

GO5 – Draft Conflict of Interests Policy

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Draft Conflict of Interests Policy

270090

TRIM 861

EXECUTIVE SUMMARY

- The purpose of this report is to submit the Draft Conflict of Interests Policy for consideration.
- It is recommended that the Conflict of Interests Policy be adopted.

REPORT

The Governance Health Check is being implemented to ensure we have a framework in place to assist with the regular review of governance processes and to prepare for the changing nature of Local Government and the future growth of the Shire.

The review of policies and the framework identified that a policy was required to support the provisions in Council's Code of Conduct and provide information and guidance on conflict of interests.

The main objectives of the policy are to ensure that Councillors and staff are aware of their obligations and are provided with information and guidance in relation to the management of conflicts between their private interests and their public duties. This ensures we are able to better maintain the integrity of Council's decision-making.

The Draft Conflict of Interests Policy will be a new Policy of Council providing guidance and information for Councillors and staff on conflict of interests.

CONSULTATION

- Council Staff

FINANCIAL IMPLICATIONS

This matter has no financial impact on Council's adopted budget or forward estimates.

ATTACHMENTS

1. Draft Conflict of Interests Policy

RECOMMENDATION

That the Conflict of Interests Policy be adopted.

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1. POLICY OBJECTIVES

- 1.1 The main objectives of this policy are to:
 - 1.1.1 Ensure that Councillors, staff and Council representatives are aware of their obligations and responsibilities under Council's Code of Conduct particularly in relation to the management of conflicts between their private interests and their public duty; and
 - 1.1.2 Support the principles of integrity, fairness, transparency and accountability in Council's decision making processes with a view to enhancing public confidence in Council.

2. BACKGROUND

- 2.1 This policy has been developed in order to provide information and guidance to Councillors, staff and council representatives in the identification, disclosure and management of actual, perceived or potential conflicts of interests.

3. APPLICABILITY

- 3.1 This Policy applies to all Councillors, staff and council representatives.

4. GUIDELINES

- 4.1 **What is a conflict of interests?**
 - 4.1.1 The Office of Local Government's Model Code of Conduct for Local Councils in NSW, adopted by Council, provides that a conflict of interests exists where a reasonable and informed person would perceive that a Council official could be influenced by a private interest when carrying out their public duty.
 - 4.1.2 For the purposes of this Policy a Council official includes a Councillor, member of Council staff, delegate of Council or member of a Council Committee.
 - 4.1.3 All Council officials must avoid or appropriately manage any conflicts of interests and the onus is on Council officials to identify a conflict of interests and take the appropriate action to manage the conflict in favour of their public duty.
 - 4.1.4 In its 2012 publication titled "Identifying and Managing Conflicts of Interest in the Public Sector" the Independent Commission Against Corruption states that: *"Conflicts of interest are not wrong in themselves. It is how they are managed that is important."*

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- 4.1.5 Any conflict of interest must be managed to uphold the probity and integrity of Council decision making and, when considering whether or not a conflict of interests exists, it is important to consider how other impartial persons would view the situation.
- 4.1.6 Private interests can be either pecuniary (financial) or non-pecuniary (non-financial) and definitions of these two types of private interests are contained in the Local Government Act 1993 (the LG Act) and Council's Code of Conduct and are set out below.
- 4.1.7 The views of a Councillor that are properly characterised as political in nature do not constitute a private interest of the Councillor.
- 4.2 What is a pecuniary interest?**
 - 4.2.1 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.
 - 4.2.2 A person will also be taken to have a pecuniary interest in a matter if that person's spouse or de facto partner or a relative of the person or a partner or employer of the person, or a 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.
 - 4.2.3 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 referred to in section 448 of the LG Act.
 - 4.2.4 Examples of pecuniary interests which may involve a conflict of interests are set out in Attachment 9.1.
- 4.3 What is a non-pecuniary interest?**
 - 4.3.1 A non-pecuniary interest is an interest that a person has in a matter that does not amount to a pecuniary interest. These interests commonly arise out of family or personal relationships or involvement in sporting, social or other groups and associations.
 - 4.3.2 Councillors should note that matters before Council involving political or campaign donors may give rise to a non-pecuniary conflict of interests.
 - 4.3.3 Examples of non-pecuniary interests which may involve a conflict of interests are set out in Attachment 9.2.
 - 4.3.4 A non-pecuniary conflict of interests must be managed according to whether it is significant or non-significant.

