

# Conflict of Interest Policy

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The community has a right to expect that Councillors and Council staff perform their duties in a fair and unbiased way and that the decisions they make are not affected by self-interest or personal gain.

It is normal that Councillors, Council staff and Council delegates may experience a conflict between their personal interests and those of Council at some time during their appointment. This is particularly evident in rural and regional councils where relationships exist in a social, family, business or other professional context in a smaller environment, given their population size, as compared with their metropolitan counterparts. It is important in these circumstances to manage such conflict appropriately and in line with this Policy.

Conflict of interests can arise when Councillors or Council staff are influenced, or appear to be influenced, by personal interest(s) when carrying out their duties. The perception of a conflict can be as damaging as an actual conflict, because it undermines public confidence in the integrity of the organisation involved and its Councillors and staff.

## Purpose

- To protect the public interest
- To support transparency and accountability
- To promote individual responsibility and personal example
- To build a supportive organisational culture

## Scope

This Policy applies to Councillors, administrators, employees of Council, contractors, volunteers, members of Council committees and delegates of the Council.

## Policy Provisions

### Pecuniary Interests

- Pecuniary interests must be disclosed.
- A person will be considered to have a pecuniary interest if:
  - they or a person with whom they are associated has a pecuniary interest

- their spouse, defacto partner, relative, partner or employer has a pecuniary interest (relative includes any of the following – parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or an adopted child of the person or the person's spouse)
  - they, a nominee, partner or employer are a member of a company or other body that has a pecuniary interest
- A person is not taken to have a pecuniary interest if:
  - they are unaware of the relevant pecuniary interest of the spouse, defacto partner, relative, partner, employer or company or other body
  - just because the person is a member of, or is employed by, a Council or statutory body or is employed by the Crown, or
  - 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
- A person does not have a pecuniary interest in a matter if the interest is so remote that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter.

### Non-Pecuniary Interests

- Non-pecuniary interests must be disclosed. If this is at a meeting, it must be done as soon as possible.
- Councillors, employees and council officials who are members of sporting clubs, social, religious or other cultural groups and associations should seriously consider whether their memberships could give rise to conflict of interests in Council matters that may affect the clubs, groups or associations. The greater the involvement with the clubs, groups or association, such as the holding of an office, the greater the likelihood of a real or perceived conflict of interests.
- In cases of a non-pecuniary interest, councillors, employees and council officials should not do anything which they could not justify to the public and should avoid any occasion for reasonable suspicion or the appearance of improper conduct or only partial performance of their public or professional duties.
- Options for dealing with a non-pecuniary conflict of interests will depend on the circumstances of the matter and an objective assessment of it.

Options for dealing with non-pecuniary interests can include:

- take no action because the conflict is assessed as minor in nature;
- allow limited involvement (eg, participate in discussion but not in decision making);
- prohibit any involvement;
- require that the individual concerned remove the source of conflict;
- include an independent process to provide assurances of probity (eg, for tendering or recruitment selection panels).

## Interests that do not need to be Disclosed

Section 4.6 of Council's Code of Conduct advises that the following interests do not have to be disclosed:

- an interest as an elector
- an interest as a ratepayer or person liable to pay a charge
- 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
- 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 council in the same manner and subject to the same conditions as apply to persons who are not subject to this code
- 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)
- if you are a council 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 council committee
- 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
- an interest you have 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 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
- an interest you have arising from the making by the council 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 council in respect of similar matters with other residents of the area:
  - the performance by the council at the expense of your relative of any work or service in connection with roads or sanitation
  - security for damage to footpaths or roads
  - 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
- an interest relating to the payment of fees to councillors (including the mayor and deputy mayor)
- 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 of the LGA
- 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

- 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
- an interest arising from being covered by, or a proposal to be covered by, indemnity insurance as a councillor or a council committee member
- an interest arising from the appointment of a councillor to a body as a representative or delegate of the council, whether or not a fee or other recompense is payable to the representative or delegate.

## Disclosing Interests

### Councillors and Administrators

- Councillors and Administrators who believe they have an interest in a matter, pecuniary or otherwise, must declare that interest in any meetings or discussions where that matter is to be considered.
- Written notice of a conflict of interests must be given to the General Manager. Notice should be given on a Conflict of Interests Declaration Form (Annexure A).
- Councillors must complete an annual Disclosure of Interest in Written Return.

### General Manager

- If the General Manager declares a conflict of interests in a matter then the Mayor should decide future participation by the General Manager at any time during which the matter is being considered or discussed or voted upon by Council or the Committee.
- Written notice of a conflict of interests must be given to the Mayor. Notice should be given on a Conflict of Interests Declaration Form.
- The General Manager must complete an annual Disclosure of Interest in Written Return.

### Employees and Council Officials (contractors, advisers, members of Council committees and delegates of the Council).

- Employees and Council officials who believe they have an interest in a matter, pecuniary or otherwise, must declare that interest in any meetings or discussions where that matter is to be considered. The conflict must be disclosed in writing to the relevant supervisor or the General Manager in the first instance in relation to staff and to the relevant Director or the General Manager in regard to all other Council officials.
- Written notice of conflicts of interest must be given to the General Manager. Notice should be given on a Conflict of Interests Declaration Form.

