



The Code of Conduct for Wingecarribee Shire Council

File 800/2

March 2005

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1 Introduction

The *Local Government Act 1993* requires every council to adopt a code of conduct that incorporates the provisions of The Code of Conduct for Local Councils in NSW. Councillors, members of staff of council and delegates of the council must comply with the applicable provisions of council's code of conduct. It is the personal responsibility of council officials to comply with the standards in the code and regularly review their personal circumstances with this in mind. Council contractors and volunteers will also be required to observe the relevant provisions of council's code of conduct.

Failure by a councillor to comply with an applicable requirement of council's code of conduct constitutes misbehaviour. Failure by a member of staff to comply with council's code of conduct may give rise to disciplinary action.

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2 Definitions

In the code of conduct the following definitions apply:

Council official	includes councillors, members of staff of council and delegates of council
Delegates of council	a delegate of council is a person or body to whom a function of council is delegated
Designated person	see the definition in section 441 of the Local Government Act 1993
Act of disorder	see the definition in clause 29 of the Local Government (Meetings) Regulation 1999 the Local Government Act 1993

The term “you” used in the code of conduct refers to council officials.

References to sections in the code of conduct are references to sections in the *Local Government Act 1993*.

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3 Purpose of the Code of Conduct

The Code of Conduct for Local Councils in NSW sets the minimum requirements of behaviour for council officials in carrying out their functions. The code is prescribed by regulation.

The code of conduct has been developed to assist council officials to:

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

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4 Key principles

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

4.1 Integrity

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

4.2 Leadership

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

4.3 Selflessness

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

4.4 Objectivity

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

4.5 Accountability

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

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4.6 Openness

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

4.7 Honesty

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

4.8 Respect

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

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5 General conduct obligations

General conduct

5.1 You must avoid behaviour that could constitute an act of disorder or misbehaviour. Specifically, you must avoid conduct that:

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

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

5.3 You must treat others with respect at all times.

Fairness and equity

5.4 You have an obligation to consider issues consistently, promptly and fairly. This involves dealing with matters in accordance with established procedures, in a non-discriminatory manner.

5.5 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.

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Harassment and discrimination

- 5.6 You must not harass, discriminate against, or support others who harass and discriminate against colleagues or members of the public. This includes, but is not limited to harassment and discrimination, on the grounds of sex, pregnancy, age, race (including their colour, nationality, descent, ethnic or religious background), political affiliation, marital status, disability, homosexuality or transgender.

Development decisions

- 5.7 It is your duty to ensure that development decisions are properly made and that parties involved in the development process are dealt with fairly. You must avoid impropriety. You must also avoid any occasion for suspicion and any appearance of improper conduct.
- 5.8 In determining development applications, it is essential that you are highly conscious of the potential for even the slightest impropriety to lead to suspicion of misconduct. This means you must ensure that no action, statement or communication between yourself and applicants or objectors conveys any suggestion of willingness to provide concessions or preferential treatment.

Guide to ethical decision-making

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

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

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

Remember – you have the right to question any instruction or direction given to you which you think may be unethical or unlawful. If you are uncertain about an action or decision, you may need to seek advice from other people. This includes your supervisor or trusted senior officer, the Department of Local Government, the Ombudsman’s Office and the Independent Commission Against Corruption.

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

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6 Conflict of interests

Pecuniary and non-pecuniary conflict of interests

- 6.1 A conflict of interests exists when you could be influenced, or a reasonable person would perceive that you could be influenced by a personal interest when carrying out your public duty.
- 6.2 You must appropriately resolve any conflict or incompatibility between your private or personal interests and the impartial performance of your public or professional duties.
- 6.3 Any conflict between your interests and those of council must be resolved to the satisfaction of the council. When considering whether or not you have a conflict of interests, it is always important to think about how others would view your situation.
- 6.4 It is essential that you properly address conflict of interests issues that may arise. You must:
- try to understand the concept and practical implications of conflict of interests issues
 - accept that failure to resolve an actual or reasonably perceived conflict of interests is unacceptable in local government
 - take timely and appropriate action to avoid, or if not, to disclose any actual, potential or reasonably perceived conflict of interests.
- 6.5 Perceptions of a conflict of interests are as important as actual conflict of interests. The onus is on you to identify a conflict of interests, whether perceived or real, and take the appropriate action to resolve the conflict in favour of your public duty.
- 6.6 Where necessary, you must disclose an interest promptly, fully and in writing. If a disclosure is made at a council or committee meeting, both the disclosure and nature of an interest must be recorded in the minutes.

