

**CONFLICT OF INTEREST POLICY**

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<b>RESPONSIBLE OFFICER</b>		General Manager	

# **PART 1: INTRODUCTION**

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

Conflicts of interest can arise when Councillors or Council staff are influenced, or appear to be influenced, by personal interest 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 staff.

## **1.1 Policy Objectives**

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

## **1.2 Scope of Policy**

This policy applies to Councillors, staff, delegates and contractors.

## **1.3 Definitions**

### Conflict 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.

### 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. 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 Interest

This involves direct conflict between a Councillor's or Council employee's current duties and responsibilities and their existing private interests.

### Perceived Conflict of Interest

This is where it could be perceived by others that a Councillor's or Council employee's private interests could improperly influence the performance of their public duties – whether or not this is actually the case.

## Potential Conflict of Interest

This arises when a Councillor or Council employee has private interests that could interfere with their public duties in the future.

## **1.4 Legislative Context**

Chapter 14 of the Local Government Act 1993 covers honesty and disclosure of interests and states that:

- The pecuniary interests of councillors, council delegates and other persons involved in making decisions or giving advice on council matters must be publicly recorded
- Councillors and staff must not take part in decisions on council matters in which they have a pecuniary interest.

Council's Code of Conduct and Code of Meeting Practice also provide direction on the declaration and management of conflicts of interest.

## **1.5 Related Documents**

Code of Conduct

Fraud and Corruption Policy (Draft Pending)

Good Governance Policy

# **PART 2: POLICY CONTENT**

## **2.1 Specific Provisions**

### **2.1.1 Pecuniary Interests**

1. Pecuniary interests must be disclosed.
2. 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.
3. 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

- 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
4. 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. (Section 442 of the Act).

### 2.1.2 Non Pecuniary Interests

1. Non-pecuniary interests must be disclosed. If this is at a meeting, it must be done as soon as possible.
2. Councillors and employees and volunteers who are members of clubs should seriously consider whether their club memberships could give rise to conflicts of interest in Council matters that may affect the clubs. The greater the involvement with the club, such as the holding of an office, the greater the likelihood of a real or perceived conflict of interest.
3. In cases of a non-pecuniary interest, employees 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.
4. Options for dealing with a non-pecuniary conflict of interest will depend on the circumstances of the matter and an objective assessment of it. Options can include:
  - take no action because the conflict is assessed as minor in nature;
  - allow limited involvement (e.g., 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).

### 2.1.3 Interests that Need not be Disclosed

Section 448 of the Local Government Act advises that the following interests do not have to be disclosed:

- an interest as an elector,
- an interest as a ratepayer or a person liable to pay a charge,
- 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,
- 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,
- 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),
- 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,

- 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 permissible uses of:
  - land in which the person or another person with whom the person is associated as provided in Section 443 has a proprietary interest (which, for the purpose 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
  - land adjoining, adjacent to or in proximity to land referred to in the subparagraph above, if the person or the other person with whom the person is associated would by reason of the proprietary interest have a pecuniary interest in the proposal,
- 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,
- 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,
- 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 agreement 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 the relative of any work or service in connection with roads or sanitation,
  - security for damage to footpaths or roads,
  - or 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 the councillors (including the Chairman),
- an interest relating to the payment of expenses and the provision of facilities to councillors (including the Chairman) in accordance with a policy under Section 252 of the Local Government Act 1993,
- an interest relating to an election to the office of Chairman arising from the fact that a fee for the following 12 months has been determined for the office of Chairman,
- 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,
- 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,
- 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.

## **PART 3: POLICY IMPLEMENTATION GUIDELINES**

### **3.1 Disclosing Interests**

#### **3.1.1 Councillors**

- Councillors 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 considered.
- Councillors must complete an annual *Disclosure of Interest Return*.

#### **3.1.2 General Manager**

- If the General Manager declares a conflict of interest in a matter then the Chairperson 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.
- The General Manager must complete an annual *Disclosure of Interest Return*.

#### **3.1.3 Employees and Delegates**

- Employees and delegates 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 considered. The conflict must be disclosed to the relevant supervisor or the General Manager in the first instance.
- Written notice of a conflict of interest must be given to the General Manager. Notice should be given on a *Conflict of Interest Declaration Form*.
- Designated employees must complete an annual *Disclosure of Interest Return*.
- *Purchasing Declaration Forms* must be completed by staff when purchasing goods/services according to RWCC purchasing policy and the declarations shall be kept on file with quotations or tenders.

### **3.2 Returns Disclosing Interests**

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 in Part 1 of Schedule 3. (Refer Section 449 of the Local Government Act 1993).
2. Thereafter, the return must be lodged within 3 months of 30 June each year. Section 441 of the Act sets out the definitions of designated persons which are generally:
  - The General Manager
  - Senior staff of Council
  - Staff specifically designated by Council because the exercise of their functions could give rise to a conflict between that person's duty as a member of staff and the person's private interest

### **3.3 Disclosures at Meetings**

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:
  - 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.
3. A person does not breach Section 451 of the Local Government Act 1993 or the above clause 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 he or she had a Pecuniary Interest. (Section 457 of the Act)
4. 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.
5. 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.

Section 456 of the Local Government Act 1993 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 he or she had a Pecuniary Interest. (Section 457 of the Act)

### 3.4 Deciding if a Conflict of Interest Exists

The following questions may help in deciding whether a conflict of interest exists or whether a Councillor or staff member's conduct could create the impression that a conflict of interest 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.

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

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

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

The responsibility rests with the individual. In many cases, only the individual will be aware of the potential for a conflict of interest. They are encouraged to err on the side of caution by declaring their interest and by not participating in discussion or in decision making if there is any doubt as to their interest in the matter.

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

Staff may make a report under Council's internal reporting system for protected disclosures if they think a colleague has failed to disclose a conflict of interest. The report will then be dealt with under the terms of Council's Internal Reporting Policy.

Any person may make a complaint to the Director-General of the Department 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 Director-General at the following address:

Director-General, Division of Local Government

Locked Bag 3015, Nowra, NSW 2541

Fax: (02) 4428 4199

Phone: (02) 4428 4100

Email: [dlg@dlg.nsw.gov.au](mailto:dlg@dlg.nsw.gov.au)

The Director General may investigate a complaint. The Director General may refer a complaint for investigation to an authority, being the 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 Director General has begun to investigate the complaint.

The Director General 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 Pecuniary Interest Tribunal may consider reports concerning complaints.

### **3.7 Managing Conflicts of Interest**

Apart from declaring an interest, Councillors and Council staff must manage that conflict.

Strategies for managing conflicts of interest 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<sup>5</sup>. The employee or Councillor may elect to relinquish the private interest that is the source of the conflict.

### **3.8 Conflicts of Interest 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 and Regulation 2010.