Where the Office recommends that the decision to impose a sanction be reviewed:
- the complaints coordinator must, where practical, 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
  - the Council must:
    - review its decision to impose that sanction, and
    - consider the Office's recommendation in doing so, and
    - resolve to either rescind or reaffirm its previous resolution in relation to the matter.
- 8.20** Where, having reviewed its previous decision in relation to a matter under clause 8.19(b), 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:
- the non-compliance is isolated and/or minor in nature, or
  - reasonable steps are taken to correct the non-compliance, or
  - reasonable steps are taken to address the consequences of the non-compliance.



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## 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 CHIEF EXECUTIVE OFFICER

- 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 Chief Executive Officer 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 Chief Executive Officer

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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer or their delegate.



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- 12.5** The Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer 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.

ST01.1 – Strategic Policy – Procedures for the Administration of the Code of Conduct		
Review Due: November 2024	Version 1_22	Last Revision: 20 April 2021
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# Strategic Policy – ST02

## Code of Meeting Practice

FOR ADOPTION

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## 1 INTRODUCTION

This Code of Meeting Practice for Orange City Council (based on the Model Meeting Code) is prescribed under section 360 of the *Local Government Act 1993* (the Act) and the *Local Government (General) Regulation 2021* (the Regulation).

This code applies to all meetings of Council and Committees of Council of which all the members are Councillors (committees of council). Council committees whose members include persons other than Councillors, such as Council's adopted Community Committees are also required to follow this Code and in this instance where the code refers to Committee of Council, this is also taken to refer to Community Committees (with the exception of webcasting requirements or where specifically noted in the Code). Supplementary procedures and processes will be available to assist Community committee members with Meeting Practices outside of this policy.

Councils must adopt a Code of Meeting Practice that incorporates the mandatory provisions of the Model Meeting Code.

Council's adopted Code of Meeting Practice may incorporate non-mandatory provisions of the Model Meeting Code and other supplementary provisions, however, an adopted Code must not contain provisions that are inconsistent with the mandatory provisions of the Model Meeting Code.

A Council and a Committee of Council of which all the members are Councillors must conduct its meetings in accordance with this Code of Meeting practice as adopted by Council.

## 2 MEETING PRINCIPLES

Council, Council Committee and Community 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.



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### 3 BEFORE THE MEETING

#### Timing of Ordinary Council Meetings

- 3.1 Ordinary meetings of the Council will be held on the following occasions:

The First and Third Tuesday of each month, commencing at 6:30pm in the Council Chambers, 135 Byng Street, Orange NSW 2800.

\*On the First Tuesday of each month, Policy Committee Meetings will also be held.

- 3.2 Council will determine and adopt its Community Committee Structure and Councillor representative members for each committee. Individual Community Committee's will confirm meeting times, dates and locations to suit the needs of that committee.

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

- 3.3 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.

#### Notice to the Public of Council Meetings

- 3.4 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.
- 3.5 For the purposes of clause 3.4, 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.

- 3.6 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

- 3.7 The Chief Executive Officer 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.

- 3.8 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.

#### Notice to Councillors of Extraordinary Meetings

- 3.9 Notice of less than three (3) days may be given to Councillors of an extraordinary meeting of the council in cases of emergency.

#### Giving notice of business to be considered at Council Meetings

- 3.10 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 **no later than eight (8)** business days before the meeting is to be held.
- 3.11 A Councillor may, in writing to the Chief Executive Officer, 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.
- 3.12 If the Chief Executive Officer considers that a Notice of Motion submitted by a Councillor for consideration at an Ordinary Meeting of the Council has legal, strategic, financial or policy implications which should be taken into consideration by the





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meeting, the Chief Executive Officer may prepare a report in relation to the Notice of Motion for inclusion with the business papers for the meeting at which the notice of motion is to be considered by the Council.

- 3.13 A Notice of Motion for 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 Notice of Motion. If the Notice of Motion does not identify a funding source, the Chief Executive Officer must either:
- (a) prepare a report on the availability of funds for implementing the motion if adopted for inclusion in the business papers for the meeting at which the notice of motion is to be considered by the council, or
  - (b) by written notice sent to all Councillors with the business papers for the meeting for which the notice of motion has been submitted, defer consideration of the matter by the council to such a date specified in the notice, pending the preparation of such a report.

#### Questions with Notice

- 3.14 A Councillor may, by way of a notice submitted under clause 3.10, ask a question for response by the Chief Executive Officer about the performance or operations of the Council.
- 3.15 A Councillor is not permitted to ask a question with notice under clause 3.14 that comprises a complaint against the Chief Executive Officer or a member of staff of the Council, or a question that implies wrongdoing by the Chief Executive Officer or a member of staff of the Council.
- 3.16 The Chief Executive Officer or their nominee may respond to a question with notice submitted under clause 3.14 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

- 3.17 The Chief Executive Officer 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.
- 3.18 The Chief Executive Officer 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 3.10.
- 3.19 Nothing in clause 3.18 limits the powers of the Mayor to put a Mayoral Minute to a meeting under clause 9.6.
- 3.20 The Chief Executive Officer 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 Chief Executive Officer, the business is, or the implementation of the business would be, unlawful. The Chief Executive Officer must report, without giving details of the item of business, any such exclusion to the next meeting of the Council.
- 3.21 Where the agenda includes the receipt of information or discussion of other matters that, in the opinion of the Chief Executive Officer, is likely to take place when the meeting is closed to the public, the Chief Executive Officer 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



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- 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.
- 3.22 The Chief Executive Officer must ensure that the details of any item of business which, in the opinion of the Chief Executive Officer, 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.

#### Statement of Ethical Obligations

- 3.23 Business papers for all Ordinary and Extraordinary meetings of the Council and Committees of the Council must contain a statement reminding Councillors of their oath or affirmation of office made under section 233A of the Act and their obligations under the Council's Code of Conduct to disclose and appropriately manage conflicts of interest.

#### Availability of the Agenda and Business Papers to the Public

- 3.24 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.
- 3.25 Clause 3.24 does not apply to the business papers for items of business that the Chief Executive Officer has identified under clause 3.21 as being likely to be considered when the meeting is closed to the public.
- 3.26 For the purposes of clause 3.24, 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.

- 3.27 A copy of an agenda, or of an associated business paper made available under clause 3.24, may in addition be given or made available in electronic form.

#### Agenda and Business Papers for Extraordinary Meetings

- 3.28 The Chief Executive Officer must ensure that the agenda for an Extraordinary Meeting of the Council deals only with the matters stated in the notice of the meeting.
- 3.29 Despite clause 3.28, business may be considered at an Extraordinary Meeting of the Council, even though due notice of the business has not been given, if:
- a motion is passed to have the business considered at the meeting, and
  - 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.
- 3.30 A motion moved under clause 3.29(a) can be moved without notice but only after the business notified in the agenda for the Extraordinary Meeting has been dealt with.
- 3.31 Despite clauses 10.20–10.30, only the mover of a motion moved under clause 3.29(a) can speak to the motion before it is put.
- 3.32 A motion of dissent cannot be moved against a ruling of the chairperson under clause 3.29(b) on whether a matter is of great urgency.

