

## GENERAL MANAGER'S REPORT

8th February 2005

<b>GM4</b>	<b>AMENDMENTS TO CODE OF CONDUCT</b>
<b>FILE: * AVB</b>	<b>{ Folio No. * }</b>

### SUMMARY:

To consider an amended Code of Conduct incorporating requirements of the Model Code released by the Department of Local Government on 24 December 2004.



The Local Government Amendment (Discipline) Act 2004 was assented to on 28 September and will commence on and from 1 January 2005. As part of the Amending Act the Department of Local Government has drafted a new Model Code of Conduct. The Model Code of Conduct is the minimum requirements for a Councils Code of Conduct.

A new Draft Code of Conduct, incorporating the requirements of the Model Code into our existing Code of Conduct, has been prepared for consideration.

The Draft document shows any new additions underlined so as to see what has been introduced.

In association with the preparation of the new Code of Conduct document the following documents were also prepared/amended: -

- New Policy – Statement of business Ethics for External Parties
- Amended Policy C24:1 – Councillors and Staff Interaction and Provision of Information To
- Amended Policy C24:7 – Gifts and Benefits
- Amended Policy C24:9 – Conflicts of Interest
- Amended Policy C24:10 (Reporting Breaches of the Code of Conduct) to align with the requirements of the Model Code.

In the new Code of Conduct reference has also been made to all the policies which Council already has that relate to the various sections in the Code.

Under Section 22 (Breaches of the Code of Conduct) the full section from the model code has been included, although this could be shortened with just reference to the Policy which also contains all the provisions.

The following documents are attached with this report:-

- New Draft Code of Conduct for Kempsey Shire Council – Policy C24.8 ([Appendix B Part 1, Part 2, Part 3](#))
- New Draft Statement of Business Ethics for External Parties ([Appendix C](#))
- Amended Policy C24.1 - Councillors and Staff Interaction and Provision of Information To ([Appendix D Part 1, Part 2, Part 3](#))
- Amended Policy C24.7 – Gifts and Benefits ([Appendix E](#))
- Amended Policy C24.9 – Conflict of Interest ([Appendix F Part 1 and Part 2](#))
- Amended Policy C24.10 – Reporting Beaches ([Appendix G](#))
- Un-amended Policies C24.5, C24.11, M7.33, M7.38, M7.39
- M7.59, M7.60, M7.70 ([Appendix H Part 1, Part 2 and Part 3](#))

Those policies designated “M” are management policies and not Council policies.

Relevant Sections under the amended Act relating to censure and suspension are:-

## **Section 440F Definitions**

- (1) In this Division:  
***misbehaviour*** of a Councillor means any of the following:
  - (a) a contravention by the Councillor of this Act or the regulations,
  - (b) a failure by the Councillor to comply with an applicable requirement of a code of conduct as required under section 440(5),
  - (c) an act of disorder committed by the Councillor at a meeting of the council or a committee of the council, but does not include a contravention of the disclosure requirements of Part 2.

**Note.** A contravention of the disclosure requirements of Part 2 is dealt with under other provisions of this Chapter.
- (2) A reference in this Division to ***misbehaviour*** or an ***incident of misbehaviour*** includes a reference to misbehaviour that consists of an omission or failure to do something.

## **Section 440G Formal censure of Councillor for misbehaviour**

- (1) A council may by resolution at a meeting formally censure a councillor for misbehaviour.

- (2) A formal censure resolution may not be passed except by a motion to that effect of which notice has been duly given in accordance with regulations made under section 360 and, if applicable, the council's code of meeting practice.
- (3) A council may pass a formal censure resolution only if it is satisfied that the councillor has misbehaved on one or more occasions.
- (4) The council must specify in the formal censure resolution the grounds on which it is satisfied that the councillor should be censured.
- (5) A motion for a formal censure resolution may, without limitation, be moved on the report of a committee of the council and any such report must be recorded in the minutes of the meeting of the council.

