

<b>Board Meeting:</b> May 2019	<b>Agenda Number:</b> 11 (ii)	<b>Record Number:</b> ED19/4376
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# **LORD HOWE ISLAND BOARD**

## **Business Paper**

### **OPEN SESSION**

#### **ITEM**

Proposed new Code of Conduct for Lord Howe Island Board Members and Officials

#### **RECOMMENDATION**

That the Board adopt the new Code of Conduct report that has been based on the new Model Code of Conduct for Local Councils.

#### **BACKGROUND**

The Lord Howe Island Board is required to adopt Code of Conduct. Clause 101 of the Lord Howe Island Regulation provides that Section 440 of the Local Government Act apply to the Board, as if in that section references to:

- (a) a council were references to the Board, and
- (b) a councillor were references to a member of the Board, and
- (c) an ordinary election were references to an election required to be conducted under section 9A(b) of the Lord Howe Island Act 1953 (the LHI Act).

Section 440 of the LG Act requires the adoption of a code of conduct that incorporates the provisions of the Model Code of Conduct. It is noted that the Board's adopted code of conduct may also include provisions that supplement the Model Code of Conduct. In other words, the Code adopted can add to but not detract from the Model Code of Conduct.

#### **CURRENT POSITION**

The Board's existing "Code of Conduct for Board Members and Board Officials" was adopted in March 2015. It is understood that some training on the on the Code was conducted in March 2018.

A new 2018 Model Code of Conduct for Local Councils in NSW was prescribed on 14 December 2018. Councils are required to adopt the new Model Code within 6 months (ie by 14 June 2019). Because the LHI Board is subject to Section 440 of the Local Government Act, the Board is also required to adopt the new Code.

While it is clear that the Board needs to adopt a new Code of Conduct based on the new Model Code, it is not a simple matter because of the unique legislation, responsibilities and roles that apply to the Board. These are different to the Local Government Act and the NSW local government context. In addition, the Lord Howe Island Act and Regulation change or override some provisions, references, titles, definitions, responsibilities and roles.

Therefore a new Code of Conduct has been developed and this has taken some time due to its complexity. The draft has been reviewed and amended as appropriate by the Office of Local Government to ensure that it is sound, consistent with legislation and contextually appropriate.

The new Code is attached to this report for consideration and adoption is recommended. Under the Direction, a Council (in this case the Board) must adopt a new Code of Conduct based on the Model Code of Conduct before 14 June 2019. If it does not, the new Model Code of Conduct automatically applies. In the case of the LHIB, this would not be a good outcome because the Model Code of Conduct does not reflect the Lord Howe Island Act or its different legislative and local context.

### **WHAT HAS CHANGED?**

In summary the changes from the current Code include:

- Incorporation of the pecuniary interest provisions previously contained in the *Local Government Act 1993* and Regulation.
- New standards relating to discrimination and harassment, bullying, work health and safety, behaviour at meetings, access to information and maintenance of Board records.
- New rules governing the acceptance of gifts including mandatory reporting.
- A new ongoing disclosure requirement for Board members and designated persons requiring disclosure of new interests in returns of interests within three months of becoming aware of them
- Board members will be required to disclose in their returns of interests whether they are a property developer or a close associate of a property developer.

In general there are many minor amendments and additions that are not able to be described in detail. They are often clarifications of terms or clauses, based on real situations in NSW where code of conduct cases have led to the need for better definitions or clarity.

### **CURRENT STATUS AND NEXT STEPS**

The new Code is tabled with the Board for consideration with the aim of adoption.

There is a need under the Code for a panel of "Conduct Reviewers" that would investigate any substantive matters raised in regard to alleged breaches of the Code. The Board is able to satisfy the requirement for a panel of "Conduct Reviewers" via our memorandum of understanding with Port Macquarie Hasting Council. It is understood that a group of Councils including Port Macquarie Hastings are engaging a panel for the use, if required of member Councils Lord Howe Island can utilise this arrangement.

Following adoption, communication and if required, training will be undertaken to:

1. Specifically explain any changes;
2. Refresh Board members' familiarity with the ongoing requirements;
3. Remind Board members of how they can raise or respond to any possible matters relating to the Code.
4. Provide opportunity to workshop any areas that are not clear or could be misinterpreted.