#### Pre-meeting briefing sessions

- 3.33 Prior to each Ordinary Meeting of the Council, the Chief Executive Officer may arrange a pre-meeting briefing session to brief Councillors on business to be considered at the meeting. Pre-meeting briefing sessions may also be held for



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- Extraordinary Meetings of the Council and meetings of Committees of the Council.
- 3.34 Pre-meeting briefing sessions are to be held in the absence of the public.
- 3.35 Pre-meeting briefing sessions may be held by audio-visual link.
- 3.36 The Chief Executive Officer or a member of staff nominated by the Chief Executive Officer is to preside at pre-meeting briefing sessions.
- 3.37 Councillors must not use pre-meeting briefing sessions to debate or make preliminary decisions on items of business they are being briefed on, and any debate and decision-making must be left to the formal Council or Committee Meeting at which the item of business is to be considered.
- 3.38 Councillors (including the Mayor) must declare and manage any conflicts of interest they may have in relation to any item of business that is the subject of a briefing at a pre-meeting briefing session, in the same way that they are required to do so at a Council or Committee meeting. The Council is to maintain a written record of all conflict of interest declarations made at pre-meeting briefing sessions and how the conflict of interest was managed by the Councillor who made the declaration.
- 4 PUBLIC FORUMS**
- 4.1 The Council may hold a public forum prior to each Ordinary Meeting of the Council for the purpose of hearing oral submissions from members of the public on items of business to be considered at the meeting. Public forums may also be held prior to Extraordinary Council meetings and meetings of Committees of the Council.
- 4.2 Public forums may be held by audio-visual link, where the member of the public has extenuating circumstances for not being able to attend the meeting in person.
- 4.3 Public forums are to be chaired by the Mayor or their nominee.
- 4.4 To speak at a public forum, a person must first make an application to the Council in the approved form. Applications to speak at the public forum **must be received by 4pm on the day of the meeting** on which the public forum is to be held, and must identify the item of business on the agenda of the council meeting the person wishes to speak on, and whether they wish to speak 'for' or 'against' the item.
- 4.5 A person may apply to speak on **1 or more than 1** items of business on the agenda of the Council meeting.
- 4.6 Legal representatives acting on behalf of others are not to be permitted to speak at a public forum unless they identify their status as a legal representative when applying to speak at the public forum.
- 4.7 The Chief Executive Officer or their delegate may refuse an application to speak at a public forum. The Chief Executive Officer or their delegate must give reasons in writing for a decision to refuse an application.
- 4.8 No more than **ten (10)** speakers are to be permitted to speak 'for' or 'against' each item of business on the agenda for the Council meeting.
- 4.9 If more than the permitted number of speakers apply to speak 'for' or 'against' any item of business, the Chief Executive Officer or their delegate may request the speakers to nominate from among themselves the persons who are to address the Council on the item of business. If the speakers are not able to agree on whom to nominate to address the Council, the Chief Executive Officer or their delegate is to determine who will address the Council at the public forum.
- 4.10 If more than the permitted number of speakers apply to speak 'for' or 'against' any item of business, the Chief Executive Officer or their delegate may, in consultation with the Mayor or the Mayor's nominated chairperson, increase the number of speakers permitted to speak on an item of business, where they are satisfied that it is necessary to do so to allow the Council to hear a fuller range of views on the relevant item of business.



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- 4.11 Approved speakers at the public forum are to register with the Council any written, visual or audio material to be presented in support of their address to the Council at the public forum, and to identify any equipment needs no later than **4pm on the day of the scheduled** public forum. The Chief Executive Officer or their delegate may refuse to allow such material to be presented.
- 4.12 The Chief Executive Officer or their delegate is to determine the order of speakers at the public forum.
- 4.13 Each speaker will be allowed **five (5)** minutes to address the Council. This time is to be strictly enforced by the chairperson.
- 4.14 Speakers at public forums must not digress from the item on the agenda of the Council meeting they have applied to address the Council on. 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.
- 4.15 A Councillor (including the chairperson) may, through the chairperson, ask questions of a speaker following their address at a public forum. Questions put to a speaker must be direct, succinct and without argument.
- 4.16 Speakers are under no obligation to answer a question put under clause 4.15. Answers by the speaker, to each question are to be limited to **two (2)** minutes.
- 4.17 Speakers at public forums cannot ask questions of the Council, Councillors, or Council staff.
- 4.18 The Chief Executive Officer or their nominee may, with the concurrence of the chairperson, address the Council for up to **two (2)** minutes in response to an address to the Council at a public forum after the address and any subsequent questions and answers have been finalised.
- 4.19 Where an address made at a public forum raises matters that require further consideration by Council staff, the Chief Executive Officer may recommend that the Council defer consideration of the matter pending the preparation of a further report on the matters.
- 4.20 When addressing the Council, speakers at public forums must comply with this Code and all other relevant Council Codes, Policies, and Procedures. Speakers must refrain from engaging in disorderly conduct, publicly alleging breaches of the Council's Code of Conduct or making other potentially defamatory statements.
- 4.21 If the chairperson considers that a speaker at a public forum has engaged in conduct of the type referred to in clause 4.20, the chairperson may request the person to refrain from the inappropriate behaviour and to withdraw and unreservedly apologise for any inappropriate comments. Where the speaker fails to comply with the chairperson's request, the chairperson may immediately require the person to stop speaking.
- 4.22 Clause 4.21 does not limit the ability of the chairperson to deal with disorderly conduct by speakers at public forums in accordance with the provisions of Part 15 of this code.
- 4.23 Where a speaker engages in conduct of the type referred to in clause 4.20, the Chief Executive Officer or their delegate may refuse further applications from that person to speak at public forums for such a period as the Chief Executive Officer or their delegate considers appropriate.
- 4.24 Oral presentations can be made, however no electronic presentations are permitted.
- 4.25 Speakers should be aware that Orange City Council records and livestreams meetings via Council's website. By agreeing to attend and speak at the Council Meeting, speakers are reminded of the need to ensure all comments are respectful to other people, Councillors and staff. Orange City Council accepts no liability for offensive or defamatory comments made by speakers.





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- 4.26 Councillors (including the Mayor) must declare and manage any conflicts of interest they may have in relation to any item of business that is the subject of an address at a public forum, in the same way that they are required to do so at a Council or Committee Meeting. The Council is to maintain a written record of all conflict of interest declarations made at public forums and how the conflict of interest was managed by the Councillor who made the declaration.

## 5 COMING TOGETHER

### Attendance by Councillors at Meetings

- 5.1 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, unless permitted to attend the meeting by audio-visual link under this code.
- 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.
- 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 Chief Executive Officer 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. The quorum for a Community Committee is outlined in the Committee's adopted Charter.
- 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.
- 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
  - (c) at any time during the meeting.



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- 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 Chief Executive Officer.

- 5.12 The Chief Executive Officer 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 health, safety or welfare of Councillors, Council staff and members of the public may be put at risk by attending the meeting because of a natural disaster or a public health emergency, the Mayor may, in consultation with the Chief Executive Officer 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 5.14, 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.

#### Meetings held by Audio-Visual Link

- 5.15 A meeting of the Council or a Committee of the Council may be held by audio-visual link where the Mayor determines that the meeting should be held by audio-visual link because of a natural disaster or a public health emergency. The Mayor may only make a determination under this

clause where they are satisfied that attendance at the meeting may put the health and safety of Councillors and staff at risk. The Mayor must make a determination under this clause in consultation with the Chief Executive Officer and, as far as is practicable, with each Councillor.

- 5.16 Where the Mayor determines under clause 5.15 that a meeting is to be held by audio-visual link, the Chief Executive Officer must:

- (a) give written notice to all Councillors that the meeting is to be held by audio-visual link, and
- (b) take all reasonable steps to ensure that all Councillors can participate in the meeting by audio-visual link, and
- (c) cause a notice to be published on the Council's website and in such other manner the Chief Executive Officer is satisfied will bring it to the attention of as many people as possible, advising that the meeting is to be held by audio-visual link and providing information about where members of the public may view the meeting.

- 5.17 This code applies to a meeting held by audio-visual link under clause 5.15 in the same way it would if the meeting was held in person.

Note: Where a Council holds a meeting by audio-visual link under clause 5.16, it is still required under section 10 of the Act to provide a physical venue for members of the public to attend in person and observe the meeting.

#### Attendance by Councillors at Meetings by Audio-Visual Link

- 5.18 Councillors may attend and participate in meetings of the Council and committees of the Council by audio-visual link with the approval of the Council or the relevant committee.