#### **Section 440H**

#### **How is the process for suspension of a Councillor for misbehaviour initiated?**

- (1) The process for the suspension of a Councillor from civic office is initiated by:
  - a) a request made by the council by resolution communicated to the Director-General, in which the council states its belief that grounds may exist that warrant the Councillor's suspension, or
  - b) a request made by the Director-General to the council for a report from the council in relation to the Councillor's alleged misbehaviour, or
  - c) a report made by the Independent Commission Against Corruption or the Ombudsman, in which the Commission or the Ombudsman states that the Commission or Ombudsman is satisfied that grounds exist that warrant the Councillor's suspension.
- (2) The council must make a report to the Director-General requested under subsection (1) (b) before the date specified in the Director-General's request or any later date allowed by the Director-General.
- (3) This section authorizes such requests and report to be made, and a reference in this section to a report made by the Independent Commission Against Corruption or the Ombudsman is a reference to a report made to the Director-General under the authority of this subsection or under any other provisions of this or any other Act.

- (4) Nothing in this section affects any function under any other provisions of this or any other Act that authorizes the making of a report or recommendation concerning suspension of a Councillor from civic office.

## **Section 440I**

### **What are the grounds on which a Councillor may be suspended?**

- (1) The grounds on which a Councillor may be suspended from civic office under this Division are that:
  - (a) the Councillor's behaviour has:
    - (i) been disruptive over a period, and
    - (ii) involved more than one incident of misbehaviour during that period, and the pattern of behaviour during that period is of such a sufficiently serious nature as to warrant the Councillor's suspension, or
  - (b) the Councillor's behaviour has involved one incident of misbehaviour that is of such a sufficiently serious nature as to warrant the Councillor's suspension.
- (2) The process for the suspension of a Councillor for civic office cannot be initiated by a request made by the council unless:
  - (a) where subsection (1) (a) applies – the Councillor has:
    - (i) on two or more occasions been formally censured for incidents of misbehaviour that occurred during the period concerned, or
    - (ii) on at least one occasion been expelled from a meeting of the council or a committee of the council for an incident of misbehaviour during the period concerned, or
  - (b) where subsection (1) (b) applies – the Councillor has:
    - (i) been formally censured for the incident of misbehaviour concerned, or
    - (ii) been expelled from a meeting of the council or a committee of the council for the incident of misbehaviour concerned.
- (3) Subsection (2) does not affect the Director-General's power to initiate the process for the suspension of a Councillor from civic office.
- (4) Furthermore, subsection (2) does not prevent the Director-General from initiating the process for the suspension of a

Councillor from civic office as a result of a request or report referred to in section 440H.

Section 440G should be incorporated into the Code of Meeting Practice. As the addition is a section of the Act that cannot be amended by Council, there would be no need to re-advertise and exhibit the Code of Meeting Practice.

A new Disciplinary Regime for Local Government, Councillors and Council Staff Workshop is being conducted by The Local Government and Shires Association at a cost of \$363.00. A workshop is to be conducted at Port Macquarie on the 22 April.

### **REPORT IMPLICATIONS:**

- ***Environmental***

***Nil***

- ***Social***

***The Code of Conduct will put in place ethical provisions to be adhered to by Councillors, delegates and staff, which can be monitored by our community and our customers.***

- ***Economic (Financial)***

***Nil***

- ***Policy or Statutory***

***The new Code of Conduct will be outlined in amended policies and will be available on the internet as public information.***

- ***General Manager's Review***

***Nil***

### **RECOMMENDATION:**

- 1. That Council adopt The Code of Conduct as outlined in Policies C24.8, C24.1, C24.5, C24.7, C24.9, C24.10, C24.11, M7.33, M7.38, M7.39, M7.59, M7.60 and M7.70 and new Policy, Our Statement of Business Ethics.**
- 2. That section 440G be incorporated into the Code of Meeting Practice.**
- 3. That interested Councillors register for the Disciplinary Workshop to be held at Port Macquarie on the 22 April.**

.....  
**Allan Burgess**  
**GENERAL MANAGER**