



# Conflicts of Interest Policy

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## 1 Introduction

There is nothing unusual or necessarily wrong in having a conflict of interests. How it is dealt with is the important thing.

Council's Code of Conduct addresses conflicts of interest and this Policy supports the Code. The Policy assists council officials to identify conflicts of interest and how they are to be managed.

Council officials are defined as councillors, members of staff of council, administrators, council committee members, conduct reviewers and delegates of Council.

A conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty.

The Independent Commission Against Corruption describes private interests as:

*Anything that can have an impact on an individual or group. The term "private interests" includes not only the personal, professional or business interests that each of us has, but also the personal, professional or business interests of the individuals or groups we associate with. This might include relatives, friends or even rivals and enemies. Whether we wish to see them benefit or be disadvantaged, we have a private interest in relation to such people.*

*Private interests, then, are those interests that can bring benefit or disadvantage to us as individuals, or to others whom we may wish to benefit or disadvantage.*

The political views of a councillor do not constitute a private interest.

It is not always easy to recognise when private interests and public duty are, or might be, in conflict with each other. The key test is whether an individual public official could be influenced, or appear to be influenced, by a private interest in carrying out their public duty.

This is an objective test. When applied it should focus on the official role and the private relationships and interests of the person concerned, and whether a reasonable disinterested person would think these relationships and interests could conceivably conflict or appear to conflict with the person's public role.

A transparent system that is observed by everyone in an organisation as a matter of course will also demonstrate to members of the public and others who deal with the organisation that its proper role is performed in a way that is fair and unaffected by improper considerations.

## 2 Conflicts of Interest

Private interests can be of two types: pecuniary or non-pecuniary. A non-pecuniary interest can be a significant or not significant interest.

### Pecuniary Interest

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 will also be taken to have a pecuniary interest in a matter if that person's:

- Spouse or de facto partner, or
- relative of the person, or
- partner or employer of the person, or
- company or other body of which the person, or a nominee, partner or employer of the person is a member,

has a pecuniary interest in the matter.

### Non-pecuniary interests

Non-pecuniary interests are private or personal interests the council official has that do not amount to a pecuniary interest as described above. These commonly arise out of family, or personal relationships, or involvement in sporting, social or other cultural groups and associations and may include an interest of a financial nature.

### Significant non-pecuniary interests

As a general rule, a non-pecuniary conflict of interests will be significant where a matter does not raise a pecuniary interest but it involves:

- a) a relationship between a council official and another person that is particularly close, for example, parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse, current or former spouse or partner, de facto or other person living in the same household
- b) other relationships that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship
- c) an affiliation between the council official and an organisation, sporting body, club, corporation or association that is particularly strong.

### 3 Responsibilities

We must be impartial and fair in our dealings with ratepayers, residents, suppliers, developers, tenderers and the general public in order to retain their trust, confidence and support. To do this it is essential that all possible conflict of interests are recognised and appropriately disclosed and managed.

Councillors, members of staff and delegates must ensure that opportunities do not exist for their interests, or those of people close to them, to conflict with the impartial performance of their Council duties.

Any potential, real or perceived conflict between an individual's interests and those of the Council must be resolved in favour of the Council.

Not only must our actions be free of any conflicts, but we must ensure that they are clearly seen to be free of any conflict of interests.

It is therefore important that you consider what other people might think of the situation. This should include, for example, successful and unsuccessful tenderers, other potential suppliers, other businesses, clients, ratepayers, development application applicants and objectors, fellow Councillors and staff members, residents and members of the public.

Council officials should avoid conflicts of interest where it is practical to do so. This may be done through divesting oneself of a personal interest or avoiding involvement at Council in a particular matter or the decision making process of that matter.

Conflicts of interest cannot always be avoided. Unavoidable conflicts of interest need to be identified, disclosed and effectively managed.

Council officials must have no involvement, at any time, in any matter in which they have a pecuniary interest or significant non-pecuniary interest.