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- 5.19 A request by a Councillor for approval to attend a meeting by audio-visual link must be made in writing to the Chief Executive Officer prior to the meeting in question and must provide reasons why the Councillor will be prevented from attending the meeting in person.
- 5.20 Councillors may request approval to attend more than one meeting by audio-visual link. Where a Councillor requests approval to attend more than one meeting by audio-visual link, the request must specify the meetings the request relates to in addition to the information required under clause 5.19.
- 5.21 The Council must comply with the Health Privacy Principles prescribed under the *Health Records and Information Privacy Act 2002* when collecting, holding, using and disclosing health information in connection with a request by a Councillor to attend a meeting by audio-visual link.
- 5.22 A Councillor who has requested approval to attend a Meeting of the Council or a Committee of the Council by audio-visual link may participate in the meeting by audio-visual link until the Council or Committee determines whether to approve their request and is to be taken as present at the meeting. The Councillor may participate in a decision in relation to their request to attend the meeting by audio-visual link.
- 5.23 A decision whether to approve a request by a Councillor to attend a meeting of the Council or a Committee of the Council by audio-visual link must be made by a Resolution of the Council or the Committee concerned. The resolution must state:
- (a) the meetings the resolution applies to, and
  - (b) the reason why the Councillor is being permitted to attend the meetings by audio-visual link where it is on grounds other than illness, disability, or caring responsibilities.
- 5.24 If the Council or Committee refuses a Councillor's request to attend a meeting by audio-visual link, their link to the meeting is to be terminated.
- 5.25 A decision whether to approve a Councillor's request to attend a meeting by audio-visual link is at the Council's or the relevant Committee's discretion. The Council and committees of the Council must act reasonably when considering requests by Councillors to attend meetings by audio-visual link. However, the Council and Committees of the Council are under no obligation to approve a Councillor's request to attend a meeting by audio-visual link where the technical capacity does not exist to allow the Councillor to attend the meeting by these means.
- 5.26 The Council and Committees of the Council may refuse a Councillor's request to attend a meeting by audio-visual link where the Council or Committee is satisfied that the Councillor has failed to appropriately declare and manage conflicts of interest, observe confidentiality or to comply with this code on one or more previous occasions they have attended a meeting of the Council or a Committee of the Council by audio-visual link.
- 5.27 This code applies to a Councillor attending a meeting by audio-visual link in the same way it would if the Councillor was attending the meeting in person. Where a Councillor is permitted to attend a meeting by audio-visual link under this code, they are to be taken as attending the meeting in person for the purposes of the code and will have the same voting rights as if they were attending the meeting in person.
- 5.28 A Councillor must give their full attention to the business and proceedings of the meeting when attending a meeting by audio-visual link. The Councillor's camera must be on at all times during the meeting except as may be otherwise provided for under this code.



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- 5.29 A Councillor must be appropriately dressed when attending a meeting by audio-visual link and must ensure that no items are within sight of the meeting that are inconsistent with the maintenance of order at the meeting or that are likely to bring the Council or the Committee into disrepute.

#### Entitlement of the Public to Attend Council Meetings

- 5.30 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.
- 5.31 Clause 5.30 does not apply to parts of meetings that have been closed to the public under section 10A of the Act.
- 5.32 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:
- by a resolution of the meeting, or
  - by the person presiding at the meeting if the Council has, by resolution, authorised the person presiding to exercise the power of expulsion.

#### Webcasting of Meetings

- 5.33 Each meeting of the Council or a Committee of the Council is to be recorded by means of an audio or audio-visual device.
- 5.34 At the start of each meeting of the Council or a Committee of the Council, the chairperson must inform the persons attending the meeting that:
- the meeting is being recorded and made publicly available on the Council's website, and
  - persons attending the meeting should refrain from making any defamatory statements.
- 5.35 The recording of a meeting is to be made publicly available on the Council's website:
- at the same time as the meeting is taking place, or

- as soon as practicable after the meeting.

- 5.36 The recording of a meeting is to be made publicly available on the Council's website for at least 12 months after the meeting.
- 5.37 Clauses 5.35 and 5.36 do not apply to any part of a meeting that has been closed to the public in accordance with section 10A of the Act.
- 5.38 Recordings of meetings may be disposed of in accordance with the *State Records Act 1998*.

#### Attendance of the Chief Executive Officer and Other Staff at Meetings

- 5.39 The Chief Executive Officer 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.
- 5.40 The Chief Executive Officer is entitled to attend a meeting of any other committee of the Council and may, if a member of the Committee, exercise a vote.
- 5.41 The Chief Executive Officer 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 Chief Executive Officer or the terms of employment of the Chief Executive Officer.
- 5.42 The attendance of other Council Staff at a meeting, (other than as members of the public) shall be with the approval of the Chief Executive Officer.
- 5.43 The Chief Executive Officer and other Council staff may attend meetings of the Council and Committees of the Council by audio-visual-link. Attendance by Council staff at meetings by audio-visual link (other than as members of the public) shall be with the approval of the Chief Executive Officer.





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## 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.
- 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.

### 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 Chief Executive Officer or, in their absence, an employee of the Council designated by the Chief Executive Officer to conduct the election, or
  - (b) by the person who called the meeting or a person acting on their behalf if neither the Chief Executive Officer nor a designated employee is present at the meeting, or if there is no Chief Executive Officer 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.

## 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].



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## 8 ORDER OF BUSINESS FOR ORDINARY COUNCIL MEETINGS

8.1 The general order of business for an Ordinary Meeting of the Council shall be:

Agenda items	Ordinary and Extraordinary meetings of Council	Policy Committees including those called as Extraordinary Committee meetings	Community Committees
a) Emergency procedures	✓	✓	✓
b) Apologies for absence	✓	✓	✓
c) Caution given to participants in meeting that the meeting is being recorded and livestreamed	✓	✓	n/a
d) Acknowledgement of Country	✓	✓	✓
e) Declarations of Interest	✓	✓	✓
f) Prayer	✓	n/a	n/a
g) Acceptance of late items	✓	n/a	✓
h) Condolences – The Mayor or Chairperson may give condolences and observe a minute's silence	✓	n/a	✓
i) Open Forum	✓	n/a	n/a
j) Mayoral Minutes	✓	n/a	n/a
k) Confirmation of minutes of previous meetings	✓	n/a	✓
l) Conduct of the Policy Committee Meetings	✓	Where items submitted	n/a
m) Notices of Motion and Rescission Motions	✓	n/a	n/a
n) Reports	✓	✓	✓
o) Closed section of meeting	✓	n/a	n/a
p) Adoption of recommendations from Closed Meeting	✓	n/a	n/a

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.



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## 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 3.10, 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 urgent where it requires a decision by the Council before the next scheduled Ordinary Meeting of the Council.
- 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 Chief Executive Officer on the availability of funds for implementing the recommendation if adopted.



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### 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 3.10 and 3.14.
- 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 Chief Executive Officer, 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 Chief Executive Officer at the direction of the Chief Executive Officer.
- 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 information. 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 3.10 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 3.10 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.





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#### 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 Chief Executive Officer on the availability of funds for implementing the motion if adopted.

#### Amendments to Motions

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

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- 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, or 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:
- 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
  - 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.
- ## **11 VOTING**
- ### Voting entitlements of councillors
- 11.1** Each councillor is entitled to one (1) vote.
- 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.
- 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 Chief Executive Officer 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 Chief Executive Officer must ensure that the names of those who vote for the Motion and those who vote against it are



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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.
- 11.10 All voting at Council Meetings, (including meetings that are closed to the public), must be recorded in the minutes of meetings with the names of Councillors who voted for and against each Motion or Amendment, (including the use of the casting vote), being recorded.

#### Voting on planning decisions

- 11.11 The Chief Executive Officer 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 For the purpose of maintaining the register, a division is taken to have been called whenever a motion for a planning decision is put at a Meeting of the Council or a Council Committee.
- 11.13 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.
- 11.14 Clauses 11.11–11.13 apply also to meetings that are closed to the public.

## **12 COMMITTEE OF THE WHOLE**

- 12.1 The Council may resolve itself into a committee to consider any matter before the Council.
- 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.
- 12.3 The Chief Executive Officer or, in the absence of the Chief Executive Officer, an employee of the Council designated by the Chief Executive Officer, 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



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- 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 8.3.
- 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.
- 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.
- 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.

#### 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

##### 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.
- 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)





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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.

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.

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.

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 Departmental Chief Executive of the Office of Local Government.

#### 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 3.21 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.

#### 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.

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 3.21 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 to the Council. Notice for, or the representation to Council is to be given before the meeting adjourns for the closed meeting.

14.12 The Chief Executive Officer (or their delegate) may refuse an application made under clause 14.11. The Chief Executive Officer or their delegate must give reasons in writing for a decision to refuse an application.

14.13 No more than **two (2)** 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 Chief Executive Officer or their delegate may request the



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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 Chief Executive Officer or their delegate is to determine who will make representations to the Council.

14.15 The Chief Executive Officer (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 3.21 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 (2)** speakers to make representations in such order as determined by the chairperson.

14.17 Each speaker will be allowed **five (5)** 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.

#### Obligations of Councillors Attending Meetings by Audio-Visual Link

14.20 Councillors attending a meeting by audio-visual link must ensure that no other person is within sight or hearing of the meeting at any time that the meeting is closed to the public under section 10A of the Act.