## Disclosure of interests in written returns

A councillor or designated person must make and lodge with the General Manager a return in the form set out in schedule 2 of Council's Code of Conduct, disclosing the Councillor's or designated person's interests as specified in schedule 1 of Council's Code of Conduct within three (3) months after:

- becoming a Councillor or designated person, and
- 30 June of each year, and
- the Councillor 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).

## Disclosures at Meetings

A Council Official who has a pecuniary or non-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.

A Disclosure made at a meeting of a council or council committee must be recorded in the minutes of the meeting

If a pecuniary interest is disclosed by a Council Official, the person must not be present at, or in sight of, the meeting of the Council or committee:

- at any time during which the matter is being considered or discussed by the council or committee, or
- at any time during which the council or committee is voting on any question in relation to the matter.

A person does not breach Council's Code of Conduct, 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.

The following criteria should be used to determine the extent of disclosure of the nature of the interest:

- The details should be sufficient to enable other Councillors, committee members and the public to appreciate, in general terms, the connection of the person with the matter under consideration;
- The disclosure must not reveal sensitive information which is not relevant to the matter before the Council or Committee;
- The disclosure must not reveal information which may be unnecessarily damaging to the reputation of some person(s) with whom the person disclosing the interest is associated;
- The disclosure will not unnecessarily prejudice a sensitive commercial or legal situation.

A person who, at the request or with the consent of Council or a Council committee, gives advice on any matter at any meeting of the Council or a Council committee must disclose the nature of any pecuniary interest the person has in the matter to that meeting at the time the advice is given.

Council's Code of Conduct is not breached if the advisor 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.

### **Deciding if a Conflict of Interests Exists**

The following questions may help in deciding whether a conflict of interests exists or could create the impression that a conflict of interests exists:

- Do I, a relative, friend or associate stand to gain or lose financially from the 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 on this matter?
- 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 this matter?
- Is the person an election campaign donor or 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 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?

**Note:** The references to "before Council", "Council's consideration", etc, also refer to issues to be dealt with under delegated authority by Council officers.

### **Responsibility for Making a Disclosure**

If a person is unsure as to whether or not they have a conflict of interests, they should give full written details to the General Manager or the Mayor or seek independent legal advice. The objective of notification is to protect both the individual and the Council.

Neither the Mayor nor General Manager has a responsibility to provide a person with a determination on whether or not they have a conflict of interests in a matter.

The responsibility to determine a conflict of interests rests solely with the individual as only that individual is aware of the grounds upon which a potential for a conflict of interests arises. It is prudent to err on the side of caution by declaring an interest and by not participating in discussion or in decision making if there is any doubt as to their interest in the matter.

### **Complaints Regarding Failure to Disclose an Interest**

Staff, Councillors or persons engaged by Council may make a report under Council's internal reporting system for protected disclosures if they believe a colleague has failed to disclose a conflict of interest.

Any person may make a complaint to the Director-General of the Office of Local Government, or the Director General may make a complaint, that a person has or may have failed to disclose a pecuniary interest.

A complaint must be in writing; and

- must identify the complainant and the person against whom the complaint is made; and
- must give particulars of the grounds of the complaint; and
- must be verified by statutory declaration; and
- must be lodged with the Departmental Chief Executive the following address:

Executive Director, Office of Local Government  
Locked Bag 3015, Nowra, NSW 2541  
Phone: (02) 4428 4100  
Email: [olg@dlg.nsw.gov.au](mailto:olg@dlg.nsw.gov.au)  
Web: [Council Complaint Form](#)

The Departmental Chief Executive may investigate a complaint or may refer a complaint for investigation to an authority, being the NSW Ombudsman, the Independent Commission Against Corruption, the Commissioner of Police or the Director of Public Prosecutions, if the authority agrees to the referral. Such referral may be made whether or not the Departmental Chief Executive has begun to investigate the complaint.

The Departmental Chief Executive may decide not to investigate a complaint but to authorise an investigation under Section 430 of the Local Government Act 1993 in respect of a matter to which the complaint relates.

The NSW Civil and Administrative Tribunal may consider reports concerning complaints.

## Managing Conflict of Interests

Apart from declaring an interest, Council Officials must manage any identified conflict.

Strategies for managing a conflict of interests include:

1. Take no action except to register the details in the case where the potential for a conflict is minimal.
2. Place restrictions on an employee's involvement in the matter in cases where they can be effectively separated from parts of the process.
3. Use a disinterested third party to oversee part or all of the process where it is not feasible or desirable for an employee to remove themselves for the decision-making process.
4. The employee or Councillor can choose to remove themselves completely from the matter.
5. The employee or Councillor may elect to relinquish the private interest that is the source of the conflict.

Annexure B provides a strategy template for managing conflict of interests.

## Conflict of Interests Register

Council will maintain a register of all declared interests. This register will be available for public inspection under the Government Information (Public Access) Act 2009.