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4.3.5 As a general rule, a significant non-pecuniary conflict of interests involves:

- 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;
- other relationships that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the business relationship, the frequency of contact and the duration of the friendship or relationship; or
- an affiliation between a Council official and an organisation, sporting body, club, corporation, or association that is particularly strong.

4.4 What are the different types of conflicts of interests?

There are three types of conflicts of interests as follows:

- *Actual* - a Council official, right now, could be influenced by a private interest when exercising a public duty;
- *Perceived* - a Council official could appear to be influenced by a private interest when exercising a public duty (whether or not this is true); or
- *Potential* - a Council official, in the future, could be influenced by a private interest when exercising a public duty.

4.5 Why the identification, disclosure and management of a conflict of interests is important?

4.5.1 The community has a right to expect that Council officials at all levels perform their duties in a fair and unbiased way and that the decisions they make are not affected by self-interest, private affiliations or the likelihood that they, or those close to them, will financially gain or lose from a decision in which they participate.

4.5.2 The perception that a conflict of interests has influenced an outcome can undermine public confidence in the integrity of Council and the official involved.

4.5.3 Unresolved or badly managed conflicts of interests can lead to corruption or abuse of public office or the perception that these exist within Council.

4.6 Identification of a conflict of interests

4.6.1 The Independent Commission Against Corruption (ICAC) has identified the following factors that may put Council officials at risk of a conflict of interests and should be taken into account by Council officials when considering whether their private interests may conflict with their public duty:

- financial and economic interests such as debts or assets;
- a family or private business;

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- a secondary employment commitment;
- affiliations with for-profit and non-profit organisations, sporting bodies, clubs and associations;
- affiliations with political, trade union or professional organisations, and other personal interests;
- obligations to professional, community, ethnic, family or religious groups in a personal or professional capacity;
- obligations because of relationships to people living in the same household;
- enmity towards, or competition with, another individual or group;
- significant family or other relationships with clients, contractors or other staff working in the same (or a related) organisation;
- highly specialist skills in an area where demand for the skills frequently exceeds supply;
- future employment prospects or plans (i.e. post separation employment).

4.6.2 Conflicts of interests can involve complex and sensitive matters and Council supports a culture of open and transparent communication in order to properly manage such conflicts as they arise.

4.6.3 A guiding principle is that, in the case of doubt as to whether a conflict of interests arises, it is better to disclose and manage the conflict in favour of the public duty.

4.6.4 A self-assessment checklist is set out in Attachment 9.3 to assist in the identification of a conflict of interests.

4.7 Good Governance and Conflict of Interests

4.7.1 *Individuals must make their own decisions*

Councillors and council staff must individually take responsibility for assessing whether they have a conflict of interests in any matter relating to their formal council roles. If the answer is yes, then they must act appropriately. This includes making a proper disclosure and potentially not participating in the relevant decision.

4.7.2 *Seeking advice is appropriate*

Councillors and council staff should seek assistance or advice from other people when they think they may have a conflict of interests. These can include the Mayor, fellow Councillors, the General Manager, their direct supervisor or other qualified officers. In some circumstances Councillors may also need to obtain their own independent legal advice.

4.7.3 *Individuals are accountable*

Councillors or officers must ultimately assess whether they have a conflict of interest. Each Councillor or officer is accountable for that assessment and the obligation to make the relevant declaration. This is regardless of any assistance or advice they may have received.

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4.7.4 Commitment and purpose

Councillors should demonstrate their commitment to good governance by determining and declaring a conflict of interests. The decision is for the individual alone (and the Complaints Coordinator and/or the Office of Local Government, if a Code of Conduct complaint is received). Declaring a conflict of interests to hinder the political process diminishes its importance as a principle of good conduct and natural justice.

4.8 Conflict of Interests and Community Representation

4.8.1 Sometimes Councillors will be in a position where they are required to declare a conflict of interest even though their constituents expect them to participate in a decision. For example, a Councillor may have a conflict of interest in a local planning decision which the community feels strongly about.

4.8.2 Because conflict of interests can impact on governance and perceptions of governance, it's important that:

- Councillors ensure they thoroughly analyse the situation (and seek appropriate advice) to determine what is required by the legislation
- Councillors clearly explain the situation to their constituents
- the Council and administration provide support to Councillors, when required, to explain conflict of interest requirements to constituents.

Councillors should not, however, use the process of conflict of interests declaration as a way of avoiding a vote on difficult issues in which they don't have a conflict.

4.9 Disclosure of a conflict of interests

4.9.1 The LG Act and Council's Code of Conduct provides that a Councillor or member of a Council Committee who discloses a pecuniary interest, or a significant non-pecuniary conflict of interest, in a matter at a Council or Committee meeting at which the matter is being discussed must disclose the nature of the interest, leave the meeting, be out of sight of the meeting and not participate in discussion or voting on the matter.