#### Information to be disclosed in resolutions closing meetings to the public

14.21 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.



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#### Resolutions Passed at Closed Meetings to be Made Public

- 14.22 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.
- 14.23 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 14.22 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, the Regulation 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, makes unfavourable personal remarks about, or imputes improper motives to any other



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- 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:
- to apologise without reservation for an act of disorder referred to in clauses 15.11(a), (b), or (e), or
  - to withdraw a motion or an amendment referred to in clause 15.11(c) and, where appropriate, to apologise without reservation, or
  - to retract and apologise without reservation for any statement that constitutes 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 other than a Councillor, from a Council or Committee Meeting, for the purposes of section 10(2)(b) of the Act. Councillors may only be expelled by resolution of the Council or the Committee of the Council.
- 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.
- How Disorder by Councillors Attending Meetings by Audio-Visual Link May be Dealt with
- 15.20** Where a Councillor is attending a meeting by Audio-Visual Link, the chairperson or a person authorised by the chairperson may mute the Councillor's audio link to the meeting for the purposes of enforcing compliance with this Code.
- 15.21** If a Councillor attending a meeting by Audio-Visual Link is expelled from a Meeting for an act of disorder, the chairperson of the meeting or a person authorised by the chairperson, may





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terminate the Councillor's Audio-Visual Link to the meeting.

#### Use of Mobile Phones and the Unauthorised Recording of Meetings

15.22 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.

15.23 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.

15.24 Without limiting clause 15.17, a contravention of clause 15.23 or an attempt to contravene that clause, constitutes disorderly conduct for the purposes of clause 15.17. Any person who contravenes or attempts to contravene clause 15.23, may be expelled from the meeting as provided for under section 10(2) of the Act.

15.25 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.

16.2 Councillors attending a meeting by Audio-Visual Link must declare and manage any Conflicts of Interest they may have in matters being considered at the meeting in accordance with the Council's Code of Conduct. Where a Councillor has declared a pecuniary or significant non-pecuniary Conflict of Interest in a matter being discussed at the meeting, the Councillor's Audio-Visual Link to the meeting must be suspended or terminated and the Councillor must not be in sight or hearing of the meeting at any time during which the matter is being considered or discussed by the Council or Committee, or at any time during which the Council or Committee is voting on the matter.

## **17 DECISIONS OF THE COUNCIL**

### Council Decisions

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.

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 3.10.

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.

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 3.10.

17.6 A Notice of Motion to Alter or Rescind a resolution, and a Notice of Motion which



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- 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.
- 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.
- 17.8 The provisions of clauses 17.5–17.7 concerning lost motions do not apply to motions of adjournment.
- 17.9 A Notice of Motion submitted in accordance with clause 17.6 may only be withdrawn under clause 3.11 with the consent of all signatories to the Notice of Motion.
- 17.10 A Notice of Motion to Alter or Rescind a resolution must be submitted to the Chief Executive Officer no later than **12pm on the proceeding day** after the meeting at which the resolution was adopted.
- 17.11 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.
- 17.12 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 Notice of Motion signed by three Councillors is submitted to the chairperson, and
  - a Motion to have the Motion considered at the meeting is passed, and
  - 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.
- 17.13 A Motion moved under clause 17.12(b) can be moved without notice. Despite clauses 10.20–10.30, only the mover of a Motion referred to in clause 17.12(b) can speak to the motion before it is put.
- 17.14 A Motion of dissent cannot be Moved against a ruling by the chairperson under clause 17.12(c).
- Recommitting Resolutions to Correct an Error
- 17.15 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:
- to correct any error, ambiguity or imprecision in the Council's resolution, or
  - to confirm the voting on the resolution.
- 17.16 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.
- 17.17 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.
- 17.18 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.
- 17.19 A Motion of dissent cannot be moved against a ruling by the chairperson under clause 17.15.
- 17.20 A Motion moved under clause 17.15 with the leave of the chairperson cannot be voted on unless or until it has been seconded.



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## 18 TIME LIMITS ON COUNCIL MEETINGS

- 18.1 Meetings of the council and committees of the council are to conclude no later than **9.30pm**.
- 18.2 If the business of the meeting is unfinished at **9.30pm**, the Council or the Committee may, by resolution, extend the time of the meeting.
- 18.3 If the business of the meeting is unfinished at **9.30pm**, and the Council does not resolve to extend the meeting, the chairperson must either:
- (a) defer consideration of the remaining items of business on the agenda to the next Ordinary Meeting of the Council, or
  - (b) adjourn the meeting to a time, date and place fixed by the chairperson.
- 18.4 Clause 18.3 does not limit the ability of the Council or a Committee of the Council to resolve to adjourn a meeting at any time. The resolution adjourning the meeting must fix the time, date and place that the meeting is to be adjourned to.
- 18.5 Where a meeting is adjourned under clause 18.3 or 18.4, the Chief Executive Officer must:
- (a) individually notify each Councillor of the time, date and place at which the meeting will reconvene, and
  - (b) publish the time, date and place at which the meeting will reconvene on the Council's website and in such other manner that the Chief Executive Officer is satisfied is likely to bring notice of the time, date and place of the reconvened meeting to the attention of as many people as possible.

## 19 AFTER THE MEETING

### Minutes of Meetings

- 19.1 The Council is to keep full and accurate minutes of the proceedings of Meetings of the Council.
- 19.2 At a minimum, the Chief Executive Officer must ensure that the following matters are recorded in the Council's minutes:

- (a) the names of Councillors attending a Council meeting and whether they attended the meeting in person or by Audio-Visual Link,
- (b) details of each Motion moved at a Council meeting and of any Amendments moved to it,
- (c) the names of the Mover and Seconded of the Motion or Amendment,
- (d) whether the Motion or Amendment was passed or lost, and
- (e) such other matters specifically required under this code.

19.3 The minutes of a Council Meeting must be confirmed at a subsequent meeting of the Council.

19.4 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.

19.5 When the minutes have been confirmed, they are to be signed by the person presiding at the subsequent meeting.

19.6 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.

19.7 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](#)

19.8 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.

19.9 Clause 19.8 does not apply if the correspondence or reports relate to a



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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.

19.10 Clause 19.8 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.

19.11 Correspondence or reports to which clauses 19.9 and 19.10 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

19.12 The Chief Executive Officer is to implement, without undue delay, lawful decisions of the Council.

## **20 COUNCIL COMMITTEES**

#### Application of this Part

20.1 This Part only applies to Committees of the Council whose members are all Councillors.

#### Council Committees whose Members are all Councillors

20.2 The Council may, by resolution, establish such committees as it considers necessary.

20.3 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.

20.4 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

20.5 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

20.6 The Chief Executive Officer 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.

20.7 Notice of less than three (3) days may be given of a committee meeting called in an emergency.

#### Attendance at Committee meetings

20.8 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.

20.9 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

20.10 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.





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#### Chairperson and Deputy chairperson of Council Committees

20.11 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.

20.12 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.

20.13 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.

20.14 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

20.15 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.

20.16 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.

20.17 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

20.18 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.

20.19 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.

20.20 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

20.21 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

20.22 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) the names of Councillors attending a meeting and whether they attended



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the meeting in person or by Audio-Visual Link,

- (b) details of each motion moved at a meeting and of any amendments moved to it,
  - (c) the names of the mover and seconder of the motion or amendment,
  - (d) whether the motion or amendment was passed or lost, and
  - (e) such other matters specifically required under this code.
- 20.23 All voting at meetings of Committees of the Council (including meetings that are closed to the public), must be recorded in the minutes of meetings with the names of councillors who voted for and against each motion or amendment, (including the use of the casting vote), being recorded.
- 20.24 The minutes of meetings of each Committee of the Council must be confirmed at a subsequent meeting of the committee.
- 20.25 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.
- 20.26 When the minutes have been confirmed, they are to be signed by the person presiding at that subsequent meeting.
- 20.27 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.
- 20.28 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.

## 21 IRREGULARITIES

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.