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6.7 If you are in doubt whether a conflict of interests exists, you should seek legal or other appropriate advice.

6.8 A conflict of interests can be of two types:

Pecuniary - An interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated. (*sections 442 and 443*)

Non-pecuniary - A private or personal interest the council official has that does not amount to a pecuniary interest as defined in the Act (for example; a friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature).

6.9 Pecuniary interest is regulated by Chapter 14 Part 2 of the Act. The Act requires that:

- councillors and designated persons lodge an initial and an annual written disclosure of interests that could potentially be in conflict with their public or professional duties (*section 449*)
- councillors or members of council committees disclose an interest at a meeting, leave the meeting and be out of sight of the meeting and not participate in discussions or voting on the matter (*section 451*)
- designated persons immediately declare, in writing, any pecuniary interest. (*section 459*)

Designated persons are defined at section 441 of the Act.

6.10 Where you are a member of staff of council, other than a designated person (as defined by section 441), you must disclose to your supervisor or the general manager, the nature of any pecuniary interest you have in a matter you are dealing with as soon as practicable.

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6.11 If you have a non-pecuniary conflict of interests, you must disclose the nature of the conflict. If this is in a meeting, do so as soon as practicable.

6.12 If you have declared a non-pecuniary conflict of interests you have a broad range of options for managing the conflict. The option you choose will depend on an assessment of the circumstances of the matter, the nature of your interest and the significance of the issue being dealt with. You must deal with a non-pecuniary conflict of interests in at least one of these ways:

- It may be appropriate that no action is taken where the potential for conflict is minimal. However, council officials should consider providing an explanation of why they consider a conflict does not exist.
- Limit involvement if practical (for example, participate in discussion but not in decision making or vice-versa). Care needs to be taken when exercising this option.
- Remove the source of the conflict (for example, relinquishing or divesting the personal interest that creates the conflict or reallocating the conflicting duties to another officer).
- Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in section 451(2) of the Act apply (particularly if you have a significant non-pecuniary conflict of interest).
- Include an independent person in the process to provide assurance of probity (for example, for tendering or recruitment selection panels).

Other business or employment

6.13 A member of staff of council who is considering outside employment or contract work that relates to the business of the council or that might conflict with their council duties, must notify and seek the approval of the general manager in writing. (*section 353*)

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6.14 Before you engage in outside employment or business you must ensure that it will not:

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

Political support

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

Personal dealings with council

6.16 You will inevitably deal personally with your council (for example, as a ratepayer, recipient of a council service or applicant for a consent granted by council). You must not expect or request preferential treatment for yourself or your family because of your position. You must avoid any action that could lead members of the public to believe that you are seeking preferential treatment.

6.17 Council has developed specific guidelines in relation to the handling of Land Use Applications (LUA's) lodged by Council, Councillors, staff and the immediate family of Councillors and staff.

Practice Note 5 – Processing of Land Use applications – Avoiding Potential for Conflicts of Interest is the relevant document that must be complied with in dealing with nominated LUA's (see Appendix 1)

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7 Personal benefit

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

Gifts or benefits

7.1 You must not:

- seek or accept a bribe or other improper inducement
- by virtue of your position acquire a personal profit or advantage which has a monetary value, other than one of a token value.

7.2 You must not seek or accept any payment, gift or benefit intended or likely to influence, or that could be reasonably perceived by an impartial observer as intended or likely to influence you to:

- act in a particular way (including making a particular decision)
- fail to act in a particular circumstance
- otherwise deviate from the proper exercise of your official duties.

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

Token gifts and benefits

7.4 Generally speaking, token gifts and benefits may include:

- gifts of single bottles of reasonably priced alcohol to individual council officials at end of year functions, public occasions or in recognition of work done (such as providing a lecture/training session/address)

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- free or subsidised meals, of a modest nature, and/or beverages provided infrequently (and/or reciprocally) that have been arranged primarily for, or in connection with, the discussion of official business
- free meals, of a modest nature, and/or beverages provided to council officials who formally represent their council at work related events such as training, education sessions, workshops
- refreshments, of a modest nature, provided at conferences where you are a speaker
- ties, scarves, coasters, tie pins, diaries, chocolates, flowers and small amounts of beverages
- invitations to appropriate out of hours “cocktail parties” or social functions organised by groups, such as, council committees and community organisations.