4.9.2 The requirement in clause 4.9.1 for a Councillor to leave a meeting upon the disclosure of a pecuniary interest in a matter at a Council or Committee meeting at which the matter is being discussed does not apply where the circumstances at section 451(4) are met, and the Councillor has made a Special Disclosure pursuant to that section of the LG Act or where the interest is of a kind referred to in section 448 of the LG Act.

4.9.3 Where a Councillor has declared a pecuniary interest in a matter that is later the subject of a rescission motion, and the circumstances for declaring the pecuniary interest have not changed, then the Councillor would also have a pecuniary interest in the rescission motion and the

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relevant pecuniary interest disclosure provisions of the LG Act and the Code of Conduct would apply.

4.9.4 A Councillor or Committee member who discloses a non-significant non-pecuniary conflict of interest in a matter at a Council or Committee meeting at which the matter is being discussed must provide an explanation as to why the conflict does not require any further action in the circumstances.

4.9.5A Councillor or Committee member must register their conflict via a Conflict of Interests Declaration Form.

4.9.6 A member of staff must disclose, in writing, the nature of any pecuniary or non-pecuniary conflict of interest they have in a matter they are dealing with as soon as they become aware of the conflict. This disclosure should be registered through the Conflict of Interests Declaration Form. The Conflict of Interests Register will be regularly reviewed by management and be made available, upon request, for public inspection.

4.10 Managing a conflict of interests

4.10.1 Council recognises the effective management of conflicts of interests is achieved in a number of ways depending upon the nature, complexity and importance of the matter.

4.10.2 Ranging from the simplest to complex, the following strategies, as recommended by the ICAC, may be implemented:

- Register only:* for low-risk conflicts requiring disclosure only;
- Restrict:* restrictions are placed upon the staff member's involvement in all or parts of the matter;
- Recruit:* recruitment of a disinterested impartial third party to oversee all or part of the matter while allowing continuation of involvement of the staff member in the matter;
- Remove:* the staff member is removed from all involvement in the matter due to serious unresolved conflict of interests;
- Relinquish:* the staff member relinquishes their private interest that is creating the conflict;
- Resign:* the staff member resigns as no other options are workable.

4.10.3 The monitoring of the conflict of interests must be on-going and strategies adjusted to take into account any changing circumstances.

4.10.4 A flowchart designed by the ICAC and included in its publication Managing Conflicts of Interests in the Public Sector – Toolkit, November 2004 for the identification, disclosure, management and monitoring of conflicts of interests is set out in Attachment 9.4.

4.11 Confidentiality

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The Conflict of Interests Register for Council Officers is kept by Governance. Access to the public may be given in accordance with the *Government Information (Public Access) Act 2009*.

The Conflict of Interests Register for Councillors is available to the public for inspection.

4.12 Breaches of this Policy

4.12.1 All Council officials have an obligation to comply with Council's Code of Conduct and this Conflict of Interests Policy. Council's Internal Reporting Policy provides for the making of complaints about suspected corrupt conduct and other matters and provides for protection against detrimental action for Council officials who report suspected corrupt conduct and other matters as set out in that Policy.

4.12.2 Failure to comply with this Policy will constitute a breach of the relevant Code of Conduct and may result in disciplinary action or other serious sanctions as set out in Council's Procedure for the Administration of the Code of Conduct.

4.12.3 Any person may make a complaint in relation to the pecuniary interest provisions of the LG Act.

Such complaints must:

- be in writing;
- identify the complainant and the person against whom the complaint is made;
- give particulars of the grounds of the complaint;
- be verified by statutory declaration;
- be lodged with the Director General of the Office of Local Government.

4.12.4 In some circumstances the failure to disclose a conflict of interests in accordance with public sector policy may constitute corrupt conduct as defined in the Independent Commission Against Corruption Act 1988.

4.13 Further information

Further information and guidance on Conflicts of Interests can be obtained by reference to the following documents:

- Identifying and Managing Conflicts of Interests in the Public Sector, ICAC, July 2012 – www.icac.nsw.gov.au
- Managing Conflicts of Interests in the Public Sector – Toolkit publication, ICAC, November 2004
- Conflict of Interests, Fact Sheet 3, NSW Ombudsman, March 2012 – www.ombo.nsw.gov.au

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- Pecuniary Interest Guidelines – NSW Office of Local Government, June 2006 – www.olg.nsw.gov.au
- Council's Code of Conduct

5. RESPONSIBILITY/ACCOUNTABILITY

- 5.1 All Councillors, staff and council representatives are responsible for managing their conflicts of interest.
- 5.2 All Councillors, staff and council representatives are responsible for declaring their conflicts of interest.
- 5.3 The Governance Section is responsible for maintaining a register of all conflicts of interest and regularly analysing data and reporting to Executive and the Audit Committee.