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## 22 DEFINITIONS

the Act	means the <i>Local Government Act 1993</i>
act of disorder	means an act of disorder as defined in clause 15.11 of this code
amendment	in relation to an original motion, means a motion moving an amendment to that motion
audio recorder	any device capable of recording speech
audio-visual link	means a facility that enables audio and visual communication between persons at different places
business day	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
chairperson	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 20.11 of this code
this code	means the council's adopted code of meeting practice
committee of the council	means a committee established by the council in accordance with clause 20.2 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
council official	has the same meaning it has in the Model Code of Conduct for Local Councils in NSW
day	means calendar day
division	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
foreshadowed amendment	means a proposed amendment foreshadowed by a councillor under clause 10.18 of this code during debate on the first amendment
foreshadowed motion	means a motion foreshadowed by a councillor under clause 10.17 of this code during debate on an original motion
open voting	means voting on the voices or by a show of hands or by a visible electronic voting system or similar means
planning decision	means a decision made in the exercise of a function of a council under the <i>Environmental Planning and Assessment Act 1979</i> 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
performance improvement order	means an order issued under section 438A of the Act
quorum	means the minimum number of councillors or committee members necessary to conduct a meeting
the Regulation	means the <i>Local Government (General) Regulation 2021</i>
webcast	a video or audio broadcast of a meeting transmitted across the internet either concurrently with the meeting or at a later time
year	means the period beginning 1 July and ending the following 30 June

### ST02 – Strategic Policy – Code of Meeting Practice

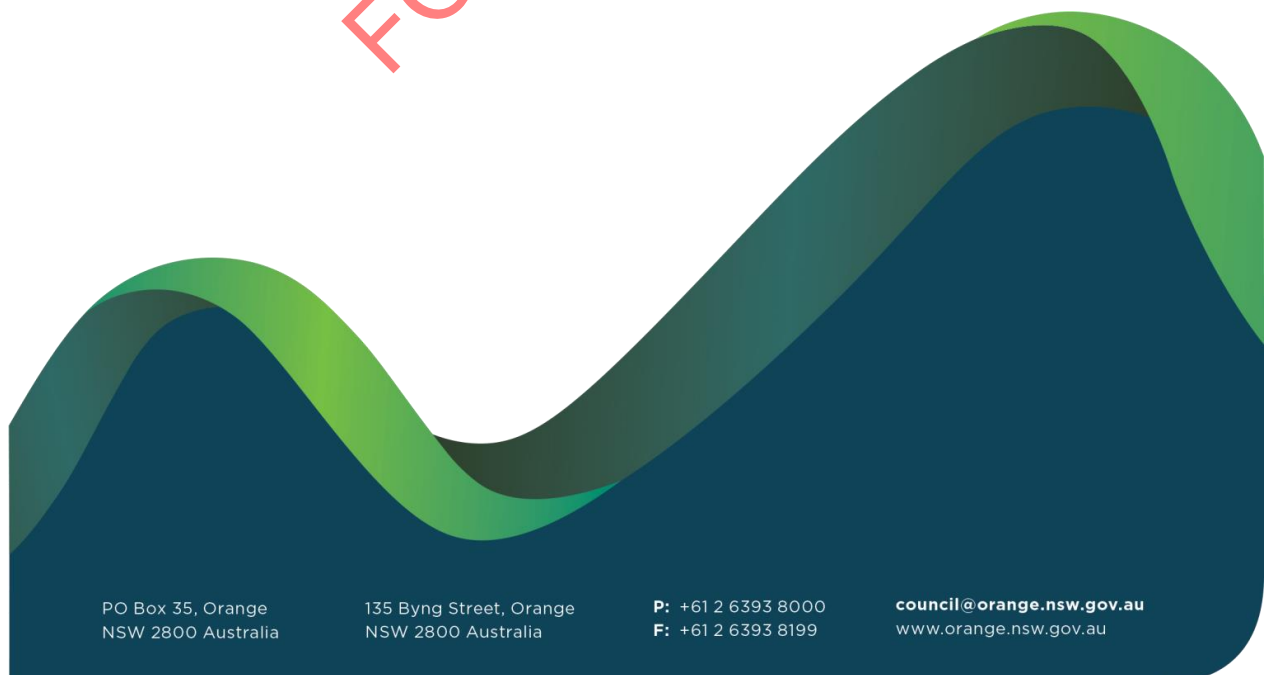
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Approved by:	Minute Number:	Approval Date:



# Strategic Policy – ST03

## Councillor Payment of Expenses and Provision of Facilities

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## POLICY OUTLINE

### PURPOSE

To provide a policy for the reasonable and appropriate management and reimbursement of expenses and the provision of facilities to Councillors to assist them in undertaking their civic duties. This Policy ensures accountability and transparency, and seeks to align Councillor expenses and facilities with community expectations. Councillors must not obtain private or political benefit from any expense or facility provided under this Policy.

### APPLICABILITY

This policy applies to all Councillors.

### SCOPE

The Policy provides for management of the expenses incurred by Councillors, including the reimbursement of expenditure. Payment of expenses or the provision of facilities to Councillors can only be provided in accordance with the adopted policy, and claims for expenses must be made in accordance with the Policy.

Any Councillor expenditure is to be approved by the Mayor and Chief Executive Officer in accordance with this Policy.

Council will reject any claim for payment of expenses or reimbursement of expenses that is made outside the requirements set by the Policy.

The Policy sets out the maximum amounts Council will pay for specific expenses and facilities. Expenses not explicitly addressed in this policy will not be paid or reimbursed.

The Policy is based on the Better Practice Template issued by the Office of Local Government in 2017. Guidelines issued by the Office of Local Government in relation to the payment of expenses and provision of facilities to Councillors, as well as the relevant provisions of the Local Government Act 1993.

## SUMMARY OF EXPENSES

The main expenses and facilities are summarised in the table below. All monetary amounts are exclusive of GST.

Expense or facility	Maximum amount	Frequency
Interstate, overseas and long distance intrastate travel expenses (refer section 6.6)	<b>\$4,000</b> total for each Councillor	Per year
Accommodation and meals (refer section 6.18)	As per the NSW Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009, adjusted annually	Per meal/night
Professional development (refer section 6.23)	<b>\$1,500</b> per Councillor	Per year
Conferences and seminars (registration) (refer section 6.29)	<b>\$60,000</b> total for all Councillors	Per year
Information and communication technology expenses (refer section 6.33-6.37)	<b>Provision of an iPad and mobile phone for the term</b> (ie. Remains the property of Council)	Per Term



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Expense or facility	Maximum amount	Frequency
Carer expenses (refer section 6.46)	<b>\$500</b> per Councillor	Per year
Home office expenses (refer section 6.49)	<b>\$250</b> per Councillor	Per year
Corporate uniform (refer section 9.1)	<b>\$450</b> per Councillor on a dollar for dollar basis	Per year
Personal protective equipment (refer section 9.1)	<b>\$120</b> per Councillor	Per year
Access to facilities in Councillors Workroom (refer section 9.1)	Provided to all Councillors	Not relevant
Business cards (refer section 9.4)	500 per Councillor	Per year
Council vehicle and fuel card (refer section 10.1)	Provided to the Mayor (Councillors may use Council pool vehicles for travel on Council business)	Not relevant
Furnished office (refer section 10.4)	Provided to the Mayor	Not relevant
Executive Support Office supporting Mayor and Councillors (refer section 10.6)	Provided to the Mayor and Councillors	Not relevant

Additional costs incurred by a Councillor in excess of these limits are considered a personal expense that is the responsibility of the Councillor.

Councillors must provide claims for reimbursement within **28 days** (section 11.13) of an expense being incurred. Claims made after this time cannot be approved.

Detailed reports on the provision of expenses and facilities to Councillors will be publicly tabled at a Council Meeting every six months and published in full on Council's website. These reports will include expenditure summarised by individual Councillor and as a total for all Councillors.

## **PART A OVERVIEW**

### **1 INTRODUCTION**

1.1. The provision of expenses and facilities enables Councillors to fulfil their civic duties as the elected representatives of Orange City Council.

1.2. The community is entitled to know the extent of expenses paid to Councillors, as well as the facilities provided.

1.3. The purpose of this policy is to clearly state the facilities and support that are available to Councillors to assist them in fulfilling their civic duties.

1.4. Council is empowered to question or refuse a request for payment from a Councillor when it does not accord with this policy.

1.5. Expenses and facilities provided by this policy are in addition to fees paid to Councillors. The minimum and maximum fees a Council may pay each Councillor are set by the Local Government Remuneration Tribunal as per Section 241 of the Act and reviewed annually. Council must adopt its annual fees within this set range. Council adopts the fees paid to the Mayor and the Councillors as part of the annual Delivery/Operational Plan.