Gifts of value

- 7.5 You must never accept an offer of money, regardless of the amount.
- 7.6 In general, you must not accept gifts and benefits that have more than a nominal or token value. These include tickets to major sporting events, corporate hospitality at a corporate facility at a sporting venue, discounted products for personal use, the frequent use of facilities such as gyms, use of holiday homes, free or discounted travel and free training excursions.

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7.7 If you receive a gift of more than token value in circumstances where it cannot reasonably be refused or returned, you should accept the gift and disclose this promptly to your supervisor, the Mayor or the general manager. The supervisor, Mayor or general manager will ensure that any gifts received are recorded in a Gifts Register.

7.8 You must avoid situations in which the appearance may be created that any person or body, through the provision of hospitality or benefits of any kind, is securing or attempting to influence or secure a favour from you or the council.

7.9 You must also take all reasonable steps to ensure that your immediate family members do not receive gifts or benefits that could appear to an impartial observer to be an attempt to influence or secure a favour. Immediate family members ordinarily include parents, spouses, children and siblings.

7.10 Councillors and designated persons must by law disclose a description of any gift or gifts totalling a value exceeding \$500 made by the same person during a period of 12 months or less. *(required to be included in the disclosure of interests returns – section 449)*

7.11 Council maintains a “Gift Register” to record all gifts received by Councillors, delegates of Council and staff. The register is a hardcopy record held in the custody of the Public Officer (Director Corporate Services)

Councillors, staff and delegates of Council are required within 21 days of receiving any gift permitted under the code to record details of the gift including, a description, estimated value and source of the gift in Council’s gift register.

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Improper and undue influence

7.11 You must not take advantage of your position to improperly influence other council officials in the performance of their public or professional duties to secure a private benefit for yourself or for somebody else.

7.12 You must not take advantage (or seek to take advantage) of your status or position with, or functions performed for, council in order to obtain unauthorised or unfair benefit for yourself or for any other person or body.

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8 Relationship between council officials

Obligations of councillors

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

8.2 Councillors must:

- refrain from directing council staff other than by giving appropriate direction to the general manager in the performance of council's functions by way of council or committee resolution, or by the Mayor exercising their power under section 226 of the Act (*section 352*)
- refrain from, in any public or private forum, directing or influencing, or attempting to direct or influence, any other member of the staff of the council or a delegate of the council in the exercise of the functions of the member or delegate (*Schedule 6A of the Act*)
- refrain from contacting a member of the staff of the council unless in accordance with procedures governing the interaction of councillors and council staff that have been authorised by the general manager
- not contact or issue instructions to any of council's contractors or tenderers, including council's legal advisers, unless by the Mayor exercising their power under section 226 of the Act.

Role of the Mayor

8.3 The role of the Mayor is defined by section 226 of the Act.

This role is the same whether the Mayor is popularly elected or elected by the councillors.

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Obligations of staff

8.4 The General Manager is responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation of the decisions of the council without delay.

8.5 Members of staff of council have an obligation to:

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

Obligations during meetings

8.6 You must act in accordance with council's Code of Meeting Practice, if council has adopted one, and the *Local Government (Meetings) Regulation 1999* during council and committee meetings.

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

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Inappropriate interactions

8.8 The following interactions are inappropriate:

- Councillors approaching council staff other than directors or senior staff for information on sensitive or controversial matters.
- Council staff approaching Councillors directly on individual staffing matters.
- Councillors approaching council staff outside the council building or outside hours of work to discuss council business.
- Council staff refusing to give information which is available to other councillors to a particular councillor because of the staff member's or councillor's political views.
- Councillors who have lodged a development application with council, discussing the matter with council staff in staff-only areas of the council.
- Councillors being overbearing or threatening to council staff.
- Councillors directing or pressuring council staff in the performance of their work, or recommendations they should make.
- Council staff providing ad hoc advice to councillors without recording or documenting the interaction as they would if the advice was provided to a member of the community.
- Councillors approaching council staff organisations; for example unions and associations; in relation to staffing matters that relate to individual staff members rather than broader industrial policy issues.
- Council staff meeting with developers alone and outside office hours to discuss development applications or proposals.
- Councillors attending on-site inspection meetings with lawyers and/or consultants engaged by council associated with current or proposed legal proceedings unless permitted to do so by council's general manager or, in the case of the Mayor, exercising their power under section 226 of the Act.