## Legislative Context

Section 440AAA of Local Government Act 1993, states that Council must adopt a model code of conduct prescribed by the regulations under [section 440](#) with specific provisions relating to the management of conflicts of interest as below:

- (3) *The model code provisions relating to disclosure of pecuniary interests are to make provision for or with respect to the following--*
- (a) *the manner and form of disclosures of pecuniary interests,*
  - (b) *the pecuniary interests that must, or that are not required to be, disclosed,*
  - (c) *returns listing pecuniary interests, the form of returns and lodging of returns,*
  - (d) *disclosures of pecuniary interests at council or committee meetings,*
  - (e) *presence and participation at council meetings by persons who have relevant pecuniary interests,*
  - (f) *conduct of meetings and other actions if a disclosure of a pecuniary interest is made,*
  - (g) *prohibiting disclosing, or including in a return, false or misleading information relating to pecuniary interests,*
  - (h) *records of disclosures of pecuniary interests.*

Further, the following legislation may also apply:



- Public Interest Disclosures Act 1994
- Government Information (Public Access) Act 2009
- Independent Commission Against Corruption Act 1988
- Ombudsman Act 1974

## Related Documents

- Code of Conduct
- Code of Meeting Practice
- Office of Local Government's Pecuniary Interest Guidelines
- Independent Commission Against Corruption's publication "*Managing Conflict of Interests in the Public Sector*"
- Fraud and Corruption Policy (POL 1000)
- Public Interest Disclosures Policy (POL 097)

## Definitions

Term	Definition
Conflict of interests	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.
Council Official	Includes Councillors, administrators, members of staff of Council, contractors, volunteers, independent conduct reviewers, members of Council committees including the Conduct Review Committee, delegates of Council and Designated Persons.
Pecuniary interest	This 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 or another person with whom the person is associated.
Non-pecuniary interest	This is any private interest that does not relate to money. Non-pecuniary interests are private or personal interests the council official has that do not amount to a pecuniary interest as defined in Council's Code of Conduct. A non-pecuniary interest may arise out of kinship, friendship, membership of an association, society or trade union, or involvement or interest in sporting, social or cultural activities.
Actual Conflict of Interests	This involves direct conflict between a Council Representative's current duties and responsibilities and their existing private interests.
Perceived Conflict of Interests	This is where it could be perceived by others that a Council Representative's private interests could improperly influence the performance of their public duties – whether or not this is actually the case.

Term	Definition
Potential Conflict of Interests	This arises when a Council Representative has private interests that could interfere with their public duties in the future.
Designated Person	Under Code of Conduct, designated persons include: <ul style="list-style-type: none"> <li>the General Manager and other senior staff of Council;</li> <li>a person who, by virtue of their Council position exercises functions (such as regulatory, town planning, financial functions or contractual functions) that, in their exercise, could give rise to a conflict between the person's duty as a member of staff or delegate and the person's private interest; and a person (other than a member of the senior staff of the council) who is a member of a committee of the council (such as the Audit &amp; Risk Committee) who by virtue of their membership and associated committee 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.</li> </ul>

### Revision History

Revision number	Council resolution	Council meeting date
1	Res No: 07/489.4	17 December 2007
2	Res No: 09/077	27 July 2009
3	Res No: 13/187	29 July 2013
4	Res No: 13/224.1	26 August 2013
5	General Manager approval	August 2016
6	Res No: 17/279	28 August 2017
7	General Manager approval	17 December 2021
8	Res No. 22/354	17 October 2022
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## ANNEXURE A: STRATEGIES TO MANAGE A CONFLICT OF INTERESTS

What Strategies can I use to manage a conflict of interests?

Strategy	What this strategy means	When it is most suitable
Register*	When you formally register details of the existence of a possible or potential conflict of interests.	<ul style="list-style-type: none"> <li>For very low-risk conflict of interests</li> <li>Where recording the conflict of interests sufficient to maintain transparency</li> </ul>
Restrict	When restrictions are placed on your involvement in the matter to oversee part or all of the process that deals with the matter.	<ul style="list-style-type: none"> <li>You can be effectively separated from parts of the activity or process</li> <li>The conflict of interests is not likely to arise frequently</li> </ul>
Recruit	When a disinterested third party is used to oversee part or all of the process that deals with the matter.	<ul style="list-style-type: none"> <li>It is not feasible or desirable for you to remove yourself from the decision-making process</li> <li>In small or isolated communities where your particular expertise is necessary and genuinely not easily replaced</li> </ul>
Remove	When you choose to remove yourself completely from the matter	<ul style="list-style-type: none"> <li>For ongoing serious conflict of interests, where restriction or recruitment or others is not appropriate</li> </ul>
Relinquish	When you relinquish the private interest that is creating the conflict	<ul style="list-style-type: none"> <li>Where your commitment to public duty outweighs your attachment to your private interest</li> </ul>
Resign	When you resign from your position with the agency	<ul style="list-style-type: none"> <li>No other options are workable</li> <li>Where you cannot or will not relinquish conflicting private work responsibilities</li> <li>Where you prefer this course as a matter of personal principle</li> </ul>

\*All conflict of interests should be registered – regardless of what additional management strategies are adopted.