Council officials must declare conflicts of interest. The notification should be made as soon as practical to ensure probity in Council's processes and business and to help protect the reputation of the individual with the conflict of interests.

For example:

- a Councillor with a conflict of interests should not wait until a Committee/Council meeting to notify the conflict of interests, but should make a written notification as soon as the conflict is known. A notification will still need to be formally made at each Committee or Council Meeting when the matter is being considered.
- A member of staff of Council should not wait until a matter is physically lodged with Council to notify the conflict of interests, but should make a written notification as soon as they know that a matter which creates a conflict of interests will be submitted to the Council.

In many cases only you will be aware of the potential for a conflict of interests. The onus for notification is therefore on you.

## 4 Managing Conflicts of Interest

Councillors must manage their conflicts of interest appropriately and with transparency. This includes:

- declaring your conflicts of interest in writing to the General Manager as soon as you become aware of the conflicts of interest and verbally at meetings
- in relation to pecuniary and significant non-pecuniary conflicts of interest:
  - distancing yourself from any involvement in the matter and particularly in the decision making process
  - not obtaining documents and information from Council relating to the matter, decision or transaction, unless the documents and information is available to the general public, ie meeting business papers
  - not discussing the matter or providing advice or information to any party involved in or associated with the matter
- not communicating with other Council officials in a manner that could be perceived as trying to influence the conduct or decisions of those officials in an improper manner
- in relation to a reportable political donation made by a major political donor in the previous 4 years who has a matter before council, declaring the non-pecuniary conflict of interest, the nature of the interest and have no involvement in the matter
- declaring your conflicts of interest in a proposal relating to the making of a principal environmental planning instrument applying to the whole or a significant part of the council's area, or the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant part of the council's area, and making a written special disclosure in the prescribed form before the commencement of the relative meeting
- Submitting a Primary Return of *Disclosure of Pecuniary Interests and other Matters* within 3 months of becoming a Councillor and thereafter submitting an Ordinary Return for each July – June period.

Council staff must manage their conflicts of interest appropriately and transparently. This includes:

- declaring your conflicts of interest in writing to your manager or General Manager as soon as you become aware of the conflicts of interests
- in relation to pecuniary and significant non-pecuniary conflicts of interest:
  - distancing yourself from any involvement in the matter and particularly in the decision making process
  - not obtaining documents and information from Council relating to the matter, decision or transaction, unless the documents and information is available to the general public, i.e. meeting business papers
  - not discussing the matter or providing advice or information to any party involved in or associated with the matter
- not communicating with other Council officials in a manner that could be perceived as trying to influence the conduct or decisions of those officials in an improper manner
- if your conflicts of interest changes or still exists a year after the initial written notification you must make a new notification in writing to your manager or the General Manager
- managers passing a copy of the written notifications to the General Manager

- managers and staff together preparing a document detailing how the conflict will be managed and passing a copy of the agreed management plan of action to the General Manager
- staff complying with the management plan of action
- managers monitoring the management of the conflict of interests
- staff and managers always putting the public interest ahead of a person's private interest in a conflict of interest situation
- if you are considering secondary employment that relates to the business of the Council or might conflict with your council duties, you must notify and seek approval of the General Manager in writing.
- For senior staff and designated persons, submitting a Primary Return of *Disclosure of Pecuniary Interests and other Matters* within 3 months of becoming employed at Council and thereafter submitting an Ordinary Return for each July – June period.

## 5 Breaches

A Code of Conduct or Conflicts of Interest Policy complaint must be made within 3 months of the alleged conduct occurring or within 3 months of the complainant becoming aware of the alleged conduct.

A complaint made after 3 months may only be accepted if the General Manager, or, in the case of a complaint about the General Manager, the Mayor, is satisfied that there are compelling grounds for the matter to be dealt with under the Code of Conduct.

You should report suspected breaches of the Code of Conduct or the Conflicts of Interest Policy by council officials (excluding the General Manager) to the General Manager in writing.