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9 Access to information and council resources

Councillor access to information

- 9.1 A council must provide access to the documents available under section 12 of the *Local Government Act 1993* to all members of the public, and to councillors. A council must also provide councillors with information sufficient to enable them to carry out their civic functions.
- 9.2 Any information that is given to a particular councillor in the performing of their civic duties must also be available to any other councillor who requests it.
- 9.3 Councillors who have a personal (as distinct from civic) interest in a document of council have the same rights of access as any member of the public.
- 9.4 Members of staff of council have an obligation to provide full and timely information to councillors about matters that they are dealing with in accordance with council procedures.
- 9.5 Councillors have an obligation to properly examine and understand all the information provided to them relating to matters that they are dealing with to enable them to make a decision on the matter in accordance with council's charter.

Refusal of access to documents

- 9.6 The general manager and public officer must act reasonably in deciding whether a document sought by a councillor should be made available under section 12 of the *Local Government Act 1993* or because it is relevant to the performance of the councillor's civic duty. The general manager or public officer must state the reasons for the decision if access is refused.

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Use of council information

9.7 You must:

- protect confidential information
- only access information needed for council business
- not use confidential information for any non-official purpose
- only release confidential information if you have authority to do so
- only use confidential information for the purpose it is intended to be used
- only release other information in accordance with established council policies and procedures and in compliance with relevant legislation
- not use council information for personal purposes
- not disclose any information discussed during a confidential session of a council meeting.
- Comply with the requirements of the State Records Act 1998 S12(2) and create and maintain records of all documentation relating to Council business.

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

9.9 You must not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person.

9.10 You must 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 had access in the exercise of your official functions or duties by virtue of your office or position.

- 9.11 You must not use confidential information with the intention to improperly cause harm or detriment to your council or any other person or body.

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Security of information

- 9.12 You must take care to maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible.
- 9.13 When dealing with personal information you must comply with:
- the *Privacy and Personal Information Protection Act 1998*,
 - the *Health Records and Information Privacy Act 2002*,
 - the Information Protection Principles and Health Privacy Principles,
 - council's privacy management plan,
 - the Privacy Code of Practice for Local Government

Personal information is information or an opinion about a person whose identity is apparent, or can be determined from the information or opinion.

Use of council resources

- 9.14 You must use council resources ethically, effectively, efficiently and carefully in the course of your public or professional duties, and must not use them for private purposes (except when supplied as part of a contract of employment) unless this use is lawfully authorised and proper payment is made where appropriate.
- 9.15 Union delegates and consultative committee members may have reasonable access to council resources for the purposes of carrying out their industrial responsibilities, including but not limited to:
- the representation of members with respect to disciplinary matters
 - the representation of employees with respect to grievances and disputes
 - functions associated with the role of the local consultative committee.

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- 9.16 You must be scrupulous in your use of council property, including intellectual property, official services and facilities and should not permit their misuse by any other person or body.
- 9.17 You must avoid any action or situation which could create the impression that council property, official services or public facilities are being improperly used for your own or any other person or body's private benefit or gain.
- 9.18 The interests of a councillor in their re-election is considered to be a personal interest and as such the reimbursement of travel expenses incurred on election matters is not appropriate. Council letterhead, council crests and other information that could give the impression it is official council material must not be used for these purposes.
- 9.19 You must not convert any property of the council to your own use unless properly authorised.
- 9.20 You must not use council's computer resources to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature.

Councillor access to council buildings

- 9.21 As elected members of the council, councillors are entitled to have access to the council chamber, committee room, mayor's office (subject to availability), councillor's rooms, and public areas of council's buildings during normal business hours and for meetings. Should councillors need access to these facilities at other times, authority is required from the general manager in order that necessary arrangements can be made.
- 9.22 Councillors must not enter staff-only areas of council buildings without the approval of the general manager (or delegate) or as provided in the procedures governing the interaction of councillors and council staff.

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9.23 Councillors must ensure that when they are within a staff area they are cognisant of potential conflict or pecuniary interest matters and /or a perception that they may bring influence to bear on council staff decisions and should conduct themselves accordingly.