### **POSSIBLE ADDITIONAL PROVISIONS**

The current Code of Conduct does include additional provisions or requirements that the Board have adopted in past codes, beyond those included in the Model Code of Conduct. These have been carried forward into the new proposed Code attached to this report.

At the March Board meeting, Board members were invited through the report and verbally, that any other additional inclusions could be forwarded to the CEO. No additional inclusions have been suggested or submitted.

**RECOMMENDATION**

That the Board adopt the new Code of Conduct report that has been based on the new Model Code of Conduct for Local Councils.

**Prepared and Endorsed:** Peter Adams Chief Executive Officer

**Attachments:**

Attachment A: New Model Code of Conduct for Board Members

# **Code of Conduct**

**2019**

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## **PART 1 INTRODUCTION**

This Code of Conduct is made for the purposes of section 440 of the *Local Government Act 1993* (“the LG Act”). Clause 101 of the *Lord Howe Island Regulation 2014* provides that Section 440 of the LG Act applies to the Lord Howe Island Board (the Board) as if in that section references to:

- (a) a council were references to the Board, and
- (b) a councillor were references to a member of the Board, and
- (c) an ordinary election were references to an election required to be conducted under section 9A(b) of the *Lord Howe Island Act 1953* (the LHI Act)

The Model Code of Conduct sets the minimum standards of conduct for Board officials. It is prescribed by regulation to assist Board 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
- act in a way that enhances public confidence in the Board.

Board members, members of Board committees, delegates of the Board, and Board advisors (for the purposes of clause 4.12) must comply with the applicable provisions of Board’s code of conduct in carrying out their functions as Board officials. It is the personal responsibility of officials of the Board to comply with the standards in the code and regularly review their personal circumstances with this in mind.

Section 12(3) of the LHI Act provides that the Board cannot employ staff. However staff may be employed under Part 4 of the *Government Sector Employment Act 2013* in the Government Service to enable the Board to exercise its functions. The conduct of the staff so employed is governed by the provisions of that Act and relevant regulations and Awards.


Failure by a Board member to comply with the standards of conduct prescribed under this code may result in removal from office by the Minister responsible for administering the LHI Act.

The Minister may remove an appointed member from office at any time for any or no reason and without notice (section 6(3) Schedule 1A LHI Act). The Minister may remove an elected member of office under the provisions of section 6(2) Schedule 1A LHI Act.

## PART 2 DEFINITIONS

In this code the following terms have the following meanings:

the Board	means the Lord Howe Island Board
Board committee	a committee established by a Board comprising of Board members, staff or other persons that the Board has delegated functions to
Board committee member	a person other than a Board member or member of staff of the Board who is a member of a council committee other than a wholly advisory committee
Board member	any person elected or appointed to the Lord Howe Island Board, excluding the Board member who is employed in the Department of Premier and Cabinet
Board official	includes Board members, Board committee members, delegates of the Board and Board advisers
Board staff	either: <ul style="list-style-type: none"> <li>a) Persons employed in the Public Service under the <i>Government Sector Employment Act 2013</i> to enable the Board to exercise its functions; or</li> <li>b) Persons contracted by the Board or its Chief Executive to enable the Board to exercise its functions.</li> </ul>
Chief Executive Officer	the executive officer of the Board administration
committee	see the definition of “Board committee”
complaint	a code of conduct complaint made under the Procedures
conduct	includes acts and omissions
delegate of the Board	a person (other than a Board member or member of staff of the Board) or body, and the individual members of that body, to whom a function of the Board is delegated
designated person	a person referred to in clause 4.8
election campaign	includes a Board, council, state and federal election campaigns
environmental planning	

instrument 	has the same meaning as it has in the <i>Environmental Planning and Assessment Act 1979</i>
LHI Act	the <i>Lord Howe Island Act 1953</i>
the Minister	the Minister responsible for administering the <i>Lord Howe Island Act 1953</i>
personal information	information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion
the Procedures	the <i>Procedures for the Administration of the Lord Howe Island Board Code of Conduct</i>
wholly advisory committee	a Board committee that the Board 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 Board or other Board officials into disrepute
  - b) is contrary to statutory requirements or the Board'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 act lawfully and honestly, and exercise a reasonable degree of care and diligence in carrying out your functions under the LHI Act or any other Act.
- 3.3 You must treat others with respect at all times.