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## 2 POLICY OBJECTIVES

The objectives of this policy are to:

- 2.1. Enable the reasonable and appropriate reimbursement of expenses incurred by Councillors while undertaking their civic duties
- 2.2. Enable facilities and appropriate standard to be provided to Councillors to support them in undertaking their civic duties
- 2.3. Ensure accountability and transparency in reimbursement of expenses and provision of facilities to Councillor
- 2.4. Ensure facilities and expenses provided to Councillors meet community expectation
- 2.5. Support a diversity of representation
- 2.6. Fulfil the Council's statutory responsibilities.

## 3 PRINCIPLES

Council commits to the following principles:

- 3.1. **Proper Conduct:** Councillors and staff acting lawfully and honestly, exercising care and diligence in carrying out their functions
- 3.2. **Reasonable Expenses:** providing for Councillors to be reimbursed for expenses reasonably incurred as part of their role as Councillor
- 3.3. **Participation and access:** enabling people from diverse backgrounds, underrepresented groups, those in carer roles and those with special needs to serve as a Councillor
- 3.4. **Equity:** there must be equitable access to expenses and facilities for all Councillors
- 3.5. **Appropriate use of resources:** providing clear direction on the appropriate use of Council resources in accordance with legal requirements and community expectations
- 3.6. **Accountability and transparency:** clearly stating and reporting on the expenses and facilities provided to Councillors.

## 4 PRIVATE AND POLITICAL BENEFIT

- 4.1. Councillors must not obtain private or political benefit from any expense or facility provided under this policy.
- 4.2. Private use of Council equipment and facilities by Councillors may occur from time to time. For example, telephoning home to advise that a Council meeting will run later than expected.
- 4.3. Such incidental private use does not require a compensatory payment back to Council.
- 4.4. Councillors must avoid obtaining any greater private benefit from Council than an incidental benefit. Where there are unavoidable circumstances and more substantial private use of Council facilities does occur, Councillors must reimburse the Council.
- 4.5. Campaigns for re-election are considered to be a political benefit. The following are examples of what is considered to be a political interest during a re-election campaign:
  - production of election material
  - use of Council resources and equipment for campaigning
  - use of official Council letterhead, publications, websites or services for political benefit
  - fundraising activities of political parties or individuals, including political fundraising events.

## PART B EXPENSES

### 5 GENERAL EXPENSES

- 5.1. All expenses provided under this policy will be for a purpose specific to the functions of holding civic office. Allowances for general expenses are not permitted under this policy.
- 5.2. Expenses not explicitly addressed in this policy will not be paid or reimbursed.





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## 6 SPECIFIC EXPENSES

### General Travel Arrangements and Expenses

- 6.1. All travel by Councillors should be undertaken using the most direct route and the most practicable and economical mode of transport. Councillors should use the Mayoral vehicle where it is available, or a Council pool vehicle, wherever practical for travel on Council business.
- 6.2. Each Councillor may be reimbursed for incidental travel expenses incurred while undertaking official business, professional development or attending approved conferences and seminars. This includes reimbursement for:
  - public transport fares
  - the use of a private vehicle or hire car
  - parking costs for Council and other meetings
  - tolls
  - Cabcharge card or equivalent
  - documented ride-share programs, such as Uber, where tax invoices can be issued.
- 6.3. Allowances for the use of a private vehicle will be reimbursed by kilometre at the rate contained in the Local Government (State) Award.
- 6.4. Councillors seeking to be reimbursed for use of a private vehicle must keep a log book recording the date, distance and purpose of travel being claimed. Copies of the relevant log book contents must be provided with the claim.

### Interstate, overseas and long-distance intrastate travel expenses

- 6.5. Council will scrutinise the value and need for Councillors to undertake overseas travel. Councils should avoid interstate, overseas and long-distance intrastate trips unless direct and tangible benefits can be established for the Council and the local community. This includes travel to sister and friendship cities.
- 6.6. Total interstate, overseas and long-distance intrastate travel expenses for all Councillors will be capped at a maximum of \$4000 per year, per Councillor.

- 6.7. Councillors seeking approval for any interstate and long distance intrastate travel must submit a case to, and obtain the approval of, the Chief Executive Officer prior to travel. The Councillor is to provide a report to Council on their return outlining program highlights and notable learnings relevant to Council strategies and operations.
- 6.8. Councillors seeking approval for any overseas travel must submit a case to, and obtain the approval of, a full Council meeting prior to travel. The Councillor is to provide a report to Council on their return outlining program highlights and notable learnings relevant to Council strategies and operations.
- 6.9. The case should include:
  - objectives to be achieved in travel, including an explanation of how the travel aligns with current Council priorities and business, the community benefits which will accrue as a result, and its relevance to the exercise of the Councillor's civic duties
  - who is to take part in the travel
  - duration and itinerary of travel
  - a detailed budget including a statement of any amounts expected to be reimbursed by the participant/s.
- 6.10. For interstate and long-distance intrastate journeys by air of less than three hours, the class of air travel is to be economy class.
- 6.11. For interstate journeys by air of more than three hours, the class of air travel may be premium economy.
- 6.12. For international travel, the class of air travel is to be premium economy if available. Otherwise, the class of travel is to be economy.
- 6.13. Bookings for approved air travel are to be made through the Chief Executive's office.



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- 6.14. For air travel that is reimbursed as Council business, Councillors are not permitted to accrue points from the airline's frequent flyer program. This is considered a private benefit.

#### **Travel Expenses NOT paid by Council**

- 6.15. Council will not pay any traffic or parking fines or administrative charges for road toll accounts.

#### **Accommodation and Meals**

- 6.16. In circumstances where it would introduce undue risk for a Councillor to travel to or from official business in the late evening or early morning, reimbursement of costs for accommodation and meals on the night before or after the meeting may be approved by the Chief Executive Officer. This includes where a meeting finishes later than 9.00pm or starts earlier than 7.00am and the Councillor lives more than 50 kilometres from the meeting location.
- 6.17. Council will reimburse costs for accommodation and meals while Councillors are undertaking prior approved travel or professional development outside the central west.
- 6.18. The daily limits for accommodation and meal expenses within Australia are to be consistent with those set out in Part B Monetary Rates of the NSW Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009, as adjusted annually.
- 6.19. The daily limits for accommodation and meal expenses outside Australia are to be determined in advance by the Chief Executive Officer.
- 6.20. **Councillors will not be reimbursed for alcoholic beverages.**

#### **Refreshments for Council related meetings**

- 6.21. Appropriate refreshments will be available for Council meetings, Council committee meetings, Councillor Briefings, approved meetings and engagements, and official Council functions as approved by the Chief Executive Officer.
- 6.22. As an indicative guide for the standard of refreshments to be provided at Council related meetings, the Chief Executive Officer will consider Part B Monetary Rates of the NSW Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009, as adjusted annually.

#### **Professional Development**

- 6.23. Council will set aside \$1,500 per Councillor annually in its budget to facilitate professional development of Councillors through programs, training, education courses and membership of professional bodies (as defined in section 6.25). Any further professional development costs would be subject to a business case submitted to the Chief Executive Officer.
- 6.24. In the first year of a new Council term, Council will provide a comprehensive induction program for all Councillors which considers any guidelines issued by the Office of Local Government (OLG). The cost of the induction program will be in addition to the ongoing professional development funding.
- 6.25. Annual membership of professional bodies will only be covered where the membership is relevant to the exercise of the Councillor's civic duties, the Councillor actively participates in the body and the cost of membership is likely to be fully offset by savings from attending events as a member.
- 6.26. Approval for professional development activities is subject to a prior written request to the Chief Executive Officer outlining the:
- details of the proposed professional development



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- relevance to Council priorities and business
- relevance to the exercise of the Councillor's civic duties.

6.27. In assessing a Councillor request for a professional development activity, the Chief Executive Officer must consider the factors set out in Clause 6.26, as well as the cost of the professional development in relation to the Councillor's remaining budget.

#### Conferences and Seminars

6.28. Council is committed to ensuring its Councillors are up to date with contemporary issues facing Council and the community, and Local Government in NSW.

6.29. Council will set aside a total amount of \$60,000 annually in its budget to facilitate Councillor attendance at conferences and seminars (providing for \$5,000 per Councillor). The \$60,000 allocation is for all Councillors. The Chief Executive Officer will ensure that access to expenses relating to conferences and seminars is distributed equitably.