6. RELATED POLICIES

- 6.1 This policy forms part of, and should be read in conjunction with, Council's Code of Conduct. The policy enhances the provisions of Council's Code by providing information and guidance in relation to the management of conflicts of interests.

7. RELATED PROCEDURES

- 7.1 Conflict of Interests Register Procedure

8. RELATED LEGISLATION

- 8.1 Independent Commission Against Corruption Act 1988
- 8.2 Local Government Act 1993

9. ATTACHMENTS

- 9.1 Examples of Pecuniary Interests [derived from examples used in ICAC publications] which may involve a conflict of interests with your public duty
- 9.2 Examples of Non-Pecuniary Interests [derived from examples used in ICAC publications] which may involve a conflict of interests with your public duty
- 9.3 Self-Assessment Checklist to Identify a Conflict of Interests
- 9.4 Flowchart - Managing Conflicts of Interests in the Public Sector – Toolkit, ICAC, November 2004

10. RESOURCES

- 10.1 Managing Conflicts of Interests in the Public Sector – Toolkit, ICAC, November 2004

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11. IMPLEMENTATION STATEMENT

11.1 To ensure this Policy is implemented effectively, Council will employ a variety of strategies involving awareness, education and training. These strategies will be aimed at Councillors, staff and Council representatives and will involve:

- Briefing for all Councillors and inclusion on new Councillor induction program
- Development of training material and Staff Procedures to be delivered to identified staff via face-to-face training and inclusion on Council's intranet
- Review of Policy at induction with all new staff and volunteers
- Communication of Policy to existing staff via e-mail or hard copy
- Inclusion of this Policy on Council's intranet and web site

12. POLICY HISTORY

12.1	Date First Adopted	## / ## / ##
12.2	Most Recent Adoption	## / ## / ##
12.3	Next Review Date	## / ## / ##
12.4	Responsible Officer	Manager Governance

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ATTACHMENT 9.1

Examples of Pecuniary Interests which may involve a conflict of interests with your public duty

- I own property adjacent to a property which is the subject of a development application made to Council.
- I own a private business which may lose customers to a rival business which has lodged a development application with Council to set up new premises near my private business.
- My spouse, de facto partner or relative is an applicant for employment with Council.
- I own shares in a family business which has tendered for a contract with Council.
- My spouse, de facto partner or relative owns a company, in which I have no direct interest, which has tendered for a contract with Council.
- I have secondary employment with a company which has tendered for a contract with Council.

ATTACHMENT 9.2

Examples of Non-Pecuniary Interests which may involve a conflict of interests with your public duty

- My child is a player in a local sporting group which submits a grant application to Council.
- A close personal friend has submitted a tender for a contract to Council.
- A person with whom I have had a personal conflict is an applicant for employment with Council.
- I am the president of a local amateur theatre group which is seeking sponsorship from Council.
- My child's school will be affected by a development which is the subject of a development application made to Council.
- I am active in a voluntary organisation and in my spare time I draw plans for an extension to its premises and these plans accompany a development application submitted to Council.

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ATTACHMENT 9.3

Self-Assessment Checklist to Identify a Conflict of Interest

If you answer "yes" to any of the following questions in relation to a matter you are dealing with you may have a conflict of interest that should be declared and managed in favour of the public duty:

- 1 Would I, or anyone associated with me, benefit from, or be detrimentally affected by, my proposed decision or action?
- 2 Could there be benefits for me in the future that could cast doubt on my objectivity in exercising my discretion in the matter?
- 3 Do I have a current or previous personal, professional or financial relationship or association of any significance with any party involved in the matter?
- 4 Would my reputation, or that of a relative, friend or associate stand to be enhanced or damaged because of my proposed decision or action?
- 5 Do I, or a relative, friend or associate, stand to gain or lose financially from my proposed decision or action in some covert or unexpected way?
- 6 Do I hold any personal or professional views or biases that may lead others to reasonably conclude that I am not an appropriate person to deal with the matter?
- 7 Have I contributed in a private capacity in any way to the matter?
- 8 Have I made any promises or commitments in relation to the matter?
- 9 Have I received a personal gift, benefit or hospitality from someone who stands to gain or lose financially from my proposed decision or action?
- 10 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 financially by my proposed decision or action?
- 11 Could my proposed decision or action have an influence on any future employment opportunities for me outside my current official duties?
- 12 Could there be any other benefits or factors that could cast doubts on my objectivity in dealing with the matter?
- 13 Do I have any doubts about the integrity of my proposed decision or action?
- 14 Could my involvement in the matter cast doubt on my integrity or Council's integrity?
- 15 If I saw someone else doing what I am proposing to do, would I suspect that they might have a conflict of interests?