### 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 sex, pregnancy, breastfeeding, race, age, marital or domestic status, homosexuality, disability, transgender status, infectious disease, carer's responsibilities or political, religious or other affiliation.
- 3.8 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 Board officials owe statutory duties under the *Work Health and Safety Act 2011* (WH&S Act). You must comply with your duties under the WH&S Act and your responsibilities under any policies or procedures adopted by the Board to ensure workplace health and safety. Specifically, you must:

- a) take reasonable care for your own health and safety
- b) take reasonable care that your acts or omissions do not adversely affect the health and safety of other persons
- c) comply, so far as you are reasonably able, with any reasonable instruction that is given to ensure compliance with the WH&S Act and any policies or procedures adopted by the council to ensure workplace health and safety
- d) cooperate with any reasonable policy or procedure of the council relating to workplace health or safety that has been notified to Board 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 WH&S 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 Board or committee meeting.
- 3.17 For the purposes of clause 3.16, a binding caucus vote is a process whereby a group of Board members are compelled by a threat of disciplinary or other adverse action to comply with a predetermined position on a matter before the Board or committee, irrespective of the personal views of individual members of the group on the merits of the matter before the Board or committee.
- 3.18 Clause 3.16 does not prohibit Board members from discussing a matter before the Board or committee prior to considering the matter in question at a Board or committee meeting, or from voluntarily holding a shared view with other Board members on the merits of a matter.
- 3.19 Clause 3.16 does not apply to a decision to appoint a person to be the Deputy Chairperson of the Board or to nominate a person to be a member of a Board committee or a representative of the Board on an external body.

#### Obligations in relation to meetings

- 3.20 You must comply with rulings by the chair at Board 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 Board or committee meetings or other proceedings of the Board (such as, but not limited to, workshops and briefing sessions).
- 3.22 You must not engage in conduct that disrupts Board or committee meetings or other proceedings of the Board (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 Board member, you must not engage in any acts of disorder or other conduct that is intended to prevent the proper or effective functioning of the Board, or of a committee of the Board. Without limiting this clause, you must not:
- a) leave a meeting of the Board or a committee for the purposes of depriving the meeting of a quorum, or
  - b) submit a rescission motion with respect to a decision for the purposes of voting against it to prevent another Board Member from submitting a rescission motion with respect to the same decision, or
  - c) deliberately seek to impede the consideration of business at a meeting.

## PART 4 PECUNIARY INTERESTS

### What is a pecuniary interest?

- 4.1 A pecuniary interest is an interest that you have in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to you or a person referred to in clause 4.3.
- 4.2 You will not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision you might make in relation to the matter, or if the interest is of a kind specified in clause 4.6.
- 4.3 For the purposes of this Part, you will have a pecuniary interest in a matter if the pecuniary interest is:
- (a) your interest, or
  - (b) the interest of your spouse or de facto partner, your relative, or your partner or employer, or
  - (c) a company or other body of which you, or your nominee, partner or employer, is a shareholder or member.
- 4.4 For the purposes of clause 4.3:
- (a) Your “relative” is any of the following:
    - i) your parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
    - ii) your spouse’s or de facto partner’s parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
    - iii) the spouse or de facto partner of a person referred to in paragraphs (i) and (ii).
  - (b) “de facto partner” has the same meaning as defined in section 21C of the *Interpretation Act 1987*.
- 4.5 You will not have a pecuniary interest in relation to a person referred to in 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 the Board 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 Board 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 Board 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 Board 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 Board of an agreement between the Board 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 Board 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 Board in respect of similar matters with other residents of the area:
    - i) the performance by the Board 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 Board by or under any Act conferring functions on the Board, or by or under any contract
  - (j) an interest relating to the payment of expenses and the provision of facilities to Board members (including the Chairperson and Deputy Chairperson) in accordance with a Board policy
  - (k) 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
  - (l) an interest arising from being covered by, or a proposal to be covered by, indemnity insurance as a Board member
  - (m) an interest arising from the appointment of a Board member to a body as a representative or delegate of the Board, 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) a person who is a delegate of the Board, excluding staff of the Board, and who holds a position identified by the Board 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 delegate and the person’s private interest
- (b) a person who is a member of a committee of the Board identified by the Board as a committee whose members are designated persons because the functions of the committee involve the exercise of the Board’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 4.15, 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 the nature of any pecuniary interest the person has in any Board matter with which the person is dealing as soon as practicable after becoming aware of the interest.