Where you believe that the General Manager has breached the Code of Conduct or the Conflicts of Interest Policy, you should report the matter to the Mayor in writing.

The General Manager must refer all Code of Conduct and Conflicts of Interest complaints about conduct reviewers and administrators to the Division of Local Government.

The General Manager must refer the following complaints about councillors to the Division of Local Government:

- a) complaints alleging a breach of the pecuniary interest provisions of the Local Government Act,
- b) complaints alleging a failure to comply with a requirement under the code of conduct to disclose and appropriately manage conflicts of interests arising from reportable political donations,
- c) complaints alleging a breach of Part 8 of the Code of Conduct relating to the maintenance of the integrity of the code, and
- d) complaints the subject of a special complaints management arrangement with *the Division* under clause 5.40 (of *the Procedures*).

The Mayor must refer the following complaints about the General Manager to the Division of Local Government:

- a) complaints alleging a breach of the pecuniary interest provisions of the Local Government Act,
- b) complaints alleging a breach of Part 8 of the Code of Conduct relating to the maintenance of the integrity of the code, and
- c) complaints the subject of a special complaints management arrangement with *the Division* under clause 5.40 (of *the Procedures*).

Councillors should not make allegations of suspected breaches of the Code of Conduct or the Conflicts of Interest Policy at Council or Committee meetings or in other public forums.

Where a complaint concerns a failure to disclose a pecuniary interest in contravention of Chapter 14 Part 3 of the *Local Government Act 1993*, it may be made to the Director-General, of the Department of Premier and Cabinet.

## 6 Policy Review

This Policy was adopted by Council on 12 August 2013.

Council first adopted a Conflicts of Interest Policy in 1997 and revised the Policy in January 2002, September 2008 and 18 February 2013.

## 7 References

Further information may be obtained from:

Local Government Act 1993  
 Local Government (General) Regulation 2005  
 Council's Code of Conduct  
 Council's Code of Meeting Practice  
 Council's Public Interest Disclosures Policy and Internal Reporting System  
*Under Careful Consideration: Key Issues for Local Government*, Independent  
 Commission Against Corruption and Department of Local Government Publication  
*Good Conduct and Administrative Practice: Guidelines for Councils*, The  
 Ombudsman  
*Report on Investigation into Local Government, Public Duties and Conflicting  
 Interests*, Independent Commission Against Corruption  
*Managing Conflicts of Interest in the Public Sector Toolkit*, Independent  
 Commission Against Corruption  
*Identifying and managing conflicts of interest in the public sector*, Independent  
 Commission Against Corruption

This Policy will be reviewed every year or as required in the event of legislative changes. This Policy may also be changed as a result of other amendments that are to the advantage of Council and in the spirit of this Policy.

Any amendment to this Policy must be by way of a Council Resolution.

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## Policy Amendments

Date	Responsible Officer	Description

## Annexures

- Annexure 1            Questions to Consider
- Annexure 2            Local Government Act - Obligations for Pecuniary Interests

## Annexure 1

### Questions to Consider

The following questions may assist you in deciding whether a conflict of interests exists or whether your behaviour could create the impression that it does:

- Do I, a relative, friend or associate stand to gain or lose financially from Council's decision or action on this matter?
- Do I, a relative, friend or associate stand to gain or lose my/our reputation because of Council's decision or action?
- Have I contributed in a private capacity in any way to the matter before Council?
- Have I made any promises or commitments in relation to the matter?
- Have I received a benefit or hospitality from someone who stands to gain or lose from Council's decision or action?
- Am I a member of an association, club or professional organisation, or do I have particular ties and affiliations with organisations or individuals, who stand to gain or lose from Council's consideration of the matter?
- Have I received or benefitted from a reportable political donation (of or exceeding \$1,000) made by a major political donor in the previous 4 years where the donor has a matter before council? (Note: donations below \$1,000 may still give rise to a non-pecuniary conflict of interests.)
- Did the person donate to my election campaign?
- Is the person someone who helped during my election campaign?
- Could there be benefits for me in the future that could cast doubt on my objectivity?
- If I do participate in assessment or decision making, would I be happy if my colleagues and the public became aware of my association or connection?
- Would a fair and reasonable person perceive that I was influenced by personal interest in performing my public duty?
- Do I need to seek advice or discuss the matter with an objective party?
- Am I confident of my ability to act impartially and in the public interest?
- Do I understand the possible penalties if I go on with the action?