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- 16 If I did participate in this matter by any decision or action, would I be happy if my colleagues and the community became aware of my involvement and any of my associations or connections to the matter?

- 17 Is the matter or issue one of great public interest or controversy where my proposed decision or action could attract greater than usual scrutiny by others?

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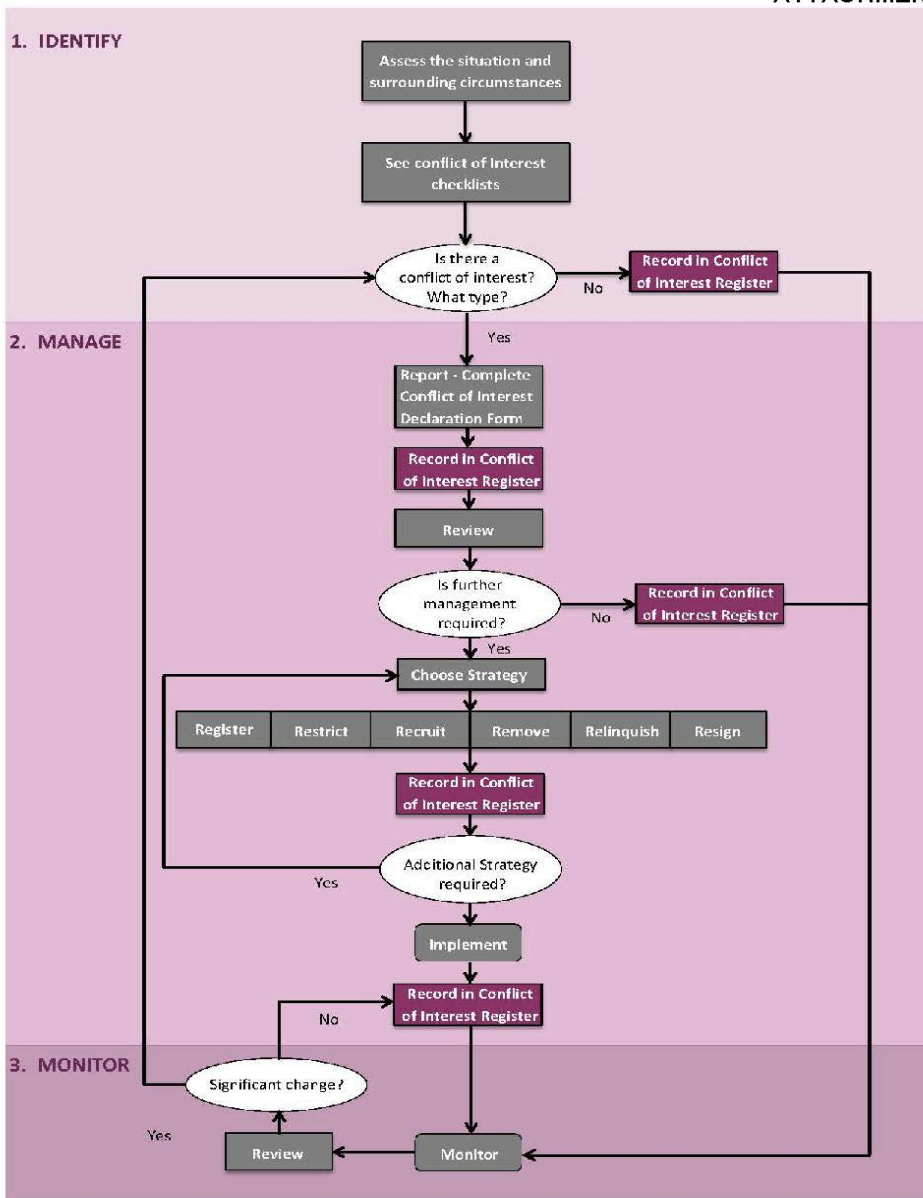
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ATTACHMENT 9.4



Source: Managing Conflicts of Interests in the Public Sector – Toolkit, ICAC, November 2004

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