- 4.11 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.

#### What disclosures must be made by Board advisers?

- 4.12 A person who, at the request or with the consent of the Board or a Board committee, gives advice on any matter at any meeting of the Board 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.

#### What disclosures must be made by a Board committee member?

- 4.13 A Board committee member must disclose pecuniary interests in accordance with clause 4.22 and comply with clause 4.23.

**Note: A Board committee member identified by the Board as a “designated person” for the purposes of clause 4.8(b) must also prepare and submit written returns of interests in accordance with clause 4.15.**

### What disclosures must be made by a Board member?

4.14 A Board member:

- (a) must prepare and submit written returns of interests in accordance with clause 4.15, and
- (b) must disclose pecuniary interests in accordance with clause 4.22 and comply with clause 4.23 where it is applicable.

### Disclosure of interests in written returns

4.15 A Board member 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 Board member's or designated person's interests as specified in schedule 1 to this code within 3 months after:

- (a) becoming a Board member or designated person, and
- (b) 30 June of each year, and
- (c) the Board member 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).

4.16 A person need not make and lodge a return under clause 4.15 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 Board member in the preceding 3 months.

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

4.18 The Chief Executive Officer must keep a register of returns required to be made and lodged with the Chief Executive Officer.

4.19 Returns required to be lodged with the Chief Executive Officer under clause 4.15(a) and (b) must be tabled at the first meeting of the Board after the last day the return is required to be lodged.

4.20 Returns required to be lodged with the Chief Executive Officer under clause 4.15(c) must be tabled at the next Board meeting after the return is lodged.

4.21 Information contained in returns made and lodged under clause 4.9 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

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



- 4.23 The Board member or Board committee member must not be present at, or in sight of, the meeting of the Board or committee:
- (a) at any time during which the matter is being considered or discussed by the Board or committee, or
  - (b) at any time during which the Board or committee is voting on any question in relation to the matter.
- 4.24 A Board member is taken to be present at the meeting for the purposes of clauses 4.22 and 4.23 where they participate in the meeting by telephone, closed-circuit television, or other means, subject to Schedule 1A, clause 15 (2) of the LHI Act.
- 4.25 Where the Board transacts any of its business remotely in accordance with Schedule 1A, clause 15 (1) of the LHI Act, Board member's must disclose any pecuniary interest they have in a matter in writing to other Board members and the Chief Executive Officer.
- 4.26 Where a Board member discloses a pecuniary interest under clause 4.25, the Board member must not participate in consideration of the matter unless an exemption is granted in accordance with clause 4.35 or 4.36.
- 4.27 A disclosure made at a meeting of the Board or Board committee, including a disclosure made under clause 4.25, must be recorded in the minutes of the meeting.
- 4.28 A general notice may be given to the Chief Executive Officer in writing by a Board member or Board committee member to the effect that the Board member or the Board committee member, or the Board member's or Board 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 Board in which it is given (whichever is the sooner), sufficient disclosure of the Board member's interest in a matter relating to the specified company, body or person that may be the subject of consideration by the Board or Board committee after the date of the notice.
- 4.29 A Board member or Board 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 Board member or Board committee member has an interest in the matter of a kind referred to in clause 4.6.
- 4.30 A person does not breach clauses 4.22,4.23 or 4.25 and 4.26 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.

- 4.31 Despite clause 4.23, a Board member 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.
- 4.32 Clause 4.23 does not apply to a Board member 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 Board'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 Board's area, and
  - (b) the pecuniary interest arises only because of an interest of the Board member in the Board member'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 Board member made a special disclosure under clause 4.33 in relation to the interest before the commencement of the meeting.
- 4.33 A special disclosure of a pecuniary interest made for the purposes of clause 4.32(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 Board 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.
- 4.34 If a meeting of the Board or a Board committee cannot be held for the purpose of:
- (a) making a decision or determination under the LHI Act, and/or
  - (b) making a recommendation to the Minister with respect to a decision or determination to be made by the Minister under the LHI Act,
- because of a loss of quorum as a result of compliance with this Part, Schedule 1A, clauses 8 (8), (9) and (10) of the LHI Act applies.
- 4.35 Despite clause 4.34, the Minister may, conditionally or unconditionally, allow a Board member or a Board committee member who has a pecuniary interest in a matter with which the Board is concerned to be present at a meeting of the Board or committee, to take part in the consideration or discussion of the matter and to vote on the matter if the Minister or Board is of the opinion:
- (a) that the number of Board members 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.
- 4.36 The Board may grant an exemption to a Board member in accordance with clause 4.35.