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10 Reporting Breaches, Complaint Handling Procedures & Sanctions

Corrupt conduct, maladministration and waste of public resources

- 10.1 You have an obligation to act honestly. You should report any instances of suspected corrupt conduct, maladministration and serious and substantial waste of public resources in accordance with council's internal reporting policy.
- 10.2 The Protected Disclosures Act 1994 provides certain protections against reprisals for council officials who report such matters. It is an offence to take detrimental action against people who make such reports.

Reporting breaches of the code of conduct

- 10.3 You should report suspected breaches of the code of conduct to the general manager, preferably in writing.
- 10.4 Where you believe that the general manager has failed to comply with this code, you should report the matter to the Mayor, preferably in writing, who will report the matter to the conduct committee.

Complaint handling procedures – staff conduct (excluding the general manager)

- 10.5 Where appropriate, the general manager will make enquiries, or cause enquiries to be made, into breaches of the code of conduct regarding members of staff of council and others engaged by the council and will determine the matter.
- 10.6 Where the general manager has determined not to enquire into the matter, the general manager will give the complainant the reason/s in writing.

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- 10.7 Enquiries made into staff conduct which might give rise to disciplinary action must occur in accordance with the relevant local government award and make provision for procedural fairness including the right of an employee to be represented by their union.

Complaint handling procedures – Councillor and General Manager conduct

- 10.8 Council will establish a conduct committee that will consist of the Mayor, the general manager and at least one person independent of council. The independent representative/s should comprise council's nominated legal adviser or other independent person/s of appropriate standing. In the instance of a complaint being made by or against the Mayor or the general manager, the Deputy Mayor, or another councillor who has been designated by council, will take the place of the Mayor or general manager on the committee.
- 10.9 Councillors should report suspected breaches of the code of conduct to the general manager, preferably in writing, in the first instance and refrain from making allegations at council meetings. Where appropriate, the general manager will report the matter to the conduct committee.
- 10.10 Where the general manager has determined not to report the matter to the conduct committee, the general manager will give the complainant the reason/s in writing.
- 10.11 Council's conduct committee is responsible for making enquiries into allegations of breaches of the code of conduct by councillors and must either:
- determine not to make enquiries into the allegation and give the reason/s in writing
 - make enquiries into the alleged breach to determine the particular factual matters, or
 - engage an independent person to make enquiries into the allegation to determine the particular factual matters.

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10.12 Enquiries made by the general manager, an independent person or the conduct committee will follow the rules of procedural fairness. The enquirer must:

- inform the person/s against whose interests a decision may be made of any allegations against them and the substance of any adverse comment in respect of them
- provide the person/s with a reasonable opportunity to put their case
- hear all parties to a matter and consider submissions
- make reasonable enquiries before making a recommendation
- ensure that no person is involved in enquiries in which they have a direct interest
- act fairly and without bias, and
- conduct the enquiries without undue delay.

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

10.14 The conduct committee may recommend that council take any actions provided for in this code of conduct that the committee considers reasonable in the circumstances.

Sanctions

10.15 Where the council finds that a councillor has breached the code, it may decide by resolution to:

- censure the councillor for misbehaviour in accordance with section 440G of the Act
- require the councillor to apologise to any person adversely affected by the breach
- counsel the councillor

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- make public findings of inappropriate conduct
- refer the matter to an appropriate investigative body if the matter is serious (for example, the Department of Local Government, the Independent Commission Against Corruption, the NSW Ombudsman or the NSW Police)
- prosecute for any breach of law.

10.16 Sanctions for staff depend on the severity, scale and importance of the breach and must be in accordance with any staff agreements, awards, industrial agreements and contracts.

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11 Councillor Misbehaviour

- 11.1 For the purposes of Chapter 14, Part 1, Division 3 of the Act, failure by a councillor to comply with an applicable requirement of this code of conduct constitutes misbehaviour. *(section 440F)*
- 11.2 Under section 440G a council may by resolution at a meeting formally censure a councillor for misbehaviour.
- 11.3 Under section 440H, the process for the suspension of a councillor from civic office can be initiated by a request made by council to the Director General of the Department of Local Government.
- 11.4 The first ground on which a councillor may be suspended from civic office is where the councillor's behaviour has been disruptive over a period, involving more than one incident of misbehaviour during that period, and the pattern of behaviour during that period is of such a sufficiently serious nature as to warrant the councillor's suspension.
- 11.5 Council cannot request suspension on this ground unless during the period concerned the councillor has been:
- formally censured for incidents of misbehaviour on two or more occasions, or
 - expelled from a meeting of the council or a committee of the council for an incident of misbehaviour on at least one occasion.
- 11.6 The second ground on which a councillor may be suspended from civic office is where the councillor's behaviour has involved one incident of misbehaviour that is of such a sufficiently serious nature as to warrant the councillor's suspension.