**Notes:** This is not a complete list of matters to consider. You may need to consider other issues. The references to "before Council", "Council's consideration", etc. also refer to items dealt with under delegated authority by Council officers.

## Annexure 2

### Local Government Act - Obligations for Pecuniary Interests

The *Local Government Act 1993* imposes requirements for Council officials to declare any pecuniary interests they might have. **The Act should be referred to in all matters concerning possible pecuniary interests. Below is a summary of the Act's requirements.**

Section 443 identifies those who will have a pecuniary interest to be:

*A person has a pecuniary interest in a matter if the pecuniary interest is the interest of:*

- (a) the person, or*
- (b) the person's spouse or de facto partner or a relative of the person, or a partner or employer of the person, or*
- (c) a company or other body of which the person, or a nominee, partner or employer of the person, is a member.*

*However, a person is not taken to have a pecuniary interest in a matter as referred to in (b) or (c) above:*

- (a) if the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or*
- (b) just because the person is a member of, or is employed by, a council or a statutory body or is employed by the Crown, or*
- (c) just because the person is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.*

If you are a Councillor or a designated person you **must** complete and lodge with the General Manager a disclosure of interest return in accordance with Section 449, which states:

- (1) A councillor or designated person must complete and lodge with the general manager, within 3 months after becoming a councillor or designated person, a return in the form prescribed by the regulations.*
- (1A) A person must not lodge a return that the person knows or ought reasonably to know is false or misleading in a material particular.*
- (2) A person need not lodge a return within the 3-month period after becoming a councillor or designated person if the person lodged a return in that year or the previous year or if the person ceases to be a councillor or designated person within the 3-month period.*
- (3) A councillor or designated person holding that position at 30 June in any year must complete and lodge with the general manager within 3 months after that date a return in the form prescribed by the regulations.*
- (4) A person need not lodge a return within the 3-month period after 30 June in a year if the person lodged a return under subsection (1) within 3 months of 30 June in that year.*
- (5) Nothing in this section prevents a councillor or designated person from lodging more than one return in any year.*

- (6) *Nothing in this section or the regulations requires a person to disclose in a return lodged under this section an interest of the person's spouse or de facto partner or a relative of the person.*

If you are a Councillor or a member of a Council committee, other than a committee that is wholly advisory, and you have a pecuniary interest you must act in accordance with Section 451, which states:

- (1) *A councillor or a member of a council committee who has a pecuniary interest in any matter with which the council is concerned and who is present at a meeting of the council or committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable.*
- (2) *The councillor or member must not be present at, or in sight of, the meeting of the council or committee:*
- (a) *at any time during which the matter is being considered or discussed by the council or committee, or*
- (b) *at any time during which the council or committee is voting on any question in relation to the matter.*
- (3) *For the removal of doubt, a councillor or a member of a council committee is not prevented by this section from being present at and taking part in a meeting at which a matter is being considered, or from voting on the matter, merely because the councillor or member has an interest in the matter of a kind referred to in section 448.*
- (4) *Subsections (1) and (2) do not apply to a councillor who has a pecuniary interest in a matter that is being considered at a meeting, if:*
- (a) *the matter is a proposal relating to:*
- (i) *the making of a principal environmental planning instrument applying to the whole or a significant part of the council's area, or*
- (ii) *the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant part of the council's area, and*
- (b) *the councillor made a special disclosure under this section in relation to the interest before the commencement of the meeting.*
- (5) *The special disclosure of the pecuniary interest must, as soon as practicable after the disclosure is made, be laid on the table at a meeting of the council and must:*
- (a) *be in the form prescribed by the regulations, and*
- (b) *contain the information required by the regulations.*

A disclosure made at a Council or Committee meeting must be recorded in the minutes of the meeting (*section 453*).