**Note: Clause 4.36 reflects Schedule 1A, clause 8 (4) of the LHI Act. When the Board is considering whether to grant an exemption, Schedule 1A, clause 8 (5) of the LHI Act applies.**

4.37 A Board committee may grant an exception to a Board committee member in accordance with clause 4.35 (b).

**Note: Clause 4.37 reflects Schedule 1A, clause 8 (7) of the LHI Act. When a Board committee is considering whether to grant an exemption, Schedule 1A, clause 8 (5) of the LHI Act applies.**

4.38 A Board member or Board committee member with a pecuniary interest in a matter who is permitted to be present at a meeting of the Board or committee, to take part in the consideration or discussion of the matter and to vote on the matter under clause 4.35, 4.36 or 4.37, must still disclose the interest they have in the matter in accordance with clause 4.22.



## **PART 5      NON-PECUNIARY CONFLICTS OF INTEREST**

### What is a non-pecuniary conflict of interest?

- 5.1 Non-pecuniary interests are private or personal interests a Board 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 Board 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 the Board's 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.
- 5.7 If a disclosure is made at a Board 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 Board member 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 Board

member's extended family that the Board member 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 Board 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 Board 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 Board'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 Board or committee meeting, by managing the conflict of interest as if you had a pecuniary interest in the matter by complying with clauses 4.22 and 4.23.

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 Clauses 5.10(b) and 5.11 apply to Board members where the Board transacts any of its business remotely in accordance with Schedule 1A, clause 15 (1) of the LHI Act.

5.13 Despite clause 5.10(b), a Board member 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.

### Political donations

5.14 Board members should be aware that matters before the Board or committee meetings involving their political donors may also give rise to a non-pecuniary conflict of interest.

5.15 Where you are a Board member 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 the Board,

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 4.22 and 4.23. A disclosure made under this clause must be recorded in the minutes of the meeting.

5.16 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*.

5.17 Board members 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 Board member is endorsed, may still give rise to a non-pecuniary conflict of interest. Board members should determine whether or not such conflicts are significant for the purposes of clause 5.9 and take the appropriate action to manage them.

5.18 Despite clause 5.15, a Board member 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

5.19 A Board member 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 Board’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 Board’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 Board member 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.

5.20 If a meeting of the Board or a Board committee cannot be held for the purpose of:

- a) making a decision or determination under the LHI Act, and/or
  - b) making a recommendation to the Minister with respect to a decision or determination to be made by the Minister under the LHI Act,
- because of a loss of quorum as a result of compliance with this Part, Schedule 1A, clauses 8 (8), (9) and (10) of the LHI Act applies.

5.21 Despite clause 5.20, the Minister may, conditionally or unconditionally, allow a Board member or Board committee member who is precluded under this Part from participating in the consideration of a matter to be present at a meeting of the Board 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 Board members 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 The Board may grant an exemption to a Board member in accordance with clause 5.21.

**Note: Clause 5.22 reflects Schedule 1A, clause 8 (4) of the LHI Act. When the Board is considering whether to grant an exemption, Schedule 1A, clause 8 (5) of the LHI Act applies.**

5.23 A Board committee may grant an exception to a Board committee member in accordance with clause 5.21 (b).

**Note: Clause 5.23 reflects Schedule 1A, clause 8 (7) of the LHI Act. When a Board committee is considering whether to grant an exemption, Schedule 1A, clause 8 (5) of the LHI Act applies.**

5.24 Where the Minister, the Board, or a Board committee exempts a Board member or Board committee member from complying with a requirement under this Part under clauses 5.21, 5.22 or 5.23, the Board member or Board committee member must still disclose any interests they have in the matter the exemption applies to, in accordance with clause 5.6.

#### Personal dealings with the Board

5.25 You may have reason to deal with the Board in your personal capacity (for example, as a lease holder, recipient of a Board service or applicant for a consent granted by the Board). 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.

5.26 You must undertake any personal dealings you have with the Board in a manner that is consistent with the way other members of the community deal with the Board. You must also ensure that you disclose and appropriately manage any conflict of interest you may have in any matter in accordance with the requirements of this code.