6.30. Approval to attend a conference or seminar is subject to approval of the Chief Executive Officer followed by a resolution of Council. In assessing a Councillor request, Council must consider factors including the:

- relevance of the topics and presenters to current Council priorities and business and the exercise of the Councillor's civic duties
- any business case submitted by a Councillor
- cost of the conference or seminar in relation to the total remaining budget.

6.31. Council will meet the reasonable cost of registration fees, transportation and accommodation associated with attendance at conferences approved by the Chief Executive Officer. Council will also meet the reasonable cost of meals when they are not included in the conference fees. Reimbursement for accommodation and meals not included in the conference fees will be subject to Clauses 6.18-6.21.

#### Information and Communication Technology (ICT) Expenses

6.32. Each Councillor will be provided with a mobile phone on request. Alternatively, Councillor may wish to utilise their own mobile phones for Council use.

6.33. For Councillors utilising Council-provided mobile phones, Council will pay the costs of usage up to \$40 per month without requiring substantiation from the Councillor as to usage. Amounts over \$40, and to a maximum of \$100 per month, can be claimed, subject to the Councillor indicating on the mobile phone account all Council-related use. No landline phone costs will be reimbursed where a Council mobile is provided.

6.34. For Councillors utilising their own private mobile or landline phones for Council purposes, Council will provide a payment of \$40 per month to cover the cost of calls. Requests for reimbursement above \$40, and to a maximum of \$100 per month, can be claimed, subject to the Councillor indicating on their phone accounts all Council related use.

6.35. Council will provide internet access on request. In relation to Council-supplied internet access, the amount provided by Council is set by the data package purchased by Council staff at the time. The package is currently \$40 per month for 4GB of data.



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- 6.36. For Councillors utilising Council-provided internet access, Council will pay the costs of the data plan (\$40 per month) without requiring substantiation from the Councillor as to usage. Requests for reimbursement over \$40 per month can be claimed, subject to the Councillor providing verification of Council-related use.
- 6.37. For Councillors utilising their own private internet access, Council will provide payment of a maximum of \$40 per month to cover the cost of this use. Requests for reimbursement above \$40 per month can be claimed, subject to the Councillor providing verification of Council-related use.
- 6.38. Usage of all Council-related technology (including internet access) should be limited to use for Council purposes only, where possible. The viewing, downloading or transmission of any material of a pornographic or offensive nature is not permitted.
- 6.39. Councillors will be provided with an iPad (or similar) to assist in accessing Council information. Appropriate accessories will be provided as necessary. Only one item will be provided per term of Council. All items remain the property of Council and are to be returned to Council at the end of the Council term.
- 6.40. All repairs/maintenance are to be undertaken by Council. On request, Councillors must return the iPad (or provided device) to Council for maintenance/updates. This will occur on at least an annual basis.
- 6.41. Reimbursements will be made only for communications devices and services used for Councillors to undertake their civic duties, such as:
- receiving and reading Council business papers
  - relevant phone calls and correspondence
  - diary and appointment management.
- 6.42. Councillors may seek reimbursement for applications on their mobile electronic communication device that are directly related to their duties as a Councillor, within the maximum limit (as outlined in sections 6.34 and 6.37).
- Special requirement and carer expenses**
- 6.43. Council encourages wide participation and interest in civic office. It will seek to ensure Council premises and associated facilities are accessible, including provision for sight or hearing impaired Councillors and those with other disabilities.
- 6.44. Transportation provisions outlined in this policy will also assist Councillors who may be unable to drive a vehicle.
- 6.45. In addition to the provisions above, the Chief Executive Officer may authorise the provision of reasonable additional facilities and expenses in order to allow a Councillor with a disability to perform their civic duties.
- 6.46. Councillors who are the principal carer will be entitled to reimbursement of carer's expenses up to a maximum of \$500 per annum for attendance at official business, plus reasonable travel from the principal place of residence.
- 6.47. Child care expenses may be claimed for children up to and including the age of 16 years where the carer is not a relative.
- 6.48. In the event of caring for an adult person, Councillors will need to provide suitable evidence to the Chief Executive Officer that reimbursement is applicable. This may take the form of advice from a medical practitioner.
- Home Office Expenses**
- 6.49. Each Councillor may be reimbursed up to \$250 per year for costs associated with the maintenance of a home office, such as a printer, minor items of consumable stationery and printer ink cartridges.



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## 7 INSURANCES

- 7.1. In accordance with Section 382 of the Local Government Act, Council is insured against public liability and professional indemnity claims.
- 7.2. Council will meet on an annual basis the premium costs of Councillors' liability insurance, defamation insurance, personal injury insurance and public liability insurance (for matters arising out of Councillors' performance of their civic duties and/or exercise of their Council functions) and professional indemnity insurance (for matters arising out of Councillors' performance of their civic duties and/or exercise of their functions). This includes payment of the relevant excess in the event of a claim.
- 7.3. Insurance protection is only provided if a claim arises out of or in connection with the Councillor's performance of his or her civic duties, or exercise of his or her functions as a Councillor. All insurances are subject to any limitations or conditions set out in the policies of insurance.
- 7.4. Council shall pay the insurance policy excess in respect of any claim accepted by Council's insurers, whether defended or not.
- 7.5. Appropriate travel insurances will be provided for any Councillors travelling on approved interstate and overseas travel on Council business.

## 8 LEGAL ASSISTANCE

- 8.1. Council may, if requested by the Councillor, indemnify or reimburse the reasonable legal expenses of:
  - a Councillor defending an action arising from the performance in good faith of a function under the Local Government Act provided that the outcome of the legal proceedings is favourable to the Councillor

- a Councillor defending an action in defamation, provided the statements complained of were made in good faith in the course of exercising a function under the Act and the outcome of the legal proceedings is favourable to the Councillor
- a Councillor for proceedings before an appropriate investigative or review body, provided the subject of the proceedings arises from the performance in good faith of a function under the Act and the matter has proceeded past any initial assessment phase to a formal investigation or review and the investigative or review body makes a finding substantially favourable to the Councillor.

8.2. In the case of a Code of Conduct complaint made against a Councillor, legal costs will only be made available where the matter has been referred by the Chief Executive Officer to a Conduct Reviewer and the Conduct Reviewer's investigation makes a finding favourable to the Councillor.

8.3. Legal expenses incurred in relation to proceedings arising out of the performance by a Councillor of his or her functions under the Act are distinguished from expenses incurred in relation to proceedings arising merely from something that a Councillor has done during his or her term in office. For example, expenses arising from an investigation as to whether a Councillor acted corruptly would not be covered by this policy.

- 8.4. Council will not meet the legal costs:
  - of legal proceedings initiated by a Councillor under any circumstances
  - of a Councillor seeking advice in respect of possible defamation, or in seeking a non-litigious remedy for possible defamation
  - for legal proceedings that do not involve a Councillor performing their role as a Councillor.





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- 8.5. Reimbursement of expenses for reasonable legal expenses (based on a cost estimate of the legal practitioner) must have Council approval by way of a resolution at a Council meeting prior to costs being incurred.

## **PART C FACILITIES**

### **9 GENERAL FACILITIES TO ALL COUNCILLORS**

- 9.1. Council will provide the following facilities to Councillors to assist them to effectively discharge their civic duties:
- A Councillors Workroom and reception area will be available for use by Councillors for activities associated with their role as a Councillor
  - Reasonable administrative support will be provided to Councillors by the Chief Executive Officer's Office during normal office hours for work directly related to the duties of the office of Councillor. Requests for support are to be directed to the Executive Support Manager
  - Councillor pigeon holes
  - Reasonable access to a photocopier and a computer during normal office hours for work directly related to the duties of a Councillor
  - Corporate uniform allowance in accordance with the annual allowance set by Council in the Delivery/Operational Plan, on a dollar for dollar basis
  - personal protective equipment for use during site visits
  - a name badge which may be worn at official functions, indicating that the wearer holds the office of a Councillor and/or mayor or deputy mayor.
- 9.2. Councillors may book meeting rooms for official business in a specified Council building at no cost. Rooms may be booked through the Executive Support Office.
- 9.3. The provision of facilities will be of a standard deemed by the Chief Executive Officer as appropriate for the purpose.