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11 .7 Council cannot request suspension on this ground unless the councillor has been:

- formally censured for the incident of misbehaviour concerned, or
- expelled from a meeting of the council or a committee of the council for the incident of misbehaviour concerned.

11 .8 Under section 440H, the process for the suspension of a councillor can also be initiated by the Department of Local Government, the Independent Commission Against corruption or the NSW Ombudsman.

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12 Listening Devices Act 1984

The aim of the Listening Devices Act is to regulate the use of listening devices in private conversations.

Essentially the Act states that a person shall not use, or cause to be used, a listening device:

1. to record or listen to a private conversation to which a person is not a party, or
2. to record a conversation to which the person is a party.

Clause 5 part 3 of the Listening Devices Act does not apply if the principal parties of the conversation have given consent to record the conversation, either expressly or impliedly. Council would strongly recommend that consent is given in writing and a copy of that consent given to all parties concerned prior to the recording.

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Appendix (1)

5. PROCESSING OF LAND USE APPLICATIONS – AVOIDING POTENTIAL FOR CONFLICTS OF INTEREST *(File 800/2)*

Introduction

Council prides itself on its tradition of honesty and fair dealing and we have a code of conduct that assists in maintaining this reputation.

I have **attached** a copy of the part of our Code of Conduct that deals with conflicts of interest and I urge all staff to familiarise themselves with these requirements.

The purpose of this Practice Note is to establish clear requirements for dealing with (real and potential) conflicts of interest concerning the processing of Land Use Applications (LUAs).

It is important to note that our community expects and deserves the absolute integrity of Council and (as stated by the NSW Ombudsman) this means that we must not allow the pursuit of private interests to interfere with our public duties.

Processing of Land Use Applications Where Council, Councillors or Staff are the Applicant

1. The Environment and Planning Division is the regulatory arm of Council in respect of Development Proposals. (Land Use Applications – LUAs).
2. If a member of staff or a member of their immediate family lodge an application the following procedures apply:
 - a) advise your supervisor in writing that you or a family member are an applicant. This advice will be documented on the relevant LUA and Personal File.
 - b) ensure you do not have any involvement in the assessment, subsequent supervision or any other Council procedures concerning the application.
 - c) ensure all contact with Council concerning the application is “over the counter”. This should be:

Processing of Land Use Applications – Avoiding Potential for Conflicts of Interest

- by appointment if possible, and
 - witnessed and documented
- d) do not access the LUA file other than by procedures available to a member of the public (refer also Section 664 *Local Government Act* 1993 regarding use of Council information).

Where Council is the applicant, in addition to the above procedures, the following applies:

1. Assessment staff and staff who have lodged LUAs must not discuss applications other than by the above procedures. Informal discussions concerning the application "in the corridor" must not occur
2. Any report to Council on the application is to include a section on how the potential conflict of interest was managed
3. The requirements concerning fees are to be enforced as per the requirements for the general public.



Approved:
D J McGowan
General Manager

Date: 13 January 2000

Amended: 11 February 2000
Amended: 2 March 2005

Wingecarribee Shire Council

General Manager's Practice Notes

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**Processing of Land Use Applications – Avoiding Potential for
Conflicts of Interest**

Attachment – refer hard copy

Wingecarribee Shire Council

General Manager's Practice Notes

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Attachment – refer hard copy

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Form of acknowledgement by employee regarding Practice Note 5

I confirm that I have read and understood the General Manager’s Practice Note 5 (*issued 13 January 2000 (amended 11 February 2000)*) relating to the Processing of Land Use Applications.

Signature:

(Name) Date:

Witness:

(Name) Date:

A copy of this signed acknowledgement form is to be placed on the employee’s personnel file.

It is the responsibility of the relevant Director to ensure that the contents of the Practice Note are explained to the employee and that the employee fully understands the contents. It is also the responsibility of the relevant Director to ensure that the signed copy is placed on the employee’s personnel file.

Copy to go on employee’s file – PERS

Employee’s Name: _____

Wingecarribee Shire Council

General Manager's Practice Notes

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**Processing of Land Use Applications – Avoiding Potential for
Conflicts of Interest**