## PART 6 PERSONAL BENEFIT

- 6.1 For the purposes of this Part, a gift or a benefit is something offered to or received by a Board 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 Board as part of a cultural exchange or sister-city relationship that is not converted for the personal use or enjoyment of any individual Board official or someone personally associated with them
  - c) attendance by a Board official at a work-related event or function for the purposes of performing their official duties, or
  - d) free or subsidised meals, beverages or refreshments of token value provided to Board 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) Board functions or events
    - v) social functions organised by groups, such as Board 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 Board, 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 Board 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 Board.

- 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 the Chief Executive Officer in writing. The recipient or Chief Executive Officer must ensure that, at a minimum, the following details are recorded in the Board'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 Board, 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 Board officials in the performance of their official functions to obtain a private benefit for yourself or for somebody else. A Board member will not be in breach of this clause where they seek to influence other Board officials and Board staff through the proper exercise of their role as prescribed under the LHI Act.

6.15 You must not take advantage (or seek to take advantage) of your status or position with the Board, or of functions you perform for council, in order to obtain a private benefit for yourself or for any other person or body.

## **PART 7      RELATIONSHIPS BETWEEN BOARD OFFICIALS**

### Obligations of Board members

7.1 The Board is a corporation constituted under the LHI Act and, for the purposes of any Act, is taken to be a statutory body representing the Crown. The governing body has the responsibility of directing and controlling the affairs of the Board in accordance with the LHI Act and is responsible for policy determinations and keeping the performance of the Board under review.

7.2 Board members must not:

- a) direct Board staff other than by giving appropriate direction to the Chief Executive Officer by way of a Board or committee resolution
- b) in any public or private forum, direct or influence, or attempt to direct or influence, any other member of the staff of the Board or a delegate of the Board in the exercise of the functions of the staff member or delegate
- c) contact Board staff on Board-related business unless in accordance with the policy and procedures governing the interaction of Board members and such persons that have been authorised by the Board and Chief Executive Officer
- d) contact or issue instructions to any of the Board's contractors, including the Board's legal advisers, unless authorised by the Board and Chief Executive Officer.

7.3 Despite clause 7.2, Board members may contact the Board's external auditor or the chair of the Board'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.

### Inappropriate interactions

7.4 You must not engage in any of the following inappropriate interactions:

- a) Board members approaching Board 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) Board members who have lodged an application with the Board, discussing the matter with Board staff in staff-only areas of the Board
- c) Board members making personal attacks on Board 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
- d) Board members directing or pressuring Board staff in the performance of their work, or recommendations they should make
- e) Board members attending on-site inspection meetings with lawyers and/or consultants engaged by the Board associated with current or proposed legal proceedings unless permitted to do so by the Board's Chief Executive Officer.

## **PART 8 ACCESS TO INFORMATION AND COUNCIL RESOURCES**

### Board members access to information

- 8.1 The Chief Executive Officer is responsible for ensuring that Board members 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 Board information under the *Government Information (Public Access) Act 2009* (the GIPA Act).
- 8.2 The Chief Executive Officer must provide Board members with the information necessary to effectively discharge their official functions.
- 8.3 Members of staff of the Board must provide full and timely information to Board members sufficient to enable them to exercise their official functions and in accordance with the Board's procedures.
- 8.4 Members of staff of the Board who provide any information to a particular Board member in the performance of their official functions must also make it available to any other Board member who requests it and in accordance with the Board's procedures.
- 8.5 Board members who have a private interest only in Board information have the same rights of access as any member of the public.
- 8.6 Despite clause 8.4, Board members 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 Board information in relation to the matter unless the information is otherwise available to members of the public, or the Board has determined to make the information available under the GIPA Act.

### Board members to properly examine and consider information

- 8.7 Board members must ensure that they 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 Board member, they must act reasonably. In reaching this decision they must take into account whether or not the information requested is necessary for the Board member 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 Board information

- 8.9 In regard to information obtained in your capacity as a Board official, you must:
- a) only access Board information needed for Board business

- b) not use that Board 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 with the Board
- d) only release Board information in accordance with established Board 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 Board 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 Board or any other person or body
- g) not disclose any confidential information discussed during a confidential session of a Board 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 Board's privacy management plan
- e) the Privacy Code of Practice for Local Government

### Use of Board resources

8.13 You must use Board resources ethically, effectively, efficiently and carefully in exercising your official functions, and must not use them for private 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 Board 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 Board 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 Board property, official services or public facilities are being improperly used for your benefit or the benefit of any other person or body.
- 8.17 You must not use Board resources (including Board 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 Board letterhead, Board crests, Board email or social media or other information that could give the appearance it is official Board 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 Board to your own use unless properly authorised.