A general notice given to the General Manager in writing by a Councillor or a member of a Council committee to the effect that the Councillor or member, or the Councillor's or member's spouse, de facto partner or relative, is:

- (a) a member, or in the employment, of a specified company or other body, or
- (b) a partner, or in the employment, of a specified person,

is, unless and until the notice is withdrawn, sufficient disclosure of the Councillor's or member's interest in a matter relating to the specified company, body or person that may be the subject of consideration by the Council or Council committee after the date of the notice (*section 454*).

If you are a designated person you must disclose in writing to the General Manager the nature of any pecuniary interest you have in any Council matter with which you are dealing (section 459).

If you are an advisor to Council and giving advice on any matter at any meeting of the Council or Committee you must disclose the nature of any pecuniary interest you have in the matter to the meeting at the time the advice is given (section 456).

Section 448 lists matters that do not have to be disclosed, those being:

- (a) *an interest as an elector,*
- (b) *an interest as a ratepayer or person liable to pay a charge,*
- (c) *an interest 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 Part,*
- (d) *an interest in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to a relative of the person by the council in the same manner and subject to the same conditions as apply to persons who are not subject to this Part,*
- (e) *an interest 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) *an interest of a member of a council committee 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 the committee member has been appointed to represent the organisation or group on the committee,*
- (g) *an interest in a proposal relating to the making, amending, altering or repeal of an environmental planning instrument other than an instrument that effects a change of the permissible uses of:*
  - (i) *land in which the person or a person, company or body referred to in section 443 (1) (b) or (c) has a proprietary interest (which, for the purposes of this paragraph, includes any entitlement to the land at law or in equity and any other interest or potential interest in the land arising out of any mortgage, lease, trust, option or contract, or otherwise), or*
  - (ii) *land adjoining, adjacent to or in proximity to land referred to in subparagraph (i), if the person or the person, company or body referred to in section 443 (1) (b) or (c) would by reason of the proprietary interest have a pecuniary interest in the proposal,*
- (h) *an interest 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,*
- (i) *an interest of a person arising from the proposed making by the council of an agreement between the council and a corporation, association or partnership, being a corporation, association or partnership that has more than 25 members, if the interest arises because a relative of the person 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,*
- (j) *an interest of a person arising from the making by the council of a contract or agreement with a relative of the person for or in relation to any of the following, but only if the proposed contract or agreement is similar in terms and conditions to such contracts and agreements as have been made, or as are proposed to be made, by the council in respect of similar matters with other residents of the area:*

- (i) the performance by the council at the expense of the relative of any work or service in connection with roads or sanitation,*
- (ii) security for damage to footpaths or roads,*
- (iii) any other service to be rendered, or act to be done, by the council by or under any Act conferring functions on the council or by or under any contract,*
- (k) an interest relating to the payment of fees to councillors (including the mayor and deputy mayor),*
- (l) an interest relating to the payment of expenses and the provision of facilities to councillors (including the mayor and deputy mayor) in accordance with a policy under section 252,*
- (m) an interest relating to an election to the office of mayor arising from the fact that a fee for the following 12 months has been determined for the office of mayor,*
- (n) an interest of a person arising from the passing for payment of a regular account for wages or salary of an employee who is a relative of the person,*
- (o) an interest arising from being covered by, or a proposal to be covered by, indemnity insurance as a councillor or member of a council committee,*
- (p) an interest arising from appointment of a councillor to a body as representative or delegate of the council, whether or not a fee or other recompense is payable to the representative or delegate.*

**You are encouraged to err on the side of caution by declaring your interests (pecuniary or non-pecuniary) and by not being present during any discussion or decision making process, if there is any doubt.**