



**muswellbrook
shire council**

Statement of Business Ethics Policy

MSC24E

Adopted by Council:
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Minute No. 77

Table of Contents

Table of Contents	2
POLICY OBJECTIVES	3
POLICY STATEMENT	3
1. Procedure and Obligations	4
1.1 Council Officials	4
1.2 Suppliers	4
2. What is the impact of Business Ethics?	5
2.1 Impact for Suppliers	5
2.2 Impact for Council officials	5
2.3 ICAC Advice	6
3. Bribes, Gifts and Benefits	6
4. Conflicts of Interest	6
5. Communication Requirement	7
6. Tendering	7
7. Public Awareness	7
8. What happens if you think there is a breach?	7
LEGISLATION	8
POLICY	8
PROCEDURE	8
Authorisation Details	8
Details History	8
Statement of Business Ethics	9

POLICY OBJECTIVES

The Statement of Business Ethics (the Statement) is intended to provide guidance for all sectors of the community when conducting business with the Muswellbrook Shire Council. It helps set the ethical ground rules for all business dealings between Council and its suppliers including, but not limited to, providers of goods and services, contractors, tenderers and consultants.

The Statement sets out Council's expectations for Council officials and requirements for the private sector when doing business with Council. It defines Council's ethical standards and obligations and establishes Council's expectation that all suppliers will be aware of and comply with these standards. It also provides suppliers with an understanding of what to expect from Council when doing business with Council.

The Statement outlines Council's core values and aims to increase the private sector's awareness of and respect for these values. The Statement explains what the consequences are for Council officials and suppliers of not complying with the requirements as outlined.

For the purpose of the Statement a Council official refers to a member of Council staff, an elected Councillor and delegates of Council.

POLICY STATEMENT

Muswellbrook Shire Council's Business Ethics are formed on Council's desire to meet its obligation to act lawfully, ethically and in the best interest of the public. Council aims to build and maintain ethical relationships with all sectors of the community and in particular the private sector.

Council places significant value on open and accountable business transactions aiming to be consistent in all measures. Council will ensure probity and diligence when undertaking public duties and using public resources acting with impartiality, honesty and fairness at all times.

Fairness means being objective, reasonable and even-handed. It does not mean pleasing everyone. Council will strive to be fair by ensuring that our processes are appropriate and demonstrate this by being open and accountable, wherever practicable. This does not mean that Council will always go to formal tender or call for bids for items of low monetary value. Council will only deal exclusively with suppliers where it can be demonstrated that there are valid reasons for doing so, based on sound probity principles.

Muswellbrook Shire Council expects all Council officials to behave ethically and in accordance with the Statement. Council also expects the private sector and its representatives to maintain similar standards of ethical conduct in their dealings with Council.

As a local government body, Council has a commitment to ensure community funds are expended efficiently, effectively and economically. Council aims to attain "best value for money" in its business dealings with the private sector.

"Best value for money" is determined by considering all the factors, which are relevant to a particular purpose, including:

- Experience
- Quality
- Reliability

- Timeliness
- Service
- Initial & ongoing costs

It is important to note that “Best value for money” does not automatically mean the “lowest price”. It means the offer that is most advantageous to Council after considering the above factors.

1. Procedure and Obligations

1.1 Council Officials

Code of Conduct

Council has a formally adopted Code of Conduct which Council officials must abide by. The Code embraces the concept of integrity, ethical conduct and accountability throughout the organisation. Council officials must treat others with respect at all times and not harass or discriminate against colleagues or members of the public.

Procurement and Tendering

Council officials must abide by the law and all its policies, procedures and practices, particularly those related to Procurement and Tendering, including relevant legislation and codes of practice. All Procurement and Tendering actions and decisions will be fully documented to a standard that will withstand scrutiny through an audit process. All pricing will remain confidential where it is considered that a commercial advantage may be gained or lost through disclosure. Information will only be released if required by a court or the Government Information (Public Access) Act 2009.

Council officials are expected to:

- Treat all potential providers of goods & services equally
- Abide by the law
- Avoid, disclose and resolve any conflicts of interest
- Strictly comply with Council’s adopted Code of Conduct, particularly in relation to incentives, gifts and benefits.

Councillors are expected not to contact or issue instructions to Council’s suppliers.

1.2 Suppliers

General Requirement

Council requires all suppliers whom it deals with to observe the following principles:

- Act fairly, ethically and honestly in all dealings with Council
- Not to disclose confidential Council information
- Not to exert pressure or influence on Council officials that may cause them to waiver from Council’s Code of Conduct
- To abide by relevant legislative processes and industry Codes of Practice

in all procurement dealings

- To have respect for the obligation of Council officials to act in accordance with the Statement
- Commit to not offer Council officials gifts or incentives such as money, benefits, entertainment, hospitality, employment opportunities, travel, or accommodation.
- Not harass or bully Council officials. Harassment includes verbal, non-verbal and physical harassment such as sexual or suggestive remarks, offensive jokes, threats or insults, wolf whistling, offensive hand or body gestures, unnecessary physical contact or indecent or sexual assault. Further information can be obtained from Council's Harassment and Workplace Bullying Policy
- Treat requests for sponsorship in accordance with Council's Sponsorship Policy
- Ensure that all sub-contractors and other people employed by the supplier are aware of the Statement and the consequences of breaching it.

2. What is the impact of Business Ethics?

2.1 Impact for Suppliers

By aligning business practices with Council's ethical expectations, suppliers can expect to:

- Compete for business on an even playing field
- Establish practices, which put them in good stead in competing for works with other public sector agencies.

If suppliers to Council do not comply with the Statement, then the consequences may be as follows:

- Possible loss of work
- Termination of contracts
- Damage to reputation
- Loss of rights (such as loss of operating or trade licences etc)
- Formal investigation for corruption or other offences

2.2 Impact for Council officials

If Council officials do not comply with the Statement, then the consequences may be as follows:

- Formal investigation
- Disciplinary action
- Dismissal
- Potential criminal charges.

2.3 ICAC Advice

It should be noted that the Independent Commission Against Corruption (ICAC) in NSW defines those people employed by Council as consultants or contractors to be “public officials”. When employed by Council, consultants & contractors are subject to the jurisdiction of ICAC and are considered to be “public officials” for the purpose of the ICAC act.

In addition, any individual can be found corrupt by the ICAC (even if they are not a public official) if they try to improperly influence a public official or Council’s honest or impartial exercise of its official functions.

Further information relating to the ICAC Act is readily available to all Suppliers (including tenderers, contractors and consultants) at the ICAC web site – www.icac.nsw.gov.au and copies of all relevant Council policies are also available at any time.

3. Bribes, Gifts and Benefits

Council’s Code of Conduct requires that Council officials do not seek or accept bribes, gifts or benefits of greater than nominal value. Details regarding nominal value can be obtained from section 6 of the Council’s Code of Conduct.

Bribes should never be accepted. A person offered a bribe should refuse it and report the incident as soon as possible to their supervisor. Council will take steps to report the matter to ICAC and the police immediately.

Nominal value gifts or benefits do not create a sense of obligation and may include things like inexpensive pens and pencils, notepads, key rings or diaries.

Gifts and benefits above nominal value create a sense of obligation, such items include tickets to sporting or entertainment events, discounted products for personal use or accepting meals and hospitality which are greater than nominal value.

Council understands that the offering of gifts and incentives is common practice in the private sector to promote business relations. However, Council applies the principles of merit to all dealings of Council. There is no need or place for gifts or incentives when doing business with Council.

It should be made clear that gifts must not be given in connection with any prospective business dealings with Council and that Council officials are not permitted to ask for any reward or incentive for doing their job.

Suppliers are asked to respect that Council officials may refuse gifts or incentives because they wish to avoid any perception of conflicts of interest and comply with Council policy.

4. Conflicts of Interest

A conflict of interest exists when you could be influenced, or a reasonable person would perceive that you could be influenced, by a personal interest when carrying out your public duty.

Council’s Code of Conduct requires that Council officials disclose and resolve any possible conflicts of interest they have. The Code requires that if any Council official has a conflict of interest, in any matter, they must not be involved in any discussion or decision making regarding the matter.

Council’s Code of Conduct also requires a member of Council staff who is

considering outside employment or contract work that relates to the business of Council or that might conflict with their Council duties must notify and seek the approval of the General Manager in writing.

The General Manager may prohibit employees from engaging in secondary employment if that work directly or indirectly conflicts or potentially conflicts with the business of Council or with the employee's function, duties or responsibilities at Council.

5. Communication Requirement

As a general principle, all communication with suppliers from Council should be clear, direct & accountable. Suppliers also have an obligation to ensure that their communication with Council abides by these three principles in order to minimise the risk of inappropriate influences being brought to bear on the business relationship.

There will be times where some communication needs to be strictly confidential for commercial-in-confidence or other reasons. This however should not preclude proper accountability and both parties should be able to explain the reasons for instituting specific communication protocols or keeping some communication confidential.

Public perception of inappropriate influence can be extremely damaging to the reputation of both parties, even if nothing has occurred. Therefore, it is in the best interests of both parties to ensure that formal communication processes are observed at all times and that all communication supports Council's core values of integrity, transparency and fairness.

6. Tendering

This Statement will form part of the formal tendering process for Council and all tenderers will be asked to submit a signed declaration stating that they have read and fully understood the contents of the full Statement in relation to dealing with Council.

7. Public Awareness

A public awareness statement has been developed. This statement will be distributed to suppliers and Council officials informing them of the existence of Council's Statement of Business Ethics Policy and stressing its important features.

Council's Statement of Business Ethics Policy and public awareness statement will be published on Council's website.

8. What happens if you think there is a breach?

If you are concerned about a possible breach of this Statement, or about any conduct that could involve fraud, corrupt conduct, maladministration or serious and substantial waste of public funds, please contact Council's General Manager, or one of Council's Directors. Please be aware that if you do approach a Council Director with such a report, it is a requirement of ICAC that the Director must inform the General Manager immediately.

It should also be noted that once the General Manager is made aware of a possible breach as described above, that it is incumbent upon him or her to report this directly to the ICAC.

For Council staff, please refer to Council's documentation on Protected Disclosures for more information on the processes that you are required to follow in the case of a possible breach of the Statement.

LEGISLATION

The Local Government Act 1993

Local Government (General) Regulation 2005

ICAC "Developing a statement of business ethics" Guidelines.

Modern Slavery Act 2018 (Cth)

POLICY

Council's Code of Conduct

PROCEDURE

No additional procedures.

Authorisation Details

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Details History

Version No.	Date changed	Policy type	Modified by	Amendments made
1	12/02/2007	External	Governance	Original Policy adopted by Council. Minute No. 27
2	11/04/2011	External	Governance	Adopted by Council. Minute No. 501
3	12/07/2022	External	Governance	Policy number updated from B45-1 to MSC24E Legislation updated to include <i>Modern Slavery Act 2018</i> (NSW), Statement of Business Ethics updated.

Statement of Business Ethics

This Statement is a means of providing guidance for suppliers, service providers, contractors and individuals to adopt standards of ethical behaviour that meet Council's requirements.

Council's business dealings are intended to achieve the best possible outcome in the interests of Council and its ratepayers for the supply of goods and services. In doing this, all business undertakings are conducted with complete fairness and are open to public scrutiny (subject to commercial confidentiality).

Council will ensure that all policies, procedures and practices related to tendering, contracting and the purchase of goods and services are consistent with best practice and the highest standards of ethical conduct. All procurement activities and decisions will be fully and clearly documented to provide an effective audit trail and allow for effective review.

In transactions which involve procurement and business matters, Council is guided by the following principles:

Fairness: Council treats all parties involved impartially. Equal opportunity to submit bids and gain access to information will be provided to all potential contractors or suppliers. Tenders will not be called unless there is the intention to award a contract, subject to a satisfactory offer.

Prevention of Corruption: Council is committed to high ethical standards and it is the responsibility of Councillors and staff, as well as Council suppliers and contractors, to not only act honestly but also report any instances of possible corruption, maladministration or illegal activities.

Value-for-Money: Council considers all factors which are relevant to a particular procurement of goods or services. These include initial and ongoing costs; quality and reliability; customer service; OH&S; technical expertise; environmental sustainability and other legislative compliance. Value for money does not necessarily mean 'lowest price'. However, the lowest price might represent best value for money if it satisfies the other criteria.

Objectivity: Council establishes procurement criteria and objectively assesses all tenders and quotes against these nominated criteria. All procurement decisions are based on merit and take into account all relevant information and circumstances that apply to a given procurement requirement.

Doing Business with Council

Suppliers and contractors shall be aware of the following requirements when dealing with Council.

Conflict of Interest: Conflicts of interest include both pecuniary and non-pecuniary interests. (A pecuniary interest is an interest that a person has in a matter because of the reasonable likelihood or expectation of appreciable financial gain to the person. A non-pecuniary interest may include family relationships, friendships or other interests that do not involve a direct financial gain.) Council staff are required to disclose any potential conflicts of interest. Suppliers and contractors to Council are asked to do the same.

Use of Information: Any confidential Council information should not be revealed to persons other than those with a genuine need and authority. Private, confidential, commercial-in-confidence or proprietary information obtained as result of doing business

with Council, should never be given to competing interests or unauthorised persons. Suppliers and contractors handling private and personal information are expected to uphold confidentiality at all times.

Gifts and Benefits: Council only permits the acceptance of gifts by Councillors or staff if they are a nominal or token value and do not create a sense of obligation. Suppliers that offer gifts or benefits as a reward for, or perceived as influencing, the purchasing decisions of Council staff will not be tolerated. Failure to comply with this requirement will result in Council ceasing to do business with the supplier.

Use of Council's Resources: Suppliers and contractors may only use Council resources and equipment if it is in accordance with specific conditions of a formal contract.

Employment of Council Staff: All suppliers and contractors who deal with Council are not permitted to offer Council staff outside employment or business proposals of any kind. Council staff have a duty to maintain public trust and confidence, and not use commercially sensitive information to facilitate future employment opportunities in the private sector.

Public Comments: Suppliers and contractors must not make any public comments or statements that would lead anyone to believe they are representing Council or expressing its views or policies.

Canvassing Support: During a tender process, any prospective supplier or contractor shall not directly or indirectly discuss their tender bid with a Councillor, or canvass support from an employee of Council, at any time. Any supplier or contractor involved in such activity will result in their tender being rejected.

Modern Slavery: Suppliers and contractors must comply with the requirements under the Modern Slavery Amendment Act 2021 (Cth) and all related legislation including the Modern Slavery Act 2018 (NSW). Council will not participate in any procurement with a supplier or contractor that is found to be engaging in modern slavery.

Complying with this Statement

By complying with the principles and standards of behaviour outlined in this Statement, all parties will be able to advance their objectives and interests in a fair and ethical manner. Failure to comply with this Statement may be deemed as a breach of contract. Council may terminate its contract or take other actions considered appropriate.

Reporting

To report any unethical behaviour in doing business with Council, please lodge a submission in writing to:

The General Manager
Muswellbrook Shire Council
60-82 Bridge Street
Muswellbrook NSW, 2333.
council@muswellbrook.nsw.gov.au