#### Internet access

- 8.20 You must not use the Board'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 Board's reputation.

#### Board record keeping

- 8.21 You must comply with the requirements of the *State Records Act 1998* and the Board's records management policy.
- 8.22 All information created, sent and received in your official capacity is a Board record and must be managed in accordance with the requirements of the *State Records Act 1998* and the Board's approved records management policies and practices.
- 8.23 All information stored in either soft or hard copy on Board supplied resources (including technology devices and email accounts) is deemed to be related to the business of the Board and will be treated as the Board's 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 Board information or records, unless authorised to do so. If you need to alter or dispose of Board information or records, you must do so in consultation with the Board's Manager Business and

Corporate Services, and comply with the requirements of the *State Records Act 1998*.

Board members access to council buildings

- 8.25 Board members are entitled to have access to the Board chamber, committee room, Chair's office (subject to availability), Board member's rooms, and public areas of Board's buildings during normal business hours and for meetings. Board members needing access to these facilities at other times must obtain authority from the Chief Executive Officer.
- 8.26 Board members must not enter staff-only areas of Board buildings without the approval of the Chief Executive Officer (or their delegate) or as provided for in the procedures governing the interaction of Board members and Board staff.
- 8.27 Board members must ensure that when they are within a staff only area they refrain from conduct that could be perceived to improperly influence Board 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 Board official or Board staff
  - b) to damage another Board official's reputation or Board staff
  - c) to obtain a political advantage
  - d) to influence a Board official or Board staff in the exercise of their official functions or to prevent or disrupt the exercise of those functions
  - e) to influence the Board 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 any Board resolution requiring you to take action as a result of a breach of this code.

Disclosure of information about the consideration of a matter under the Procedures

- 9.9 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 Board, 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 a matter being considered under the Procedures except for the purposes of seeking legal advice, unless the disclosure is otherwise permitted under the Procedures.

- 9.13 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 Board official are to be managed in accordance with the Procedures.

## **SCHEDULE 1: DISCLOSURES OF INTERESTS AND OTHER MATTERS IN WRITTEN RETURNS SUBMITTED UNDER CLAUSE 4.15**

### 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 Board member 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 4.15(a), the date on which a person became a Board member or designated person
- b) in the case of a return made under clause 4.15(b), 30 June of the year in which the return is made
- c) in the case of a return made under clause 4.15(c), the date on which the Board member 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 Board member or designated person has an interest includes a reference to any real property situated in Australia in which the councillor 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 Board member 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 4.15 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 Board member or designated person.
8. For the purposes of clause 5 of this schedule, “interest” includes an option to purchase.

### Gifts

9. A person making a return under clause 4.15 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 Board member 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 4.15 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 Board member 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 4.15 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 Board member or designated person.

Interests as a property developer or a close associate of a property developer

19. A person making a return under clause 4.15 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 4.15 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 Board member or designated person.

Dispositions of real property

23. A person making a return under clause 4.15 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 4.15 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 Board member or designated person.



### Sources of income

26. A person making a return under clause 4.15 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 Board member or designated person need not be disclosed.
30. Remuneration paid to a Board member under Schedule 1A, clause 5 of the LHI Act.

### Debts

31. A person making a return under clause 4.15 of this code must disclose the name and address of each person to whom the person was liable to pay any debt:
- a) on the return date, and
  - b) at any time in the period since 30 June of the previous financial year.
32. A liability to pay a debt must be disclosed by a person in a return made under clause 4.9 whether or not the amount, or any part of the amount, to be paid was due and payable on the return date or at any time in the period since 30 June of the previous financial year, as the case may be.
33. A liability to pay a debt need not be disclosed by a person in a return if:
- a) the amount to be paid did not exceed \$500 on the return date or in the period since 30 June of the previous financial year, as the case may be, unless:

- (i) the debt was one of two or more debts that the person was liable to pay to one person on the return date, or at any time in the period since 30 June of the previous financial year, as the case may be, and
- (ii) the amounts to be paid exceeded, in the aggregate, \$500, or
- b) the person was liable to pay the debt to a relative, or
- c) in the case of a debt arising from a loan of money the person was liable to pay the debt to an authorised deposit-taking institution or other person whose ordinary business includes the lending of money, and the loan was made in the ordinary course of business of the lender, or
- d) in the case of a debt arising from the supply of goods or services:
  - (i) the goods or services were supplied in the period of 12 months immediately preceding the return date, or were supplied in the period since 30 June of the previous financial year, as the case may be, or
  - (ii) the goods or services were supplied in the ordinary course of any occupation of the person that is not related to their duties as the holder of a position required to make a return, or
- e) subject to paragraph (a), the debt was discharged prior to the person becoming a Board member or designated person.

#### Discretionary disclosures

34. A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision of this schedule.

## **SCHEDULE 2: FORM OF WRITTEN RETURN OF INTERESTS SUBMITTED UNDER CLAUSE 4.15**

### 'Disclosures by Board members or designated person' 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*.
2. If this is the first return you have been required to lodge with the Chief Executive Officer after becoming a Board member 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 Board member 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 Board member 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 4.15 of the 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 4.17 of the Code of Conduct). Complaints about breaches of these requirements are to be referred to the Chief Executive Officer.

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 Board meeting.

Information contained in returns made and lodged under clause 4.15 is to be made publicly available in accordance with the requirements of the *Government Information (Public Access) Act 2009*, the *Government Information (Public Access) Regulation 2009* and any guidelines issued by the Information Commissioner.

You have an obligation to keep the information contained in this return up to date. If you become aware of a new interest that must be disclosed in this return, or an interest that you have previously failed to disclose, you must submit an updated return within three months of becoming aware of the previously undisclosed interest.

Disclosure of pecuniary interests and other matters by [full name of Board member or designated person]

as at [return date]

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

[Board member or designated person's signature]  
[date]

#### 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 partnership 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]*

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#### C. Gifts

Description of each gift I received at any time since 30 June	Name and address of donor
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#### D. Contributions to travel

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time since 30 June	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel was undertaken
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#### E. Interests and positions in corporations

Name and address of each corporation in which I had an interest (if interest or held a position at the return date/at any time since 30 June	Nature of any	Description of position (if any)	Description of principal objects (if any) of corporation (except in case of listed company)
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F. Were you a property developer or a close associate of a property developer on the return date? (Y/N)

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#### 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
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#### 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
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## I. Dispositions of property

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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

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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

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## J. Discretionary disclosures

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### **SCHEDULE 3: FORM OF SPECIAL DISCLOSURE OF PECUNIARY INTEREST SUBMITTED UNDER CLAUSE 4.33**

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 4.32(c) of the Code of Conduct.

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

Clause 4.3 of the 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 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 Chief Executive Officer.

This form must be completed by you before the commencement of the Board or Board committee meeting at which the special disclosure is being made. The completed form must be tabled at the meeting. Everyone is entitled to inspect it. The special disclosure must be recorded in the minutes of the meeting.

Special disclosure of pecuniary interests by *[full name of Board member]*

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

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

to be held on the                      day of                      20     .

Pecuniary interest	
Address of the affected principal place of residence of the Board member or an associated person, company or body (the identified land)	
Relationship of identified land to the Board member <i>[Tick or cross one box.]</i>	<input type="checkbox"/> The Board member 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). <input type="checkbox"/> An associated person of the Board member has an interest in the land. <input type="checkbox"/> An associated company or body of the Board member has an interest in the land.
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) <sup>2</sup> <i>[Tick or cross one box]</i>	<input type="checkbox"/> The identified land. <input type="checkbox"/> Land that adjoins or is adjacent to or is in proximity to the identified land.
Current zone/planning control <i>[Insert name of current planning instrument and identify relevant zone/planning control applying to the subject land]</i>	

<sup>1</sup> Clause 4.1 of this 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.



Proposed change of zone/planning control <i>[Insert name of proposed LEP and identify proposed change of zone/planning control applying to the subject land]</i>	
Effect of proposed change of zone/planning control on Board member or associated person <i>[Insert one of the following: "Appreciable financial gain" or "Appreciable financial loss"]</i>	

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

Board member's signature

Date

[This form is to be retained by the Board's Chief Executive Officer and included in full in the minutes of the meeting]