### **Stationery**

- 9.4. Council will provide the following stationery to Councillors each year:
- letterhead, to be used only for correspondence associated with civic duties
  - business cards (500 per annum per Councillor)

### **Administrative support**

- 9.5. Council will provide administrative support to Councillors to assist them with their civic duties only. Administrative support will be provided by the Executive Support Manager or other staff as delegated by the Chief Executive Officer.
- 9.6. Council staff are expected to assist Councillors with civic duties only, and not assist with matters of personal or political interest, including campaigning.

### **10 ADDITIONAL FACILITIES TO THE MAYOR**

- 10.1. Council will provide to the Mayor a maintained vehicle to a similar standard of other Council vehicles, with a fuel card. The vehicle will be supplied for use on business, professional development and attendance at the Mayor's office.
- 10.2. The Mayor must keep a log book setting out the date, distance and purpose of all travel. This must include any travel for private benefit. The log book must be submitted to the Executive Support Manager on a monthly basis. Monthly records will be retained in the corporate records system.
- 10.3. The Mayoral allowance will be reduced to cover the cost of any private travel recorded in the log book, calculated on a per kilometre basis by the rate set by the Local Government (State) Award.
- 10.4. Council will provide the mayor with a furnished office, telephone and meeting space.
- 10.5. In performing his or her civic duties, the mayor will be assisted by a member of staff providing administrative and secretarial support, as determined by the Chief Executive Officer.



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- 10.6. The number of staff provided to support the mayor and Councillors will not exceed one full time equivalent.
- 10.7. Staff in the Mayor's office are expected to work on official business only, and not for matters of personal or political interest, including campaigning.

## **PART D PROCESSES**

### **11 APPROVAL, PAYMENT AND REIMBURSEMENT ARRANGEMENTS**

- 11.1. Expenses should only be incurred by Councillors in accordance with the provisions of this policy.
- 11.2. Approval for incurring expenses beyond amounts resolved for travel, information and communications technology etc, or for the reimbursement of such expenses, should be obtained before the expense is incurred.
- 11.3. Final approval for payments made under this policy will be granted by the Chief Executive Officer.

#### **Direct Payment to a Supplier**

- 11.4. Council may approve and directly pay expenses. Requests for direct payment must be submitted to the Executive Support Manager using the prescribed form, with sufficient information and time to allow for the claim to be assessed and processed.

#### **Reimbursement**

- 11.5. All claims for reimbursement of expenses incurred must be made on the prescribed form, supported by appropriate tax invoices and be submitted to the Executive Support Manager. Councillors are not to earn reward points or other benefits for any Council-related transaction (refer Council's Gifts and Benefits Policy).

#### **Advance Payment**

- 11.6. Council may pay a cash advance for Councillors attending Council booked and approved conferences, seminars or professional development.

- 11.7. The maximum value of a cash advance is \$100 per day of the conference. For seminars or professional development courses, a maximum of \$300 per event is available.

- 11.8. Requests for advance payment must be submitted to the Executive Support Manager using the prescribed form with sufficient information and time to allow for the claim to be assessed and processed.

- 11.9. Councillors must fully reconcile all expenses against the cost of the advance within one month of incurring the cost and/or returning home. This includes providing to Council:

- a full reconciliation of all expenses including appropriate tax invoices
- reimbursement of any amount of the advance payment not spent in attending to official business or professional development.

#### **Notification**

- 11.10. If a claim is approved, Council will make payment directly or reimburse the Councillor by direct deposit to a specified account.

- 11.11. If a claim is refused, Council will inform the Councillor in writing that the claim has been refused and the reason for the refusal.

#### **Reimbursement to Council**

- 11.12. If a Councillor has incurred an expense that exceeds a maximum limit, exceeds reasonable incidental private use or is not provided for in this policy, Council will deduct the expense from the Councillor's monthly allowance.

#### **Timeframe for Reimbursement**

- 11.13. Unless otherwise specified in this policy, Councillors must provide all claims for reimbursement within 28 days of an expense being incurred. Claims made after this time will not be approved nor reimbursed.



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## 12 DISPUTES

12.1. Where an individual Councillor disputes the decision on an expenses claim, or the provision of facilities, the following process will apply:

- The Councillor must notify the Chief Executive Officer, in writing, of the details of the claim or request for facilities.
- The Chief Executive Officer will investigate the issue and inform the Councillor of the decision, in writing, within seven days of the request being received.
- Should the Councillor not accept the Chief Executive Officer's decision, the Chief Executive Officer will submit a report to Council outlining the reasons for denying the claim or request.

## 13 RETURN OR RETENTION OF FACILITIES

13.1. All unexpended facilities or equipment supplied under this policy are to be relinquished immediately upon a Councillor ceasing to hold office or at the cessation of their civic duties.

13.2. Should a Councillor desire to keep any equipment allocated by Council, then this policy enables the Councillor to make application to the Chief Executive Officer to purchase any such equipment. The Chief Executive Officer will determine an agreed fair market price or written down value for the item of equipment.

13.3. The prices for all equipment purchased by Councillors under Clause 13.2 will be recorded in Council's annual report.

## 14 PUBLICATION

14.1. This policy will be published on Council's website.

## 15 REPORTING

15.1. Council will report on the provision of expenses and facilities to Councillors as required in the Act and Regulations.

15.2. Detailed reports on the provision of expenses and facilities to Councillors will be reported to Council every six months and published in full on Council's website. These reports will include expenditure summarised by individual Councillor and as a total for all Councillors.

## 16 BREACHES

16.1. Suspected breaches of this policy are to be reported to the Chief Executive Officer.

16.2. Alleged breaches of this policy shall be dealt with by following the processes outlined for breaches of the Code of Conduct, as detailed in the Code and in the Procedures for the Administration of the Code.



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## 18 DEFINITIONS

The following definitions apply throughout this policy.

Term	Definition
Appropriate refreshments	Means food and beverages, excluding alcohol, provided by Council to support Councillors undertaking official business
Act	Means the <i>Local Government Act 1993</i> (NSW)
Clause	Unless stated otherwise, a reference to a clause is a reference to a clause of this policy
Code of Conduct	Means the Code of Conduct adopted by Council or the Model Code if none is adopted
Councillor	Means a person elected or appointed to civic office as a member of the governing body of Council who is not suspended
Incidental personal use	Means use that is infrequent and brief and use that does not breach this policy or the Code of Conduct
Long distance intrastate travel	Means travel to other parts of NSW of more than three hours duration by private vehicle
Maximum limit	Means the maximum limit for an expense or facility provided in the text
Official business	Means functions that the Mayor or Councillors are required or invited to attend to fulfil their legislated role and responsibilities for Council or result in a direct benefit for Council and/or for the Local Government area, and includes: <ul style="list-style-type: none"> <li>• meetings of Council and committees of the whole</li> <li>• meetings of committees facilitated by Council</li> <li>• civic receptions hosted or sponsored by Council</li> <li>• meetings, functions, workshops and other events to which attendance by a Councillor has been requested or approved by Council</li> </ul>
Professional development	Means a seminar, conference, training course or other development opportunity relevant to the role of a Councillor
Regulation	Means the <i>Local Government (General) Regulation 2005</i> (NSW)
Year	Means the financial year, that is the 12 month period commencing on 1 July each year

### ST03 – Strategic Policy – Councillor Payment of Expenses and Provision of Facilities

Review Due: November 2024	Version 1_22	Last Revision: 21 May 2019
Approval by:	Minute Number:	Approval Date:



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# Reimbursement

## REQUEST FORM

Use this form to claim reimbursement where you have paid for something that was required to perform an approved activity in the course of Council business. Please give completed form with relevant receipts to the CEO's Executive Support Office.

### CLAIMANT DETAILS

Name

Contact Number

Email address

### EXPENSES - INVOICES MUST BE ATTACHED TO VERIFY ALL CLAIMS

Date of Expense	Description of Expense (including names of other persons paid for on this receipt)	Amount	Job Number
<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	<input type="text"/>

### DECLARATION

- ☐ I acknowledge that I have read the instructions relating to reimbursements and that these costs were incurred by me in line with Orange City Council Policies and I have attached the required supporting documents
- ☐ I acknowledge the reimbursement will be made with my monthly Councillors allowance

Date

Name:

Signature:

### AUTHORISED BY CEO

Date

Name:

Signature:

### AUTHORISED BY MAYOR

Date

Name:

Signature: